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BEI DER HOCHSCHULE  
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**Siegfried Magiera**

**THE EMERGENCE OF A "EUROPE OF CITIZENS"  
IN A COMMUNITY WITHOUT FRONTIERS**

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## 1. Introduction: The Non-Economic or Human Dimension of the European Community

a) The European Community (EC) appears primarily as an international economic organization. Nevertheless, it has also a non-economic or, to put it positively, a human dimension. This dimension is the focus of the emerging "Europe of Citizens" in contrast to the earlier "Europe of Dealers".

According to the wording and contents of its three constituting treaties<sup>1</sup>, the European Community pursues essentially economic objectives in the areas of coal and steel, of atomic energy and of the economy in general. Its task is described in detail in Article 2 of the EEC Treaty. According to this article, the Community, by establishing a common market and progressively approximating the economic policies of Member States, shall promote throughout the Community "a harmonious development of economic activities, a continuous and balanced expansion, an increase in stability, [and] an accelerated raising of the standard of living..." However, according to this same article, the Community shall also promote "closer relations between the States belonging to it." These relations have not been specified, in particular, not been limited to the economic sector. Furthermore, in the preamble of the EEC Treaty, the Member States have shown their determination "to lay down the foundations of an ever closer union among the peoples of Europe." The desire of the Member States to establish relations beyond the economic sector can also be seen in the ECSC Treaty. According to the preamble of this treaty, the Member States are "resolved to substitute for age-old rivalries the merging of their essential interests; to create, by establishing an economic community, the basis for a broader and deeper community among peoples long divided by bloody conflicts; and to lay the foundations for institutions which will give direction to a destiny henceforward shared."

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<sup>1</sup> Treaties establishing the European Coal and Steel Community (ECSC) of 18 April 1951, the European Economic Community (EEC) and the European Atomic Energy Community (EAEC) of 25 March 1957.

The exact nature of the non-economic objectives and tasks and the measures they authorize or demand cannot be inferred in detail from these fundamental provisions. Nevertheless, these provisions, including those in the preambles of the treaties, are legally binding.<sup>2</sup>

b) An additional confirmation and extension of the non-economic dimension of the Community can be found in the **Single European Act (SEA)**<sup>3</sup> which amended the treaty law. According to Article 1 SEA, the European Community and the European Political Cooperation henceforth have as their objective "to contribute together to making concrete progress toward European unity." This "European unity" is not explicitly defined. However, the outlines can be recognized by looking at previous practice and, especially, at the preamble of the Single European Act.<sup>4</sup> According to the provisions of the preamble, the Member States are moved by the will to transform their relations as a whole into a European Union and convinced that the European idea, the results achieved in the fields of economic integration and political cooperation and the need for new developments correspond to the wishes of the democratic peoples of Europe. Consequently, the Member States are determined to work together to promote democracy and fundamental rights,

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<sup>2</sup> Court of Justice of the EC, decision of 5 Feb. 1963 (Case 26/62 - van Gend & Loos), 1963 E.C.R. 1/24; of 13 July 1966 (Case 56 and 58/64 - Consten and Grundig), 1966 E.C.R. 321/366; of 8 April 1976 (Case 43/75 - Defrenne), 1976 E.C.R. 455/473. - According to the Court's decision of 30 May 1989, par. 29 (Case 242/87 - Commission/Council; not yet reported) concerning the ERASMUS-program (N. 69), the realization of the Europe of Citizens falls into the framework of the general objectives of the Community ("... dans le cadre des objectifs généraux de la Communauté, tels que la réalisation de l'Europe des citoyens ...").

<sup>3</sup> Of 17 and 28 Feb. 1986, OJ (EC) L 169/1 (1987) = Bull.EC, Supp. 2/86.

<sup>4</sup> Cf. for details S. Magiera, Die Einheitliche Europäische Akte und die Fortentwicklung der Europäischen Gemeinschaft zur Europäischen Union, in: Gedächtnisschrift für W. Geck, 1989, pp. 507-530; cf. also L. Hurwitz, Contemporary Perspectives on EC Integration: Attitudes, Nongovernmental Behavior and Collective Decision Making - Introductory Essay, 1980, pp. 3-23.

to improve the economic and social situation, to pursue new objectives, and to ensure a smoother functioning of the Community.

c) In accordance with these basic provisions of the treaty law, the Member States and the Community institutions have in practice, taken up at the end of the 1960s the non-economic dimension of the Community under the general term of "A people's Europe" or "A Europe of Citizens"; this activity has proceeded parallel to the plans for a European Union.<sup>5</sup>

An initial phase was concluded in 1975 with the report of the Commission on a People's Europe and with Leo Tindemans' report on European Union.<sup>6</sup> The only tangible result for the citizens in the Community, however, was the introduction of the direct election in 1979 of the European Parliament as a result of the reform of the electoral law in 1976.<sup>7</sup> Previously, the representatives had been designated by the national Parliaments.

A second, on-going phase has begun in the middle of the 1980s. Parallel to the efforts of the European Parliament for a Treaty establishing the European Union,<sup>8</sup> an extensive account of the requirements and possibilities of a Europe of citizens was undertaken by a group of experts set up by the Fontainebleau European Council. The two reports of this Adonnino Committee of March and June 1984<sup>9</sup> were approved by the European Parliament<sup>10</sup> and the Milan summit meeting of the European Council.<sup>11</sup> The

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<sup>5</sup> Cf. for details *S. Magiera*, Die Europäische Gemeinschaft auf dem Wege zu einem Europa der Bürger, in: Die Öffentliche Verwaltung 1987, pp. 221-231; *T. Oppermann*, Vom Mitbürger zum EG-Bürger?, in: Lüneburger Symposium für *H.P. Ipsen*, 1988, pp. 87-93.

<sup>6</sup> Bull.EC, Supp. 7/75 and 1/76.

<sup>7</sup> Council Decision and Act concerning the election of the representatives of the European Parliament by direct universal suffrage of 20 Sep. 1976, OJ L 278/1.

<sup>8</sup> Resciution of 14 Feb. 1984, OJ C 77/33.

<sup>9</sup> Bull.EC, Supp. 7/85.

<sup>10</sup> Resolution of 14 June 1985, OJ C 175/276, and of 13 Nov. 1985, OJ C 345/27.

<sup>11</sup> Bull.EC, Supp. 7/85, pp. 16, 34.

Council called upon the Member States and the Community institutions to adopt and implement measures as soon as possible.

Subsequently, a great number of initiatives have been developed which the Commission summarized in a communication of June 1988.<sup>12</sup> These efforts were strengthened by the Single European Act which has charged the Community with the goal of progressively establishing the internal market by the end of 1992. This market shall comprise an area without internal frontiers in which the free movement of goods, services, capital and of persons is ensured (Article 8 a EEC Treaty).

In the following presentation, I shall focus on the major aspects of a Europe of Citizens in a Community without frontiers. In doing so, we can distinguish between the development of a European identity, and a personal, a social, a cultural and a political dimension.

## 2. The European Identity

a) When we recall the statement in the preamble of the 1951 ECSC Treaty according to which the Member States are "resolved to substitute for age-old rivalries the merging of their essential interests," it becomes clear that dramatic changes have come about in the awareness on the part of the citizens since the end of the Second World War and during the development of the European Community.

The earlier, almost exclusively national outlook has been supplemented and partly overcome by an inclusion of the common European dimension. An indication of this change is the attitude of the people toward European integration. With certain fluctuations and differences in individual Member States, three-fourths of the citizens of the Community believe in European integration. The majority consider their country's membership in the Community to be a good thing and do not see any contradiction between Euro-

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A people's Europe, Bull.EC, Supp. 2/88.

pean integration and national identity; rather, they see them as complementary.<sup>13</sup> At the same time, the opinion of the citizens in relation to individual aspects of European integration is discriminating and well balanced. For example, up to 80 percent regard the planned measures for the reform of the internal market as advantageous, while less than 20 percent consider the previous results of the common agricultural policy as good.<sup>14</sup>

b) The attitude toward European integration and, consequently, European identity, obviously depends on the tangible achievements of the Community for the individual citizen. Common symbols, such as a flag or an anthem, may contribute toward European awareness,<sup>15</sup> but they cannot replace actual progress in integration. This is especially true for measures which represent only fictitious achievements, such as the so-called European passport<sup>16</sup> or driving licence,<sup>17</sup> which have, in reality, remained national documents with only a European appearance, or the replacement of customs signs by European emblems<sup>18</sup> while maintaining control procedures at borders. Moreover, the possible dangers of a symbolic, essentially emotional orientation toward "European identity" must not be underestimated. A misconception could de-

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<sup>13</sup> EC-Commission, Euro-Barometer, 29/1988, pp. 1-14.

<sup>14</sup> Ibid., pp. 27-43.

<sup>15</sup> A people's Europe (N. 12), p. 7.

<sup>16</sup> Resolution of 23 June 1981, OJ 241/1, and supplementary Res. of 30 June 1982, OJ 179/1, and of 14 July 1986, OJ 185/1, of the Representatives of the Governments of the Member States of the EC, meeting within the Council, concerning the adoption of a passport of uniform pattern.

<sup>17</sup> First Council Directive 80/1263/EEC of 4 Dec. 1980 on the introduction of a Community driving licence, OJ L 375/1; cf. now also the more progressive proposal of the Commission for a Council Directive concerning the driving licence, COM (88) 705/Rev. = OJ C 48/1 (1989).

<sup>18</sup> Resolution of the Council and the Representatives of the Governments of the Member States of the EC, meeting within the Council, of 13 Nov. 1986 on the introduction of appropriate signboards at the Community's external and internal frontiers, OJ C 303/1.

velop that European identity is directed against the national, regional and local differences in the Community, or against the relations of the Community with the rest of the European and non-European world. Therefore, the following presentation will focus on those initiatives which can contribute to tangible results for the citizens of the Community in non-economic areas.

### 3. The Personal Dimension

In a Community without frontiers, to be established by the end of 1992, border controls must be abolished and, as a result, the current option to deny or grant the freedom of movement to certain persons according to individual or collective characteristics, will no longer exist.

a) At present, the territorial mobility of **Community citizens** exists only in connection with an economic activity, either for workers or self-employed persons or for persons providing or receiving services.<sup>19</sup> Community law and the jurisprudence of the European Court of Justice use the relevant terms in a broad sense. Thus, workers are also covered when they travel to another Member State in search of work, or when they wish to remain in that State after termination of their work.<sup>20</sup> Persons who require medical care or undertake educational and business trips, as well as all tourists in general, are

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<sup>19</sup> Cf. esp. Art. 48 et seq. EEC treaty; also EC-Commission, A guide to working in a Europe without frontiers, 1988.

<sup>20</sup> Art. 48 (3) EEC treaty; cf. also Commission Regulation (EEC) No. 1251/70 of 29 June 1970 on the right of workers to remain in the territory of a Member State after having been employed in that State, OJ L 142/24.

regarded as recipients of services.<sup>21</sup> Students enjoy mobility when they travel to another Member State for vocational training.<sup>22</sup>

Excluded from the freedom of movement of Community citizens are mainly those students not pursuing vocational training, pensioners, and other non-gainfully employed persons. A directive proposed by the Commission in 1979, according to which the freedom of movement and the right of residence in the Community was to be extended to all Community citizens,<sup>23</sup> was not accepted by the Council. The reason given was concern about the different social security schemes in the Member States which could favor a transfer of the place of residence to another Member State solely because of the better welfare benefits there.<sup>24</sup>

b) In a Community without frontiers, border controls would also be removed for **nationals of third States**. At present, these persons are not included in the freedom of movement, which is basically reserved for the citizens of the Member States and can be extended only as an exception to providers of services from third States when they reside in the Community.<sup>25</sup> Hitherto, the freedom of movement has been extended to nationals of third

<sup>21</sup> Court of Justice of the EC, decision of 31 Jan. 1984 (Case 286/82 and 26/83 - Luisi and Carbone), 1984 E.C.R. 377/403.

<sup>22</sup> Court of Justice of the EC, decision of 13 Feb. 1985 (Case 293/83 - Gravier), 1985 E.C.R. 593; of 2 Feb. 1988 (Case 24/86 - Blaizot), not yet reported; cf. also *C. O. Lenz*, *Die Rechtsprechung des Europäischen Gerichtshofs im Bereich des Bildungswesens*, in: *Europa-Archiv* 1989, pp. 125-134.

<sup>23</sup> Proposal of 31 July 1979 for a Council Directive on a right of residence for nationals of Member States in the territory of another Member State in which they are not yet or no longer employed, OJ C 207/14.

<sup>24</sup> Cf. the first report of the Adonnino-Committee (N. 9), p. 15; *A people's Europe* (N. 12), p. 19. - The proposal (N. 23) was finally withdrawn by the Commission on 3 May 1989 and substituted on 7 June 1989 by three proposals concerning students, pensioners and non-economically active people respectively (cf. *Europe - Agence Internationale*, No. 5031 [8 June 1989], p. 6).

<sup>25</sup> Art. 59 (2) EEC treaty.

States only insofar as they are family members of Community citizens who are entitled to mobility.<sup>26</sup>

The abolition of border controls requires an approximation of the different provisions of the Member States regarding the movement and residence of nationals of third States, especially of refugees and those seeking asylum.<sup>27</sup>

c) In addition, coordinated action on the part of the Member States is necessary in the fight against **transnational crime**, especially terrorism and drug-dealing.<sup>28</sup> As serious as the dangers connected with the abolition of border controls might be, they are not sufficient to justify the retention of existing controls. These dangers must be combatted in other ways, for example, by coordinated checks at the external borders and an increased cooperation among the Member States within the framework of a mutually-organized European "Community Police Authority".<sup>29</sup> Otherwise, one would make tangible progress on the way to a Europe of Citizens for the great majority of law-abiding citizens dependent on the misconduct of a small, criminal minority.

<sup>26</sup> Cf. Art. 10-12 of Council Regulation (EEC) No. 1612/68 of 15 Oct. 1968 on freedom of movement for workers within the Community, OJ L 257/2; Art. 1 of Council Directive 73/148/EEC of 21 May 1973 on the abolition of restrictions on movement and residence within the Community for nationals of Member States with regard to establishment and the provision of services, OJ L 172/14. - Cf. also Commission Decision 88/384/EEC of 8 June 1988 setting up a prior communication and consultation procedure on migration policies in relation to non-member countries, OJ L 183/35.

<sup>27</sup> Cf. EC-Commission, White Paper "Completing the Internal Market", COM (85) 310, p. 15; EC-General Report 22/1988, point 1057; EC-Commission, Report on the abolition of the controls of individuals at intra-Community borders, COM (88) 640; also *H. C. Taschner/W. de Lobkowicz*, Die Europäische Gemeinschaft und das Asylrecht, in: *M. Zuleeg* (ed.), *Ausländerrecht und Ausländerpolitik in Europa*, 1987, pp. 143-152.

<sup>28</sup> Cf. EC-Commission, White Paper (N. 27); A people's Europe (N. 12), p. 17; EC-Commission, Report on the abolition ... (N. 27).

<sup>29</sup> For efforts in this direction cf. e.g. Europe - Agence Internationale, No. 4960 (22 Feb. 1989), p. 7; No. 4962 (24 Feb. 1989), p. 5; No. 4972 (13/14 March 1989), p. 3.

#### 4. The Social Dimension

a) Along with the economic dimension, the social dimension is included in the three treaties establishing the Community. In general, according to the ECSC Treaty, the tasks of the Community include contributing to growth of employment and a rising standard of living and to improving living and working conditions (Articles 2 and 3 lit. e). According to the EAEC Treaty, the tasks include contributing to raising the standard of living and establishing uniform safety standards to protect the health of workers and of the general public (Articles 1 and 2 lit. b). Finally, according to the EEC Treaty, the tasks include promoting an accelerated raising of the standard of living, ensuring economic and social progress, and working toward the constant improvement of living and working conditions (Article 2, Preamble, par. 2 and 3). Whereas the ECSC Treaty still contains the "Economic and Social Provisions" without differentiation in a single title (Articles 46 et seq.), the EAEC Treaty has a separate chapter on "Health and Safety" (Articles 30 et seq.). The EEC Treaty is more explicit. It contains a special title on "Social Policy" with separate chapters on "Social Provisions" and "The European Social Fund" (Articles 117 et seq.). An additional title on "Economic and Social Cohesion" (Articles 130 a et seq.) was included by the Single European Act. Finally, it contains various individual social policy provisions, especially regarding the freedom of movement of workers and the right of establishment (Articles 48 et seq., 52 et seq.) and agricultural and transport policy (Articles 39 and 75).

b) In the practice of the Community, social policy played at first a minor role, since it was regarded as a rather automatic consequence of economic development. After the early establishment in 1968 of the customs union in the area of the free movement of goods, the efforts in the area of the free movement of persons were increased by applying the specific social policy provisions and, in addition, the subsidiary competence provision of Article 235 of the EEC Treaty.

Until the middle of the 1970s, the fundamental acts were adopted on abolition of restrictions on movement and residence for workers<sup>30</sup> and self-employed persons<sup>31</sup>, as well as on the application of social security schemes.<sup>32</sup> Furthermore, the European Center for the Development of Vocational Training (CEDEFOP)<sup>33</sup> and the European Foundation for the Improvement of Living and Working Conditions<sup>34</sup> were established. In addition, the resolution of the Council concerning a social action program<sup>35</sup> and an action program for migrant workers and their families<sup>36</sup> were adopted.

Subsequently, these acts and initiatives have been enlarged and expanded. However, increased attention was given to the social dimension again only in connection with the adoption of the Single European Act and the goal to complete the internal market by the end of 1992. By implementing the new Treaty title concerning the economic and social cohesion (Articles 130 a et seq. EEC Treaty) in 1988, the re-organization of the existing structural funds and, thereby, the reform of the European Social Fund were achieved.<sup>37</sup> Furthermore, the European Council emphasized at its meeting in Hanover the

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<sup>30</sup> Cf. the Regulations (EEC) No. 1612/68 (N. 26) and No. 1251/70 (N. 20) as well as the Council Directive 68/360/EEC of 15 Oct. 1968 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families, OJ L 257/13.

<sup>31</sup> Cf. the Council Directives 73/148/EEC (N. 26) and 75/34/EEC of 17 Dec. 1974 concerning the right of nationals of a Member State to remain in the territory of another Member State after having pursued therein an activity in a self-employed capacity, OJ L 14/10 (1975).

<sup>32</sup> Cf. Council Regulation (EEC) No. 1408/71 of 14 June 1971 on the application of social security schemes to employed persons, to self-employed persons and to members of their families moving within the Community, OJ L 149/2.

<sup>33</sup> Council Regulation (EEC) No. 337/75 of 10 Feb. 1975, OJ L 39/1.

<sup>34</sup> Council Regulation (EEC) No. 1365/75 of 26 May 1975, OJ L 139/1.

<sup>35</sup> Of 21 Jan. 1974, OJ C 13/1.

<sup>36</sup> Of 9 Feb. 1976, OJ C 34/2.

<sup>37</sup> Council Regulation (EEC) No. 4255/88 of 19 Dec. 1988 laying down provisions for implementing Regulation (EEC) No. 2052/88 as regards the European Social Fund, OJ L 374/21.

importance of the social aspects for the progressive implementation of the established goals for 1992.<sup>38</sup> Finally, the Commission adopted a guideline note concerning the social dimension of the internal market.<sup>39</sup> The pre-eminent goal is the improvement of the living and working conditions of all Community citizens by the completion of the internal market. The main objectives are the improvement of working conditions, the assurance of social security, the improvement of employment opportunities and, in general, the adoption of a charter of basic social rights.

c) With respect to **working conditions**, the Community law contains provisions to ensure equal treatment of workers without prejudice to the otherwise different conditions in the individual Member States. Thus, the free movement of workers includes the abolition of any discrimination based on nationality as regards employment, remuneration and other conditions of work (Article 48 (2) EEC Treaty).

In addition, the Member States are bound to ensure and maintain the application of the principle that men and women should receive equal pay for equal work (Article 119 EEC Treaty). Moreover, Community law contains provisions to ensure certain minimum standards for workers, the observance of which can require an adjustment of working conditions in the Member States. Thus, the Member States were, according to the original text of the EEC Treaty, obliged to maintain the existing equivalence between paid holiday schemes (Article 120). According to the text as amended by the Single European Act, they are further obliged to encourage improvements, especially in the working environment, as regards the health and safety of workers, and to set as their objective the harmonization of conditions in this area while maintaining the improvements made (Article 118 a).

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<sup>38</sup> Bull. EC 6-1988, p. 187.

<sup>39</sup> Bull. EC 9-1988, p. 8; cf. also Social Europe (Special issue), The social dimension of the internal market, 1988; Social Europe (Supp. 7/88), The social aspects of the internal market, vol. 1.

With the completion of the internal market, the common minimum standard will become more important because the social level represents an economic cost factor. If the common minimum standard is not to become regressive for the citizens of the most highly developed Member States, it must be set at the highest level. As long as this adjustment has not been achieved in the lesser developed Member States, it must be guaranteed that no distortions of competition in favor of business activities in those areas will take place. Therefore, the social level and the corresponding costs must be raised step by step so that the dangers of "social dumping" and of lowering the social level throughout the Community will be prevented.

d) With regard to **social security**, Community law provides for the application of social security schemes of the Member States to employed and self-employed persons and their families.<sup>40</sup> Workers who are nationals of a Member State enjoy, in the territory of another Member State, the same social and tax advantages as national workers.<sup>41</sup> These **social advantages** encompass, according to the jurisprudence of the European Court of Justice, all benefits which are granted to the nationals of a Member State either by virtue of their status as workers, or simply by virtue of their residence on national territory, and where the extension of the benefits to nationals of other Member States seems suitable to facilitate the free movement of workers.<sup>42</sup> Among these social advantages are assistance for rehabilitation of employees, fare reductions for large families, the use of one's own language in court proceedings, or co-habitation in a partnership outside of marriage.<sup>43</sup> Community law, especially the principle of non-discrimination embedded in Article 7 of the EEC Treaty, can provide claims to social benefits also for other persons. Tourists, for example, who travel to another Member State as

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<sup>40</sup> Regulation (EEC) No. 1408/71 (N. 32).

<sup>41</sup> Art. 7 (2) Regulation (EEC) No. 1612/68 (N. 26).

<sup>42</sup> Decision of 14 Jan. 1982 (Case 65/81 - Reina), 1982 E.C.R. 33/44.

<sup>43</sup> Cf. for details *Magiera* (N. 5), p. 225; *A. Randelzhofer*, in: *E. Grabitz* (ed.), *Kommentar zum EWG-Vertrag*, Art. 48 par. 30 et seq. (1988).

recipients of services have a right to compensation as crime victims when a Member State affords such compensation to its nationals.<sup>44</sup>

e) With regard to the **improvement of employment opportunities**, the Community and its Member States are faced with the problem of high **unemployment** which - in a true internal market - can only be solved jointly. In recent years, 11 percent or 16 million of the working population in the Community were unemployed.<sup>45</sup> In addition, there is an unequal distribution of the unemployed among the different Member States and regions (between 3 percent and more than 30 percent), as well as to the disadvantage of young people under 25 years of age (22 percent).<sup>46</sup> An action program to encourage an increase in employment was adopted by the Council at the end of 1986.<sup>47</sup> Remedial measures are to be taken, especially within the framework of economic and social cohesion, by the reform of the structural funds.<sup>48</sup> Compared to 1987, the appropriations of these funds will be doubled in real terms by 1993 and concentrated on the regions and groups of persons most in need.<sup>49</sup> The European Regional Development Fund may use approximately 80 percent of its resources for the least developed regions;<sup>50</sup> the European Social Fund concentrates on measures to combat long term unemployment and the integration of young people into working life.<sup>51</sup>

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<sup>44</sup> Court of Justice of the EC, decision of 2 Feb. 1989 (Case 186/87 - Cowan), not yet reported.

<sup>45</sup> EC-Commission, The social dimension of the internal market, Bull. EC 9-1988, point 1.1.2.

<sup>46</sup> Ibid.

<sup>47</sup> Res. of 22 Dec. 1986, OJ C 340/2.

<sup>48</sup> Cf. EC-General Report 22/1988, points 533-534.

<sup>49</sup> Art. 1-3, 12 of Council Regulation (EEC) No. 2052/88 of 24 June 1988 on the tasks of the structural funds and their effectiveness and on coordination of their activities between themselves and with the operations of the European Investment Bank and the other existing financial instruments, OJ L 185/9.

<sup>50</sup> Art. 12 (5), *ibid.*

<sup>51</sup> Art. 1, 3 (2), *ibid.*

An additional concern regarding the improvement of employment opportunities is the adequate **qualification of employed and self-employed persons** for the increasing demands in a Community without frontiers. First of all, there is a need for the mutual recognition of diplomas, certificates and other evidence of formal qualifications, as well as for the coordination of the legal and administrative regulations of the Member States concerning the taking up and pursuit of activities as self-employed persons (Article 57 EEC Treaty). Up to the present, development in this area has been slow and sporadic.<sup>52</sup> With the adoption of the Council Directive of December 21, 1988, on a general system for the recognition of higher-education diplomas<sup>53</sup>, the Community has taken an initial step toward more comprehensive regulations, thus making way for improvements in other areas. In order to enhance employment opportunities, there is a further need for the promotion of advanced vocational training for employed persons. Accordingly, the European Social Fund has been charged with the task to participate in the financing of measures for vocational training and, if necessary, of measures for vocational counseling.<sup>54</sup>

f) In addition to these individual aspects which have been developed rather haphazardly, the Community must still elaborate a comprehensive general concept. This is necessary, if the social dimension is to exist on an equal footing with the economic dimension of the internal market. Procedurally, the social dialogue which was incorporated by the Single European Act into the EEC Treaty (Article 118 b), may be of value at the Community level. In this connection, the Commission has suggested as a goal for 1992 the creation of a general "social minimum" for the Community, the principles and

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52 Cf. the compilation in: EC-Commission (N. 19), pp. 18 et seq.; by *Randelzhofer* (N. 43), Art. 57 Anhang I (1986).

53 89/48/EEC, OJ L 19/16 (1989).

54 Art. 3 (2) (c) of Regulation (EEC) No. 2052/88 (N. 49); Art. 1 of Regulation (EEC) No. 4255/88 (N. 37).

characteristics of which could be compiled in a Community charter of fundamental social rights.<sup>55</sup>

At the request of the Commission, the Economic and Social Committee adopted an opinion on "The Basic Social Rights of the European Communities" on February 22, 1989.<sup>56</sup> The Committee recommends the establishment of a catalogue of basic social principles and rights at the Community level which are to be guaranteed by all Member States. For this purpose no new provisions are intended, but those provisions shall be taken into account which are contained in the existing international instruments, especially of the Council of Europe, the United Nations and the International Labour Organisation.

According to their personal scope, the Committee distinguishes between two groups of norms - those applicable to all citizens and those applicable to employed persons. Among the general norms are the right to social security, education, protection of privacy and personal property, old-age benefits, the right of consumers to health protection, information and the free choice of goods and services, as well as the right to the protection of the working environment and cultural heritage. Among the specific rights of the employed persons are the freedom of association, the freedom to choose and practice a trade, occupation or profession, the right to basic and advanced vocational training, to an annual paid holiday and a weekly rest period, to safe and healthy working conditions, medical assistance and free employment services.

The opinion of the Committee is of value insofar as it offers a comprehensive overview of the possible social rights of the European Community. However, considerable efforts will have to be made to define and organize

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<sup>55</sup> Bull. EC 9-1988, point 1.1.7. - Cf. also the Proposal of the Commission of 22 Dec. 1988 for a Council Decision establishing a medium-term Community action program to foster the economic and social integration of the least privileged groups, COM (88) 826 = OJ C 60/11 (1989).

<sup>56</sup> EC-Doc. CES 270/89. - On 17 May 1989, the Commission presented a preliminary draft of the intended "Community Charter of Fundamental Social Rights" (cf. Europe - Agence Internationale, No. 5016 [18 May 1989] p. 6, and - for the text of the draft - Europe/Documents, No. 1558 of 12 June 1989).

these principles and rights more clearly and especially to determine their legal meaning and implication.

## 5. The Cultural Dimension

a) In comparison to the economic and social dimension, the treaties establishing the European Community, even after their amendment by the Single European Act, do not contain any special provisions regarding the cultural dimension of the Community. However, the purposes and tasks of the Community mentioned above, especially the creation of an ever closer union among the peoples of Europe and the constant improvement of their living conditions, are formulated in such a broad manner that they do not exclude the cultural dimension.

This becomes especially clear with a closer look at the term "culture". As it is generally used today, culture means "the whole of the spiritual, material, intellectual and emotional factors which make up the nature of a society or a social group."<sup>57</sup> However, in the discussion of the cultural dimension of the European Community, a more specific aspect is meant - namely, in essence, the areas of science, education and the arts.<sup>58</sup>

Which of the different cultural aspects within a community of states dedicated toward increasing integration falls into the competence of the Community or of the Member States at a given moment of development, can only be determined for each specific case. In order to surmount problems of transition, the Community and the Member States dispose of a wide and flexible range of legal instruments. Accordingly, the competences can be exercised by

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<sup>57</sup> Cf. the definition by UNESCO, quoted in: EC-Economic and Social Committee, Opinion on the communication from the Commission on a fresh boost for culture in the EC, OJ C 175/40, point 2.2 (1988).

<sup>58</sup> Cf. C. Tomuschat, *Rechtliche Aspekte des Gemeinschaftshandelns im Bereich der Kultur*, in: *Fédération Internationale pour le Droit Européen, Reports of the 13th Congress*, vol. 1, 1988, pp. 17-64.

the Community institutions alone, by a common action of the Community Council and the Ministers meeting within the Council, or by a coordinated action of the Member States. All these instruments have been used in a variety of ways, particularly in the cultural sector. They will not be further discussed here. Rather, emphasis will be placed on the material aspects of the cultural dimension in a Community without frontiers to be established by the end of 1992.

b) One major aspect of the cultural dimension, the **field of science**, has been treated within the framework of the Community for several decades, although only a few provisions in the Treaty law (Article 55 ECSC Treaty; Articles 2 lit. a and 7 EAEC Treaty; Article 41 lit. a EEC Treaty) authorized limited actions.<sup>59</sup> Realizing the increasing need for a more comprehensive Community policy in this field, the Member States agreed in the Single European Act to insert a new title into the EEC Treaty (Articles 130 f-q) in order "to strengthen the scientific and technological basis of European industry and to encourage it to become more competitive at international level" (Article 130 f).

c) Of special importance for the cultural dimension of the Community is the **field of education**. In this respect, the EEC Treaty confers upon the Community institutions certain competences as to professional education, for example, laying down general principles for implementing a common vocational policy (Article 128), promoting close cooperation between Member States in the field of vocational training (Art. 118), or issuing directives for the mutual recognition of diplomas, certificates and other evidence of formal qualifications (Art. 57).

Independent of the difficult delimitation as to competences, the inclusion of the field of general education, in addition to that of professional training,

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Cf. H.J. Glaesner, in: E. Grabitz (ed.), *Kommentar zum EWG-Vertrag*, vor Art. 130 f par. 1 et seq. (1988).

has proven increasingly important for the common development of the Community and its Member States.<sup>60</sup>

This became clear about the middle of the 1970s. On June 6, 1974, still separate resolutions were passed by the Council concerning the mutual recognition of diplomas, certificates and other evidence of formal qualifications,<sup>61</sup> and by the Ministers of Education meeting within the Council concerning cooperation in the field of education.<sup>62</sup> On February 9, 1976, however, a joint resolution was adopted by the Council and by the Ministers of Education meeting within the Council comprising an action program in the field of education.<sup>63</sup>

Subsequently, diverse initiatives were taken up which have increased in number and importance, especially since the middle of the 1980s. Among these are the resolutions of the Council and the Ministers of Education meeting within the Council regarding new information technology in education,<sup>64</sup> consumer education in primary and secondary schools,<sup>65</sup> environmental education,<sup>66</sup> and health education in schools.<sup>67</sup> Furthermore, they comprise various programs adopted by the Council, for example, the programs for cooperation between universities and industry in the field of technology (COMETT),<sup>68</sup> for promoting the mobility of university students

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<sup>60</sup> Cf. the compilations in: EC-Council, *European educational policy statements*, 1987; *Social Europe* (Supp. 3/87), *Activities of the Commission of the EC in the field of education and training during 1985-1986*; also *T. Oppermann, Von der EG-Freizügigkeit zur europäischen Ausbildungspolitik?*, 1988; *K. Sieveking, Europäisierung der Bildungspolitik?*, in: *Zeitschrift für Ausländerrecht* 1987, pp. 99-108.

<sup>61</sup> OJ C 98/1.

<sup>62</sup> OJ C 98/2.

<sup>63</sup> OJ C 38/1.

<sup>64</sup> Of 19 Sep. 1983, OJ C 256/1.

<sup>65</sup> Of 9 June 1986, OJ C 184/21.

<sup>66</sup> Of 24 May 1988, OJ C 177/8.

<sup>67</sup> Of 23 Nov. 1988, OJ C 3/1 (1989).

<sup>68</sup> Of 24 July 1986, OJ L 222/17, and of 16 Dec. 1988, OJ L 13/28 (1989).

(ERASMUS),<sup>69</sup> and for promoting youth exchanges in the Community (YES).<sup>70</sup>

After the Commission had presented a summary communication on education in the European Community with the medium-term perspectives for the period 1989-1992,<sup>71</sup> the Council and the Ministers of Education meeting within the Council adopted a resolution on May 24, 1988 on the European dimension in education.<sup>72</sup> In their resolution, they regard the strengthening of this dimension as a contribution to the development of the Community and to the implementation of the goal to create a unified internal market by 1992. Through concerted action by the Member States and the Community, young people are to be provided with a better understanding of the Community and its Member States in their historical, cultural, economic and social aspects, and with a closer view of the significance of the cooperation of the Community States with other States in Europe and the world. Subsequently, the Commission has presented a work program relating to the promotion of innovation in secondary education in the Community<sup>73</sup> and a proposal for a Council decision establishing the LINGUA program to promote training in foreign languages in the Community.<sup>74</sup>

d) In addition to the special fields of science and education, the Community and its Member States have also turned their attention to **culture in general** which has increasingly been recognized as the substrate of technology and economy.<sup>75</sup> According to two communications of the Commission of

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<sup>69</sup> Of 15 July 1987, OJ L 166/20.

<sup>70</sup> Of 16 June 1988, OJ L 158/42.

<sup>71</sup> COM (88) 280.

<sup>72</sup> OJ C 177/5.

<sup>73</sup> COM (88) 545.

<sup>74</sup> COM (88) 841 = OJ C 51/7 (1989); adopted by the Council on 23 May 1989 (cf. Europe - Agence Internationale, No. 5020 [24 May 1989] p. 11).

<sup>75</sup> EC-General Report 21/1987, point 708.

1977 and 1982 concerning the Community action in the cultural sector,<sup>76</sup> several specific initiatives have been taken since the middle of the 1980s. They are connected to the economic and social dimension of the Community, but go partially beyond it. Among them are the resolutions of the Ministers for Cultural Affairs meeting within the Council on the annual designation of a "European City of Culture,"<sup>77</sup> a European sculpture competition,<sup>78</sup> special conditions of admission for young people to museums and cultural events,<sup>79</sup> the protection of Europe's architectural heritage,<sup>80</sup> and the conservation of works of art and artifacts.<sup>81</sup> Furthermore, they comprise resolutions of the Council and the Ministers for Cultural Affairs meeting within the Council on the European Cinema and Television Year (1988)<sup>82</sup> and on the promotion of the translation of important works of European culture.<sup>83</sup>

At the end of 1987, the Commission presented an additional communication on "A Fresh Boost for Culture in the European Community" for the period 1988-1992.<sup>84</sup> This communication suggests measures for the following five areas: creation of a European cultural area, promotion of the European audio-visual industry, access to cultural resources, training in the arts, and cultural dialogue with the rest of the world. According to the conclusions of the Council and of the Ministers for Cultural Affairs meeting within the Council on May 27, 1988,<sup>85</sup> four priorities have been set for Community action: promotion of the audio-visual industry, a policy on books, training in the cultural sector, and business sponsorship.

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<sup>76</sup> Bull.EC, Supp. 6/77 and 6/82.

<sup>77</sup> Of 13 June 1985, OJ C 153/2.

<sup>78</sup> Of 13 June 1985, OJ C 153/3.

<sup>79</sup> Of 20 Dec. 1985, OJ 348/2.

<sup>80</sup> Of 13 Nov. 1986, OJ C 320/1.

<sup>81</sup> Of 13 Nov. 1986, OJ C 320/2.

<sup>82</sup> Of 13 Nov. 1986, OJ C 320/4.

<sup>83</sup> Of 9 Nov. 1987, OJ C 309/3.

<sup>84</sup> COM (88) 603 = Bull.EC, Supp. 4/87.

<sup>85</sup> OJ C 197/2.

It is obvious that these endeavors are closely related to the economic and social dimension of the Community. This is especially true for measures beneficial to industry and individuals in the cultural sector who must adjust to the new conditions within an internal market without frontiers. Almost four million people are employed in the cultural sector of the Community; its share of the gross national product of the Member States is between 3 percent and 6 percent.<sup>86</sup>

As far as support measures are concerned,<sup>87</sup> these must be adapted to the specific conditions of the cultural sector, which cannot be exposed completely to the free competition of the market. However, in so doing, no measures contradictory to the system as a whole may be used. In this respect, the Commission's proposal for a directive on broadcasting causes concern.<sup>88</sup> According to the proposal, television corporations and cable networks are required to reserve a certain portion of their program for productions of European origin. Such an infringement of the freedom of broadcasting not only affects the cultural dialogue with the rest of the world and supports the charge of a "Fortress Europe", but, above all, contradicts the basic principles of cultural development. Cultural performance needs an atmosphere of freedom and an unrestricted inter-play between the providers and the recipients of cultural productions. This does not mean that support measures for artists and their work should be excluded. However, they may not go so far as to force the supported productions upon their distributors and recipients.

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<sup>86</sup> Bull. EC 12-1987, point 1.1.3.

<sup>87</sup> Cf. EC-Commission, *The Public Administration and Funding of Culture in the European Community* (prepared by A. Ca'Zorzi), 1989.

<sup>88</sup> COM (86) 146 = OJ C 179/4 (1986) = Bull. EC, Supp. 5/86; COM (88) 154 = OJ C 110/3 (1988); cf. also the - more moderate - common position adopted by the Council on April 13, 1989 (Council-document 5858/89) and the - again stricter - resolution of the European Parliament of May 25, 1989 (Europe - Agence Internationale, No. 5022 [26 May 1989], p. 9).

## 6. The Political Dimension

a) The political dimension of a Europe of Citizens in a Community without frontiers relates to the political structure of the Community as well as to the political rights of the citizens in this Community. Both aspects can only be developed on the basis and within the framework of the **constitutional traditions of the Member States** which are characterized by the principles of pluralistic democracy and of guaranteed human and civil rights.<sup>89</sup> The protection of this tradition will become more important as more tasks and competences pass from the Member States to the Community and as the Community progresses on its way to a European Union. This recognition has been stressed repeatedly by the Community institutions and the Member States. Examples are the joint declaration of 1977 by the European Parliament, the Council and the Commission on respecting fundamental rights,<sup>90</sup> the statement of the European Council of 1978 on safeguarding democracy,<sup>91</sup> and the determination of the Member States in the preamble of the Single European Act of 1986 to work together to promote democracy and fundamental rights.<sup>92</sup>

b) The protection of the democratic constitutional tradition within the Community has been supported from the beginning by the **institution of a European Parliament** consisting "of representatives of the peoples of the States brought together in the Community."<sup>93</sup> Subsequently, the competences of Parliament have been increased and its democratic legitimation has been

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<sup>89</sup> Cf. for details *S. Magiera*, Politische Rechte im Europa der Bürger, in: *Zeitschrift für Rechtspolitik* 1987, pp. 331-337 (also published in: *Zuleeg* [N. 27], pp. 123-141); *J. A. Frowein*, Die Herausbildung europäischer Verfassungsprinzipien, in: *Festschrift für W. Maihofer*, 1988, pp. 149-158.

<sup>90</sup> OJ C 103/1.

<sup>91</sup> Bull. EC 3/1978, p. 5.

<sup>92</sup> *Supra*, N. 3.

<sup>93</sup> Art. 20 ECSC Treaty, 107 EAEC Treaty, 137 EEC Treaty.

strengthened by the introduction of the direct election of its representatives beginning in 1979. Step by step, its position has become more similar to that of the parliaments in the Member States. In comparison to these, however, it still lacks essential powers, especially with regard to legislation and to the appointment of the executive. Furthermore, its election and thus its representation are still determined by national rather than by Community factors. The Act introducing the direct election of the European Parliament<sup>94</sup> leaves the determination of the requirements for participation in the elections to the Member States. These generally limit participation to their own nationals who, in addition, must reside in their territory.<sup>95</sup> Thus, Community citizens who avail themselves of their right to free movement and to establish residence in another Member State are generally excluded from political participation in the election of the European Parliament. A certain remedy for this deprivation is provided by those Member States that grant their nationals the right to vote, if they reside in another Member State.<sup>96</sup> The further step, also favored by the European Parliament,<sup>97</sup> of extending the right to vote to all Community citizens residing in their territory, and thus introducing genuine European elections, has been taken only by a few Member States.<sup>98</sup>

c) The protection of the democratic constitutional tradition within the Community is also supported by the envisioned participation of Community citizens in **local elections** of their Member State of residence. At the request of the European Parliament, the Commission presented a proposal for a Council directive in 1988 on the basis of the subsidiary competence provision of Art. 235 EEC Treaty.<sup>99</sup> The purpose of the directive is to compensate for

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94      *Supra*, N. 7.

95      Cf. the compilation in: European Parliament, *Forging ahead* (= *Ein Parlament in voller Entfaltung*), 3rd ed. 1989, pp. 19 et seq.

96      *Ibid.*

97      Resolution of 9 May 1985, OJ C 141/465; of 14 Nov. 1985, OJ C 345/82 and 83.

98      Cf. European Parliament (N. 95).

99      COM (88) 371 = OJ C 246/3 (1988) = Bull. EC, Supp. 2/88; cf. for details *S. Magiera*, *Kommunalwahlrecht in den EG-Mitgliedstaaten*, in: *Europa-Archiv* 1988, pp. 475-480;

the loss of democratic participation which is regularly incurred when a Community citizen makes use of his freedom of movement and establishes residence in another Member State. At present, more than four million people are affected by this loss. Contrary to the elections to the European Parliament or to the national Parliaments, this loss cannot be prevented by continuing to vote in the Member State of origin. Apart from existing legal obstacles, an effective exercise of the right to vote at the local - as compared to the national or European - level requires a close knowledge of the local circumstances which, in the long run, is only possible for voters residing there.

d) The protection of the democratic constitutional tradition is supplemented by the **protection of the fundamental rights and freedoms** within the Community. This protection is provided mainly by the jurisdiction of the European Court of Justice which has to ensure that the law is observed in the interpretation and application of the treaties.<sup>100</sup> The observation of the law in general includes the observation of the fundamental rights in particular, as recognized by the constitutions and by other norms binding the Member States, especially by the European Convention for the Protection of Human Rights and Fundamental Freedoms.<sup>101</sup>

The present level of protection is generally considered to be sufficient. The German Federal Constitutional Court has finally given up its protection of fundamental rights concerning Community legislation in favor of the pro-

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*W. de Lobkowitz*, Un droit de vote municipal pour tous les Européens, in: *Revue du Marché Commun* 1988, pp. 602-614.

<sup>100</sup> Art. 164 EEC Treaty, 136 EAEC Treaty, 31 ECSC Treaty.

<sup>101</sup> Cf. e.g. Court of Justice of the EC, decision of 12 Nov. 1969 (Case 29/69 - Stauder), 1969 E.C.R. 419/425; of 17 Dec. 1970 (Case 11/70 - Internat. Handelsgesellschaft), 1970 E.C.R. 1125/1135; of 14 May 1974 (Case 4/73 - Nold), 1974 E.C.R. 491/507; of 28 Oct. 1975 (Case 36/75 - Rutili), 1975 E.C.R. 1219/1232; also *B. Beutler*, in: *H. v. d. Groeben/H. v. Boeckh/J. Thiesing/C. D. Ehlermann*, *Kommentar zum EWG-Vertrag*, vol. 2, 1983, pp. 1461 et seq.; *I. Pernice*, in: *Grabitz* (N. 43), Art. 146 para. 42 et seq.

tection exercised by the European Court of Justice.<sup>102</sup> Nevertheless, there is still need for improvement. The case-by-case development of the protection of fundamental rights may have been appropriate during the early stages of the Community, however, in a more advanced Community, especially in regard to a Europe of Citizens without frontiers, there is a growing need for a consolidated compilation of the existing fundamental rights.

Subsequent to earlier initiatives of the Community institutions which go back to the beginning of the 1970s, the European Parliament has started a new initiative with regard to the completion of the internal market by the end of 1992. Three months before its third election by direct universal suffrage, it adopted - in the name of the European peoples - a resolution on the "Declaration of Fundamental Rights and Freedoms" and called upon the other Community institutions and the Member States to join it in this declaration.<sup>103</sup> Among the rights and freedoms listed in the declaration are the traditional human rights, such as the inviolability of human dignity, the right to life, equality before the law, freedom of religion and expression, freedom of movement, of property, of assembly and of association. It also includes, however, far reaching social rights, such as a right to just conditions of work, to the best possible protection of health, or to education and vocational training, and finally, general safeguards, for example, in the areas of environmental and consumer protection. Similar to the compilation of basic social rights by the Economic and Social Committee previously mentioned, the catalogue of fundamental rights and freedoms drawn up by the European Parliament needs legal clarification. Special attention will have to be given to the precise distinction between the rights which can be claimed directly by individual citizens, and mere benefits which are meant as guidelines for the competent institutions.

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<sup>102</sup> Decision of 22 Oct. 1986, in: *Entscheidungen des Bundesverfassungsgerichts*, vol. 73, pp. 339 et seq.

<sup>103</sup> Resolution of 14 April 1989 (PE-document 132.563).

## 7. Conclusion

The discussion has shown that, according to its founding treaties and to its subsequent practice, the European Community is not limited to the economic integration of its Member States. Rather, it provides for a comprehensive integration which includes also the social, cultural and political dimension. These additional aspects increase in importance as the Community progresses on its way to a European Union. The completion of the internal market by the end of 1992 which was stipulated by the Single European Act shall comprise an area without internal frontiers in which the free movement of goods, services and capital, but also of persons is ensured. This freedom of movement does not cover persons only as actors on the economic stage, but in their complete - economic as well as social, cultural and political - personality. Thus, it affects citizens who remain nationals of the several Member States but who shall enjoy basically the same rights and duties in the whole Community as a "Europe of Citizens".

