



## Response of the European Network against Racism (ENAR)

### The Charter of Fundamental Rights

December 2000

*The European Network against Racism (ENAR) is a network of some 600 European NGOs working to combat racism in all EU Member States. Its establishment was a major outcome of the 1997 European Year against Racism. ENAR is determined to fight racism, xenophobia, anti-Semitism and Islamophobia, to promote equality of treatment between EU citizens and third country nationals, and to link local/regional/national initiatives with European initiatives. Further information is available at: [www.enar-eu.org](http://www.enar-eu.org)*

**The virtual omission of third country nationals by the Charter project**

After reading the European Union's Charter of Fundamental Rights project proposed by the presidium following discussions of the Convention, ENAR (a Europe-wide network which campaigns against racial discrimination and for equal rights and opportunities within the Union) wishes to express its profound disappointment and dissatisfaction regarding the content of this text.

In spite of the fact that one of the objectives listed in the preamble of this Charter is to improve the protection of fundamental rights in the light of developments in society by making them more visible, the Union has, at the very least, been very short-sighted with regard to the 17 million third country nationals who reside legally in the 15 Member States.

In fact, third country nationals are only mentioned twice.

**Article 15.3. Freedom to choose an occupation:**

“Nationals of third countries who are authorised to reside in the territories of the Member States are entitled to working conditions equivalent to those of citizens of the Union.” In this passage we note that the working conditions to which third country nationals are entitled are ‘equivalent’ but that they are not equal.

**Article 43.2. Freedom of movement and of residence:**

“Freedom of movement may be granted, in accordance with the Treaty establishing the European Community, to nationals of third countries legally resident in the territory of a Member State.”

No such freedom of movement is granted, even though the possibility is envisaged within the limits of the Treaty.

It is important to point out that, both at present and in theory, this freedom of movement is limited for third country nationals to the right to travel for a period of no more than three months.

In practice they will have to wait until the “Council shall adopt measures setting out the conditions under which nationals of third countries shall have the freedom to travel within the territory of the Member States during a period of no more than three months.” (Article 62 of the final version of the Treaty).

It is important to recall that nationals of third countries have been contributing in an active, indeed fundamental, way to the construction of the European Union for many years.

Whole sectors of the economy depend on them; in addition to their undeniable economic contribution, third country nationals also contribute to urban renewal, to the enrichment and broadening of social, cultural and artistic life and to the development of the Member States where they are resident.

In spite of their tremendous contribution, third country nationals, who have the same obligations as European Union nationals, are not accorded the same rights.

**Second-class citizens**

Currently, third country nationals enjoy neither freedom of movement nor the right to settle; under Community law they do not have the right to all the social and economic benefits granted by the Member States to their nationals; they do not have the freedom to have access to economic activities in the territory of the European Union, nationals of the European Union may be favoured over them. Community law does not guarantee them the same conditions for exercising their activities or the same living conditions as nationals of the host Member State, neither does it guarantee them equal treatment in the area of social protection.

Third country nationals do not enjoy the political rights that are accorded to European Union nationals, they do not have the right to vote or to stand as a candidate in local or European elections in the host Member State.

This difference in treatment, essentially on the basis of nationality, between nationals of the European Union and of third countries contradicts the initial intentions of the architects of the Treaty of Rome who included the general principle of non-discrimination on the basis of nationality (Article 12 of the final version of the Treaty), a principle which has subsequently been interpreted as being restricted to the nationality of Member States of the European Union.

This is also in contradiction with a range of international and European instruments for the protection of the rights of the person.

### **European citizenship and equal treatment**

At the time when the Union is endeavouring to implement the principles which it claims to defend, to consolidate a Europe of citizens, this division between European Union nationals and third country nationals is no longer defensible, neither in the social or political spheres, nor in the area of fundamental rights.

This is why we are calling for the rights, which follow from European citizenship to be extended to third country nationals who have been legally resident in a Member State for five years.

This equality of treatment is a prerequisite if the European Union and the Member States wish to be consistent with the commitment they have undertaken with regard to combating racial discrimination, if they wish to move towards full integration of nationals of third countries and if they wish to thwart the extremist, racist and xenophobic currents which are sweeping across the whole of the European Union.