

EUROPEAN UNIVERSITY INSTITUTE, FLORENCE

DEPARTMENT OF LAW

E U I W O R K I N G P A P E R No. 45

MIGRANT WORKERS AND CIVIL LIBERTIES

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March 1983

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Printed in Italy in March 1983
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Badia Fiesolana
I - 50016 San Domenico (FI)
Italy

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Introduction

Why has there been so much talk in recent years of foreigners, of immigration, of racism.....?

After the economists, the sociologists and the demographers, the lawyers too have finally come to consider these problems. Under the pressure of events there have been a number of articles dealing with legislative reform and appearing at a steadily increasing rate. Volkmar Gessner compares this attitude with that towards the problems of the environment and of land use: these questions have been neglected too long, but today there is an awareness of the acuteness of these problems and that they must be approached as a whole¹. Gérard Lyon-Caen for his part states that "the problem of the status of foreign workers in highly industrialized countries, principally in Western Europe, is on the way to becoming one of the major issues of our time. It has taken the place of that of the fate of the peoples under foreign domination. The demand for the independence of the colonies has been replaced by the call for the dignity of migrant workers"². He goes on to state: "The phenomenon is a double-sided one. One side is the movement of capital to where labour is abundant and inexpensive; it is employed from Taiwan to Singapore, from Mexico to Spain. The other is the movement of available labour from the countries of high demographic density - but no capital - towards the industrial centres"³.

One may doubt the depth of the awareness that has grown, and still more that the situation has improved at all. The output of legal scholarship, however productive, is not an indubitable pointer towards the improvement of a practical situation.

It can only be an excuse. Rather than speaking of awareness, ought one not to say that the recent shifts in legal output in this connection do no more than reflect the conflicts undermining the dominant mode of production and the contradictions inherent in the model of economic growth?

Danièle Lochak quotes Carré de Malberg to affirm that "if the police state is that in which administrative authority may arbitrarily and with more or less complete freedom of decision apply all the measures for which it wishes to take the initiative, to meet circumstances and to attain at any moment the objectives it chooses", if "this police state is based on the idea that the end suffices to justify the means", then it is indisputable that "foreigners in France are living under such a regime"^{4 5 6}.

The diversity of the foreigners

The proportion, very small in Denmark (94,000 foreigners in 1978 to some 5 million inhabitants, i.e. 1.88%) and the Netherlands (345,000 foreigners on 31 December 1975 to some 13,700,000 inhabitants, or 2.5%), is clearly higher in the United Kingdom (2,033,000 foreigners in 1977 - figures from a survey on labour forces - to 56 million inhabitants, or 3.6%), in West Germany (3,948,000 foreigners in 1977 to a total population of 61,400,000 or 6.43%), in France 3,505,000 foreigners to a total population of 53,078,000, or 6.6%)

and especially in Luxembourg, where the foreign population represents 25% of the total population (89,721 foreigners out of a total population of 362,211)⁷.

It is important to note that the foreigners in Europe do not form a homogeneous group. This diversity brings with it some special legislative provisions. And even if the law is equal for all, its application poses different problems.

Among foreigners can be counted diplomats, consuls, international officials and other people who have a special status protected under International Law⁸. But the great bulk is formed by the immigrant workers that the Germans euphemistically call 'guest workers' ('Gastarbeiter'). Some of them have left their countries of origin for ever and seek assimilation in their adopted country. Their problem is to become naturalized as quickly as possible. Others, however, and they are the majority, have had to leave their country, but dream of going back home as soon as economic conditions permit.

Some countries, including France, have pursued a policy aimed at facilitating naturalization⁹.

France, at least until 1974, favoured immigration. By contrast, the Federal Republic of Germany has always stated that it was not a country of immigration, and in fact favoured a rather rapid turnover of foreign labour¹⁰. The United Kingdom, for its part, has considered itself as rather a country of emigration, although today the problems of immigration are particularly delicate there¹¹. Italy, a traditional country of emigration, has at least in theory tried to protect the interests of its citizens abroad, although this concern reflected more political than humanitarian considerations¹².

The colonial heritage

Some European countries have a long colonial past, and the situation of foreigners still reflects this today, notably in France and the United Kingdom, and to some extent also in the Netherlands because of the problem of its former Indonesian subjects, among whom the South Moluccans have been much talked about in recent years¹³.

France and the United Kingdom have thus reserved a certain preferential status to their former "colonial subjects".

Algerian immigration into France is important for its numbers¹⁴ and has always caused delicate problems¹⁵. Article 7 of the declaration of principle annexed to the Evian agreements of 19 March 1962 confers on Algerians in France all the recognized rights of Frenchmen, except political rights. A bilateral agreement of 27 December 1968¹⁶ regulates freedom of movement and residence, but also permits checks on the movement of persons^{17 18}. The application of the Evian agreements is a heavy burden on Franco-Algerian relations in the area of the application of foreign worker legislation in France¹⁹. On 20 September 1973 President Boumédiène suspended immigration to France after a certain number of racist attacks against Algerians in France. In 1979 the agreements were extended for one year, and negotiations for revision are on the way²⁰.

By contrast with Algeria, the countries of sub-Saharan Africa that once belonged to France have never constituted an important source of labour for the French economy. Three steps can be picked out.

In an initial liberal period in the context of the Franco-African community created by title XII of the Constitution of 4 October 1958, a multilateral agreement was concluded on the fundamental rights of nationals of States of the Community, and signed on 22 June 1960 by France, Madagascar and the Senegal-Mali Federation²¹. Article 2 of that agreement provides for freedom of movement and residence for nationals of the signatory States.

Bilateral conventions on establishment including the clause of treatment in the same way as nationals in respect of the exercise of paid employment completed the multilateral agreement^{22 23}.

France very quickly took fright at its "great generosity" and at the consequences of these agreements, and sought through bilateral conventions to grant a more strictly defined status to nationals of its former colonies. These conventions on movement imposed on wage workers the condition of an employment contract visaed before departure by the labour office of the host country²⁴.

Since 1974 France has sought through a new type of convention on movement to impose the obligation of possession of a valid passport and of a residence permit. France has also sought to control the movements of students and the movements of families²⁵.

A high Quai d'Orsay official was thus able to write: "If we may make forecasts, we have the right to think that at the end of a development that started fifteen years ago and has no foreseeable completion, all nationals of the African countries that formerly belonged to France will find themselves coming under regulations that will scarcely differ from those of foreigners in ordinary law"²⁶.

The social cost of the idea of the Franco-African community had become too high.

The situation in the United Kingdom is almost inextricable. To an immigration problem which is almost threatening to explode, there is added a very complicated legal aspect where the continental lawyer can find his way only with very great difficulty²⁷.

The difficulty comes in great part from the fact that the United Kingdom has no nationality law in the modern sense of the term. The British legislature has had to define a concept of nationality bit by bit. The immigration law has been used for this, but at the same time legislation on nationality has been used to regulate the flow of immigration^{28 29}.

As Ann Dummett notes, the Common Law recognizes only two situations as regards nationality: that of the subject and that of the alien. The modern theory of nationality based on the links between the individual and the State has never been developed in Britain; English law is based on the feudal concept of allegiance to the Crown. At the start of the twentieth century, any child born on a territory that was a possession of the King was a British subject: whether born in India, the West Indies, Australia or Britain, the only nationality he had was that of the Empire³⁰.

The British Nationality Act (1948) authorizes all independent States of the Commonwealth to create and regulate their own citizenship, including in particular the right to issue passports. However, the fact of being a citizen of a Commonwealth country implies that of being a British subject³¹. "British nationality is the genus and citizenship is the species"³².

A New British Nationality Act received the Royal Assent in October 1981 with the commencement date of 1 January 1983. For Ian A. MacDonald and Nicholas Blake, "The Act represents a major new departure in British nationality law, and brings to an end a post-war era which started with nationality being seen as a symbol of Commonwealth unity and ended with it being cut up into fine distinctions between citizens who belong and those who do not. It is an era in which the broad principles enshrined in the British Nationality Act 1948 have been steadily and systematically eroded by successive immigration laws³³. According to Charles Blake, "The chief problem about existing nationality law was that it provided no clear statement as to who had the right of unrestricted entry. As such a right was determined by patriality (an obscure archaism resurrected by and for immigration legislation, S.2 Immigration Act 1971), the simplest way and perhaps the only way forward was to bring nationality law into line with immigration law"³⁴. For R. White and F.J. Hampson, "The Act completely replaces the scheme set up by the British Nationality Act 1948". The principal purpose of the new measure given by Mr. Whitelaw at second reading in the Commons was that "citizenship and right of abode, which ought to be related, have over the years parted company with each other (H.C. Deb. Vol. 997, col 931). This refers to the fact that nationality law reflects liberal assumptions of a generation ago, while immigration law, particularly in relation to 'coloured people' has become egregiously restrictive in the last two decades"^{35 36 37}. In parallel with the attempts to clarify the law on nationality, we can see an attempt to outline an immigration law. In the nineteenth century the United Kingdom recognized freedom of entry (except in wartime) to British subjects as well as to aliens. In 1905, 1914 and 1919 laws were passed regarding aliens which, while having

immediate ad-hoc motivations (respectively, to control the influx of Jewish refugees from Poland and Russia, to deal with the outbreak of World War I, and to meet the perils of the aftermath of the War and the Russian Revolution), left a permanent legacy. Very wide discretionary powers, primarily exercisable by the Home Secretary, were given both as to exclusion and deportation, while other drastic limitations were imposed on aliens.

The Commonwealth Immigrants Act 1962 regulated the entry of all Commonwealth citizens or British Subjects whose passport was issued by a Government of another Commonwealth State or of a Colony.

This measure was criticized because its unavowed aim was to differentiate between people according to colour.

The second Commonwealth Immigrants Act 1968 authorized free entry only of citizens born in the United Kingdom and Colonies, adopted, naturalized or registered in the United Kingdom, or whose father, mother or grandmother had been born there.

In 1971 the Conservative government submitted a bill with the aim of unifying the whole of the immigration regulations, for subjects, protected persons and aliens³⁸.

The United Kingdom was seeking to adapt its legislation at the time of entry into the European Communities³⁹.

Article 2 of the Immigration Act 1971 makes the right of abode in the United Kingdom the keystone of the new legislation. But this right is not to be confused with citizenship of the United Kingdom.

A person who has the right of abode is a patrial⁴⁰. All others are non patrials. Only patrials have the right of entry to the United Kingdom.

A person is patrial

- 1) if he is a citizen of the United Kingdom and colonies, by birth, adoption or naturalization⁴¹;
- 2) if he is a citizen of the United Kingdom and colonies and his father, mother, grandfather or grandmother had citizenship by birth, adoption, naturalization or registration in the United Kingdom⁴²;
- 3) if he is a citizen of the United Kingdom and colonies who has been settled in the United Kingdom and been ordinarily resident there for five years⁴³;
- 4) if he is a Commonwealth citizen, provided that his father or mother was born in the United Kingdom^{44 45}.

This legislation is a source of multiple paradoxes, as Ann Dummett notes: "A patrial from absolutely any country has the right to take a job in the United Kingdom. An "Australian patrial" has thus all the rights conferred by each of the two nationalities: he can vote, work etc in the United Kingdom just as well as in Australia. But a "non patrial" citizen of the United Kingdom and colonies from Kenya cannot vote, etc in Kenya, nor can he freely enter into the United Kingdom to vote or work there"⁴⁶.

The present system and its application have given rise to numerous discussions and disputes⁴⁷.

Let us note in closing that the United Kingdom, by contrast with France, has not concluded international agreements on immigration with the other Commonwealth countries.

Our study, which aims at being a comparative study, must nevertheless take broad account of international and European law to the extent that these legal systems define certain particular statutes, and also because they lay down common

rules and directly and indirectly influence the law of the European Community countries. International and regional organizations have had an importance of the first order in Europe, and the impact of these standards cannot be neglected.

Many bilateral and multilateral treaties have included a reciprocity clause. For Gérard Lyon-Caen this is an "old notion of commutative law, worthy of the law of talion. Why does it still continue to encumber laws and treaties? (...) It is clear that the German or French worker will not have the same rights in Turkey as the Turkish worker in France or Germany. But that worker does not exist ... If he were to exist he would continue to benefit during his stay in Turkey from the protection of his national law. Subordinating certain rights to a reciprocity condition is a nonsense in the area of immigration"⁴⁸.

However, for H. Batiffol and P. Lagarde "these provisions have (...) the advantage of affirming at international level solutions admitted in domestic law. Their interest is therefore a matter of responsibility in public international law"⁴⁹.

The notion of civil liberties does not have the same meaning in all countries of the European Community⁵⁰. Moreover, the idea itself is in flux.

Civil liberties are no longer conceived of simply as rights enjoyed by private persons taken in isolation, analysable into the assignment to these private persons of a certain area of autonomy. Civil liberties encompass both individual liberties and the freedoms we shall call collective civil liberties. Social reality is now impelling lawyers to give consideration to human needs that go beyond the purely individual level, and legal construction is necessarily following this shift⁵¹.

The phenomenon of migration is in its extent also shaking up the traditional legal frameworks. The foreign element has become a necessity for the economies of the industrialized countries, as statistics show. Moreover, foreign labour can be controlled more easily, and has the advantage of being very inexpensive (the social costs being generally very low). This mass phenomenon has certainly brought with it a new awareness and is influencing the construction of aliens legislation. Among individual liberties, we shall deal mainly with the question of the right of residence, which is absolutely pivotal for the other civil liberties of the foreigner, to the extent that it conditions all his possible activities.

Collective civil liberties will be taken in the broadest sense as arrangements for participation by foreigners in the various activities of the host country.

Part One

Individual Civil Liberties

It may seem paradoxical to take as an example of an individual civil liberty the right of residence¹, since in fact there was until recently no such right and one would have been better to write an article on aliens residence "policy"². The issue of right of residence has become a crucial problem in immigration: it is a right that conditions all the other rights. Perhaps we are more sensitive today to this question because the problems of recruitment, travelling, or even some problems of hygiene, have found an, albeit very relative, solution³.

Without certainty of the right of residence, there is no sense in talking of other rights such as the right to housing, the right to schooling, political and social rights. The right of residence is primary also for "second-generation immigrants"⁴.

The International Organizations, without one wishing to deny the contribution of classical international law⁵, have perhaps contributed most to the rise of guarantees for aliens in this area⁶. We are today experiencing, both in the international organizations and in bilateral relations, an inflation of legal texts, the practical legal worth of which is hard to assess. One cannot find one's way in the innumerable international texts that relate to the aliens issue. Still more serious, perhaps, is the fact that there is hardly any coordination in this burgeoning of texts of very unequal worth⁷.

However awkward we may feel it that most of these texts have a merely declaratory character, this is the reason why today we speak of "soft law"⁸.

This multiplicity of both international and regional legal standards necessarily provokes contradiction between the different standards.

One solution for the future would consist in coordinating the drafting of the various standards. An effort towards this has begun under Council of Europe auspices⁹.

Likewise, the 1966 International Conventions on human rights contain safeguarding clauses, either general or relating to a particular area of trade-union freedom, which state that these instruments cannot detract from the guarantees provided for in the corresponding I.L.O. conventions¹⁰.

Christian Philip has proposed an interesting solution: "There is no problem where a country has ratified an international labour convention and subsequently ratifies a regional agreement with less precise provisions (or vice versa).

In such cases there is no incompatibility. We are simply in the presence of two texts, the clauses of one of which are of higher level than those of the other... The State concerned is in fact bound by the more protective of the two provisions, without this raising any special problem. Compliance with the two commitments is reconcilable (who can the greater can the lesser)"¹¹.

But a serious obstacle remains: "Incompatibility consists in the existence for a country of two conventions to which it is

a contracting party and the provisions of which are contradictory and cannot be achieved conjointly, since they exclude each other"¹².

We have chosen to begin by studying the contribution of five international and European organizations: The ILO, the preeminent body for the protection of workers; the Council of Europe, since it concerns itself with everything that concerns man; finally the Nordic pact, Benelux and the Belgo-Luxembourgish Economic Union, since these were the first European regional integration organizations. Four of the nine Common Market countries are involved, namely Denmark and the Benelux countries. One might also have cited the work of the O.E.C.D.

The progress made within these International Organizations enables us better to understand the special character of the Community system. Here too, we have not been able to be complete, but we have sought to be alert to the problems. If we have insisted so much in this part of the study on effectiveness, this is because we feel that one cannot compromise when it comes to the fate of millions of aliens; it is their dignity and often their very existence that is at stake.

A) The Contribution of the International and European Organizations

a) The International Labour Organization

The general principles set out in article 427 of the Treaty of Versailles 1919, added also that: "the standard set by law in each country with respect to the conditions of labour should have due regard to the equitable economic treatment of all workers lawfully resident therein"¹³.

The revised Convention No. 97 (1949) on migration for employ-

ment is applicable to migrant workers "without discrimination in respect of nationality", including citizens of States who have not ratified the Convention¹⁴. The convention contains firstly a series of provisions on information and recruitment of migrant workers, and a second series dealing with equality of treatment¹⁵.

We feel that it is an outstanding point that it prohibits a migrant worker admitted permanently, and family members authorised to accompany him, from being returned to their territory of origin because the migrant is unable to follow his occupation by reason of illness contracted or injuries sustained subsequent to entry¹⁶.

But on the other hand, the priority of the national market is affirmed¹⁷. Convention No. 143 (1973) is aimed at reinforcing equality of opportunity and of treatment for migrant workers. It is also aimed at combatting clandestine immigration and all the scourges that brings with it¹⁷.

Recommendation No. 151 accompanying Convention No. 143 lays down in paragraph 33 some minimum standards, particularly for protection in the event of expulsion. They are aimed at guaranteeing a "right of appeal" against the expulsion measure. The appeal may be administrative or judicial, but its rules must be laid down by national legislation. The appeal must have a suspensory effect, except for "needs of national security or public order" which must however be "duly justified". Finally, the worker must have the right to legal assistance and to an interpreter¹⁹.

b) The Council of Europe

The Council of Europe's specific contribution to protection of the right of residence is rather slight²⁰. The Council of

Europe is concerned with all humanitarian issues; the problems of aliens and immigrants are humanitarian issues; therefore with the problems of the alien and the immigrant. One of its directors, speaking of the problems of the ten million migrant workers in Europe, has stated: "This enormous mass of workers represents by itself the twentieth member state of the Council of Europe"²¹.

But the Council of Europe has spread itself too thinly in its concerns, it has drawn up too many texts on these issues"²². These texts are frequently rather abstract. On the other hand, they compete with other texts of world²³ or regional²⁴ organizations. The Council of Europe has not the political power to ensure observance of the texts it draws up"²⁵.

But the multilateral conventions drawn up at the Council of Europe have the interest that they frequently codify bilateral practices already in existence, as was indubitably the case with the European Convention on establishment"²⁶.

Thus, this convention implicitly recognizes practice as regards the entry and residence of aliens. Each Contracting-Party is invited to facilitate the "entry" and "prolonged or permanent residence" of foreigners. But as Pierre Mamopoulos notes: "Freedom of entry etc. is considered as an established fact. Clearly the aim is to go a step further by establishing the obligation to 'facilitate'. This is, it would seem, more of a declaration of faith than a legal obligation stricto sensu. The distinction does nevertheless have value... There is the same obligation to 'facilitate', however to the extent permitted by the economic and social conditions of the host country, the reasons for imposing such restrictions being left to by evaluation that country on the basis of its national criteria"²⁷.

The same author adds: "In reality this amounts to the system at present in force, as established through practice and through bilateral conventions on establishment. In the present state of things, it would have indeed been difficult to derogate significantly therefrom"²⁸.

Article 3 regulates the procedure for expulsion. Mr. J.L.F. van Essen has criticised it rather severely: "...nationals of the Contracting Parties who have been lawfully residing for more than ten years in the territory of any other party may be expelled only for reasons of national security or for other reasons (offending against ordre public or morality), if of a particularly serious nature. Only one conclusion can be drawn, namely that the nationals of each Member State of the Council of Europe remain until their tenth year of residence on the territory of any other Member State subject to more or less arbitrary measures of expulsion, and may in the event of an offence, even if not particularly serious, be punished by expulsion"²⁹.

Article 3 further provides a right of appeal against expulsion, enjoyed by nationals of Contracting Parties who have been residing for more than two years in the territory of any other Party³⁰.

The European Social Charter brought scarcely any progress as regards aliens' right of entry and residence; any progress there is in the nuances.

As H. Wiebringhaus pertinently notes³¹, the Social Charter suffers from the fact that the countries of emigration are absent. But the status of the Charter must also be born in mind. Thus, H. Wiebringhaus notes: "The Social Charter as a rule contains provisions that are binding only on the States, without

there being a possibility of deducing any individual subjective public right enforceable through the courts therefrom"³².

Thus, the Social Charter does not guarantee the right of free entry to the territory of another Contracting Party³³.

A more original provision in such a convention is article 18 (4) which recognizes "the right of their nationals to leave the country to engage in a gainful occupation in the territories of the other Contracting Parties". This right is part of the human rights guaranteed by the European Convention on Human Rights³⁴.

The European Convention on the legal status of migrant workers was the outcome of prolonged proceedings both in the Committee of Ministers and in the consultative assembly³⁵.

That convention benefited from what had already been established through the European Convention on establishment and the European Social Charter and was also influenced by I.L.O. Convention No. 143, and it is not easy to see the specific contribution to the problems made by it.

The Convention is open to signature and ratification only by Council of Europe members³⁶. A State that ceases to be a member of the Council of Europe ceases to be a party to the Convention³⁷.

The preamble stresses that the point is to regulate the legal situation in Council of Europe Member States, but Article 1 restricts application to nationals of the Contracting Parties^{38 39}. It will therefore be noted that the Convention applies neither to workers from third countries nor to workers from Council of Europe countries that have not ratified the Convention. The field of application ratione personae is therefore restricted,

especially as Article 2 excludes a) frontier workers, b) artists, c) seamen, d) trainees, e) seasonal workers, f) workers who are nationals of a Contracting party carrying out specific work in the territory of another Contracting Party on behalf of an undertaking having its registered office outside the territory of that Contracting Party.

Though the Convention on the legal status of migrant workers does follow the prudent, hesitant line of the Council of Europe, greater clarity in the vocabulary can nevertheless be noted.

The migrant begins to have rights, the right to leave his territory, the right of admission to the territory of a Contracting Party to take up employment if he has been authorized, etc. (Article 4 of the Convention).

The most original is perhaps Article 9 (5), which provides the reasons for withdrawing the residence permit: a) reasons of national security, public policy or morality; b) if the holder refuses, after having been duly informed of the consequences of such refusal, to comply with the measures prescribed for him by an official medical authority with a view to the protection of public health; c) if a condition essential to its issue or validity is not fulfilled. Each contracting Party nevertheless undertakes to grant to migrant workers whose permits have been withdrawn an effective right to appeal, in accordance with the procedure for which provision is made in its legislation, to a judicial or administrative authority⁴⁰.

c) The Nordic Common Labour Market

The Common Labour Market was born out of an agreement between Denmark, Finland, Norway and Sweden, and entered into force on

1 July 1954^{41 42}.

The original aspect is its simple structure. There has been no creation of an international organization; the Nordic countries have in any case a purely "invertebrate" federalism⁴³. The object of this intergovernmental agreement is abolition of the work permit, collaboration between the employment administrations, the exchange of employment statistics and the creation of an intergovernmental commission to coordinate movement and mutual information.

It should nonetheless be noted that aliens are not exempt from police registration.

For Ch. Zorgibe "one should nevertheless not exaggerate the results of the common labour market. Firstly, because one must not neglect a de facto situation of which the convention was, at bottom, nothing more than the legal consecration..., since 1943, labour permits had been abolished in Sweden, and then in 1943 between Sweden and Denmark. Elsewhere, they were de facto automatically granted to Scandinavian nationals. Secondly, because when full employment is assured in their country, the great majority of Nordic workers prefer to stay on national territory, so that the number of Scandinavian nationals employed in each State is very small, both in absolute terms and relatively to the population"⁴⁴.

A 1975 addendum to the convention regulated the consequences of Denmark's accession to the Treaty of Rome⁴⁵.

Perhaps the most interesting point is the Nordic Council's decision to recommend harmonization of aliens legislation⁴⁶.

d) The Belgo-Luxembourgish economic union

The convention of the Belgo-Luxembourgish economic union signed on 25 July 1921, which entered into force on 1 May 1922, provides that there should be, between the two States of the Union, "full and entire freedom of trade", and moreover contains a clause to eliminate "all discrimination between products and between nationals"⁴⁷.

Pierre Pescatore nevertheless noted in 1961 that free movement of workers had never been resolved "in the BLEU framework, though without difficulties in practice having arisen because of this shortcoming"⁴⁸.

The same author goes on to note: "In the Belgo-Luxembourgish context it is more national legislation and administrative practice which on both sides have brought about the more or less complete assimilation of nationals of the two countries in respect of entry and residence"⁴⁹.

e) Benelux

Article 1 of the treaty provides that the free movement of persons shall be an integral part of the very notion of the economic union. Article 2 (1) guarantees nationals of the three countries the possibility of entering and leaving the territory of the other parties, while article 2 (2) assures them the same treatment as nationals in respect of movement, residence and establishment.

The same provision guarantees them the enjoyment of civil rights and protection of the person, rights and interests on the same basis as nationals.

A convention abolishing travel document control at the internal frontiers of Benelux came into force on 1 July 1960.

As Pierre Pescatore points out, "these provisions were amended, in a restrictive sense, by the convention of 19 September 1960 on the implementation of articles 55 and 56 of the treaty of union"⁵⁰.

A common Benelux labour market had already been set up by a labour treaty signed at the Hague on 7 June 1956, which entered into force on 1 November 1960. It established the free movement of workers and the absence of discrimination in the offering and acceptance of jobs⁵¹.

f) The European Community

The free movement of wage workers, like that of the self-employed, is part of the liberal tradition of the treaty of Rome⁵².

The treaty of Paris had already laid down the principle of free movement for certain categories of workers⁵³, and the Euratom treaty had also made such provision⁵⁴.

This was intended to open to wage-earners in the Member States a wider possibility of employment, while enabling employers to find labour more easily⁵⁵.

The free movement of persons, like the free movement of goods, is part of a customs union^{56 57}.

Article 48 (3) regulates the right of entry and residence⁵⁸:
"/ freedom of movement / shall entail the right, subject to limitations justified on grounds of public policy, public security or public health:

- a) to accept offers of employment actually made;
- b) to move freely within the territory of Member States for this purpose;

- c) to stay in a Member State for the purpose of employment in accordance with the provisions governing the employment of nationals of that State laid down by law, regulation or administrative action;
- d) to remain in the territory of a Member State after having been employed in that State, subject to conditions which shall be embodied in implementing regulations to be drawn up by the Commission"⁵⁹.

For the right of establishment, article 52 is similar⁶⁰, except that there is no "right to remain"⁶¹.

Article 56 of the same treaty allows for special treatment for foreign nationals on grounds of public policy, public security or public health. Pursuant to that article, the Council has adopted a directive to coordinate the legal provisions in the various countries⁶².

Let us note here that the right of residence therefore depends essentially on the application of a directive, and experience has shown that the directive is not an adequate legal instrument to protect the alien. To be sure the directive is flexible enough to defend the interests of the State ...

In this time of crisis of the European institutional machinery, it is surely the Court of Justice of the European Communities which, in a roundabout way, in giving preliminary rulings in accordance with article 177 EEC, has given a new dimension to the problems of the free movement of persons⁶³.

The Luxembourg Court has in particular declared certain treaty provisions directly applicable⁶⁴. It has also found that those before the courts may invoke the provisions of directive before national courts, thereby extending its Franz Grad jurisprudence^{65 66}.

Without denying the work of the Court of Justice of the European Communities, it must be stated that the euphoris over its "exploits" has passed, and there has been a realization that the actual situation of aliens, and of immigrant workers in particular, has hardly changed. The Luxembourg Court has not, from its statutes, the means of ensuring respect for decisions.

In a judgment of 22 December 1978, Cohn-Bendit, the French Conseil d'Etat rejected the Court's thesis on the direct applicability of directives⁶⁷.

According to Article 56 of the Treaty instituting the European Economic Community of 25 March 1957, no requirement of which empowers an organ of the European Communities to issue, in matters of ordre public, regulations which are directly applicable in the Member States, the co-ordination of statute and of subordinate legislation (dispositions législatives et réglementaires) 'providing for special treatment for foreign nationals on grounds of public policy (ordre public), public security or public health' shall be the subject of Council directives, enacted on a proposal from the Commission and after consultation with the European Assembly. It follows clearly from Article 189 of the Treaty of 25 March 1957 that while these directives bind the Member States 'as to the result to be achieved' and while, to attain the aims set out in them, the national authorities are required to adapt the statute law and subordinate legislation and administrative practice of the Member States to the directives which are addressed to them, those authorities alone retain the power to decide on the form to be given to the implementation of the directives and to fix themselves, under the control of the national courts, the means appropriate to cause them to produce effect in national law. Thus, whatever the detail that they contain

for the eyes of the Member States, directives may not be invoked by the nationals of such States in support of an action brought against an individual administrative act.

However, one must not draw over-hasty conclusions from this; one can find, with G. Lyon-Caen, that: "the administrative courts must verify the legality of regulations adopted in the application of a directive... The Conseil d'Etat gives itself the role of verifying conformity with Community Law, and therefore of possibly censuring the national regulatory authority. It therefore does not deprive the Community directive of all effect in internal law"⁶⁸.

L. Dubouis advises "the Community judge, however, to keep his boldness in better line with the mentality of the national courts"⁶⁹, and the same author goes on: "Perhaps one could not avoid ignorance, then collaboration, being eventually succeeded by the opposition of the judges. Those that come before the courts have little to gain from the prolongation of this revolt; the respect for the rule of law still less"⁷⁰.

It is useful to recall what Judge Pescatore recently wrote: "The judicial system created by the treaty can give results only on condition that it can function in a spirit of cooperation and mutual respect"⁷¹.

Independently of this 'Cohn-Bendit' affair, more spectacular for its violation of principles than tragic in its effect, since the Minister of the Interior had abrogated the expulsion decree on the eve of the Conseil d'Etat's judgment, one can note that there is a discrepancy between the standards proclaimed by the Court of Justice of the European Communities and the actual situation in the various countries. Legislation on aliens is often confused⁷², judges know

Community law badly⁷³, and it is too often forgotten that the main point is often respect by administrations, and frequently by subordinate officials, for the rules of law⁷⁴.

But the major ambiguity lies perhaps in the fact that there is no clarity as to the "Sitz im Leben" of this legislation. Some, like T.C. Hartley, even speak of "EEC Immigration Law"⁷⁵. But J.J.M. Tromm, commenting on Hartley's book, states: "Since the concept 'alien' is not used in the EEC treaty nor in the implementing legislation, something termed EEC immigration law does not exist, at least not as long as the Community has not developed its own citizenship"⁷⁶. He goes on: "the author entertains the opinion that the individual rights on freedom of movement are granted immediately by the Community (the treaty), which is obviously not true: these rights are granted by the national authorities of the Member States, in accordance with the treaty and its secondary legislation"⁷⁷.

The solution to the problems of migrants is perhaps to be found in a more pragmatic direction. The point will be to see what means of protection aliens have in the various national legal systems, and also to see to what extent Community law is already being applied in the various countries⁷⁸. Perhaps more than in other areas, political will is called for. The greater is the area of guarantees for aliens, the narrower will be the area of the public order reservation. The point is more to promote the rights of aliens than to define the notion of public order, which is one of those concepts that are difficult to tie down⁷⁹.

Part Two

Collective Civil Liberties

No one can today dispute the greater sensitivity to public life, which undoubtedly bears witness to the importance allocated in our times to the collective aspect. Accordingly, collective civil liberties, namely those "which are exercised by several" -- to take up the definition given by Professor Paul Lagarde¹ -- are taking on increasing importance in social and political campaigns.

But the point is not merely to have rights, it is still necessary to assert them and to acquire new ones. Assigning collective and civil rights to foreign workers is "permitting them to contribute to the improvement of their economic and social status"².

At the same time we must come to consider the question of political rights. However, we do not wish here to set up scholarly distinctions between rights called political (for instance belonging to a political party) and rights regarded as something else than political (for instance belonging to an association). The collective and civil rights that we shall examine are understood broadly as "means enabling participation in the public and political life of a State, i.e., the life of the Polis"³. And the life of the polis necessarily embraces everything having to do with cultural, trade union and associational life and everything that appears as a participation in State power. Rather than distinguishing politics and nonpolitics, the point is to evaluate degrees of political involvement. Our approach will show these different levels by bringing out the representation, consultation and participation of foreign workers.

Before speaking of the exercise of right of participation in State power, we feel priority must be given to studying certain fundamental freedoms, such as the right of association, the right of assembly and trade-union rights. The existence of and respect for these rights in fact constitute a sine qua non before one can contemplate the recognition of other rights, such as that to take part in municipal elections.

As Catherine Withol de Wenden so rightly notes, we are in the present state of affairs seeing "insufficient legal protection for immigrants on the assumption of the granting of forms of political representation"⁴.

For his part, Paul Lagarde points out that "nowhere do the texts formally forbid aliens from engaging in political activities ... But here the texts matter little. The practice is the most important thing. In France, no text prohibits aliens from engaging in political activities, but the Minister of the Interior, each time he has to justify an expulsion, replies that the alien expelled has failed to fulfil the obligation of political neutrality imposed on all aliens resident in France, which ... amounts to depriving the alien of all possibility of action and expression at political level. In other countries, the political liberty of the alien is contained by the notion of public order. The question is whether the mere exercise of political liberty can be considered as an offence against public order ..." ⁵. In any case, for the alien there is a severer punishment than for the national, namely expulsion⁶.

Because of their double allegiance, one might think that foreign workers will be tempted to be uninterested in the problems of representation as regards the host country, since

they often nourish the illusion that their emigration will not last long. On the other hand, they risk undergoing pressure from their country of origin and remaining attached to its political cleavages.

The imbalance between the channels of political representation offered by the host country and the peculiarities of the channels of expression preferred by the migrants raises a political question (for instance, it might be that the interest the immigrants have in national political problems goes before knowledge of local affairs).

Some deny the desirability of granting political rights to aliens, but propose "to develop consultative procedures that allow this social group to make the authorities of the country of residence permanently aware of the difficulties they encounter in daily life"⁷. Some European countries have already set up consultative bodies at both national and local level⁸.

Must a distinction be drawn between aliens from third countries and European Community nationals, and what are conventionally called "special rights" be granted to European Community nationals? German doctrine has created the concept of "Marktbürger", whose position is supposed to be different both from that of the "ordinary" alien and from that of the citizen of a State⁹. Professor Sasse notes in this connection a homogeneity that exists both at the level of the historical and political past and at that of a common European future. He sees here an inevitable convergence of views¹⁰, and affirms:

The closer relations between the States at the promotion of which the Rome Treaty according to its Preamble aims, the principles of non-discrimination in treatment of residents, which underlie economic freedom of movement, and the prospect of an assembly elected by all Community Europeans (Article 138 (3) EEC) would find in

every form of political partial integration of Community non-nationals a rational complement and a step-by-step realization of the goal of eventually reaching, in Europe too, a 'common citizenship'".¹¹

The achievement of common citizenship with the European Community is clearly an ambitious goal, and especially in the European field history teaches us that over-idealistic dreams and utopias are often a brake on the construction of European unity.

Another objection seems to us still more fundamental: Is there not a risk of dividing foreign workers into Community nationals and third country nationals? Employers in all ages have already taken sufficient advantage of the divisions of the working class so as to dominate it better. Moreover, the number of foreign workers who are European Community nationals is slight by comparison with that of the migrants coming from third countries. In these circumstances, giving the right to vote in local elections only to Community nationals could in no case constitute a satisfactory answer to the question of the political rights of foreign workers.

After this broad survey, we now come to the various collective freedoms, following the distinction between the representation of aliens and the participation of aliens.

I. The representation of aliens

The first point is to define what we mean by representation of aliens. Representation is understood as the taking account of the special character and identity of the alien and, apart from the individual taken in isolation, the taking account of what we might call his "foreignness". In the circumstances, speaking of the representation of aliens means nothing more than taking into consideration the human dignity of the

alien and recognising him as a full member of the host country's society.

We shall look below at different types of representation (through associations, through trade unions) and at the application given to them. Account must also be taken of the fact that representation is not conceived only as regards the host country but also as regards the country of origin.

A. The representation of aliens through associations

This question is important for more than one reason: the right of association given to aliens enables them to integrate themselves into cultural and social life, especially at local level, and this right also enables aliens to defend certain interests that have taken on increasing importance in recent years (consumer protection, protection of quality of life ...).

However, the right of association above all enables aliens to come together in groups specifically to maintain their difference: the foreigners' association may be the place where together they live the culture and tradition of their country of origin; it enables the immigrant worker not to be cut off from his roots. The right of association allows immigrants to "live" this difference in the host country, and for some it is a means of defending themselves against assimilation. Nicolas Rettenbach has shown with great astuteness that while equality of rights and treatment is certainly necessary, what was perhaps just as important was to allow the Algerians in France to live the difference, that is, to have the right to be and live as they are, to live their identity and their culture¹². Catherine Withol de Wenden likewise stresses that apart from the purely representational aspect, immigrant associations offer the possibility of continuity¹³.

Freedom of association is the object of very divergent regulations as regards aliens¹⁴. We shall review the various legislation in the Common Market countries.

In the Federal Republic of Germany the Basic Law reserved the freedom of assembly and association solely to German nationals (article 8 (1), article 9 (1)). Frowein notes that "the federal laws on assembly and association have included the alien, and have generally created a right for the alien to assemble or associate"¹⁵, while also finding that these guarantees have no constitutional value¹⁶.

It is only the legislator that has given the right of association¹⁷ and the right of assembly¹⁸ to aliens. On the other hand, it is for the legislator to determine the limits to be set to such rights as have no constitutional value¹⁹. And this is precisely what has been done with the promulgation of the aliens law (Ausländergesetz)²⁰.

As regards the right of association, the law on associations provides in paragraph 14 that an association of aliens (Ausländerverein) - that is one where the members or the leaders are all or mostly aliens - may be banned if "through its political activity it endangers the internal or external security, the public order or other major interests of the Federal Republic". This restriction is a specific restriction applicable only to associations of aliens²¹. The Federal Minister of the Interior has made use of paragraph 14 in banning the associations of Palestinians in Federal Germany²².

The right to found a political party belongs only to Germans. The law on political parties²³ does not forbid aliens from belonging to political parties²⁴, but it refuses in paragraph 2, subparagraph 3, the special status of a political party to political associations the majority of whose members or leading

members are aliens²⁵. A final remark is important as regards the regulation of the right of association: in practice, the law on associations regulates only the banning of associations and the police measures to be taken as regards associations²⁶. But in respect of individual activity within an association, Article 6 II of the aliens law is to be applied²⁷.

It is precisely this Article 6 that has been the basis for extensive restrictive measures as regards the freedom of assembly. Thus, Frowein indicates in his report that to protect a State visit by the Shah of Iran the authorities had taken measures banning all participation in political demonstration by a number of Iranian students²⁸. The Federal Administrative Court (Bundesverwaltungsgericht) rejected appeals against these measures, finding that Article 6 gave the authorities power to take measures to avoid hostile encounters between groups of aliens^{29 30}.

Following these considerations on the law of association in the Federal Republic of Germany, we should like once more to note the existence in that country of associations working in collaboration with the countries of origin, with equality of rights between aliens and nationals as one of their central objectives³¹. Catherine Withol de Wenden characterizes the importance of these associations by noting that "their actions seem to be the basis of the public political activity of immigrant workers³²".

In the United Kingdom the liberties of expression, assembly and association are in principle guaranteed for all those residing in the United Kingdom, without distinction between nationals and aliens. The only limits on freedom of association that exist are aimed at situations where individuals are associated to an illegal end^{33 34}.

To avoid the racial conflicts that have been taking place for the last few years, the British government has felt it necessary through its race relations legislation³⁵ to protect the right of ethnic minorities³⁶.

In Denmark the Constitution guarantees the liberties of expression, association and peaceful assembly, treating Danish nationals and foreign nationals on an equal footing³⁷. We shall note in passing that in Denmark legal writing on fundamental freedoms is almost unanimous in considering that the Constitution offers the same guarantees to foreign nationals as to Danish nationals, except in cases of explicit exception. Nevertheless, Hjalte Rasmussen has to recognize that there are, albeit isolated, authors³⁸ who maintain the position that foreign nationals have not the right to invoke the freedoms of association and peaceful assembly guaranteed by the Constitution. Moreover, Catherine Withol de Wenden notes a report drawn up by the Council of Europe³⁹ disputing the assertion that foreigners have the same rights as natives as regards freedom of association and assembly, citing Denmark among the countries that reserve the right to freedom of association to citizens⁴⁰.

Article 9 of the Constitution of the Netherlands grants freedom of peaceful assembly and of association to every resident, i.e. every person who has been domiciled in the Netherlands for a certain time. The text makes no distinction between nationals and aliens.

Article 9 has been implemented through a law of 1855 on freedom of assembly and association. This law still treats nationals and aliens on an equal footing⁴¹. Article 16 of the 1855 law provides for an exception for aliens not domiciled in the Netherlands, in the sense that they cannot become members of a political party. Foreign nationals resident in the country had the right

to join a political party. In 1939 this law underwent amendment, due to the political circumstances of the time, aimed at banning foreigners from all political activity. However, the 1939 amendment disappeared completely at the end of the war, and now even foreigners not domiciled in the Netherlands can become members of a political party⁴². Groenendijk notes that the revision of the Dutch Constitution provides the freedom of peaceful assembly and of association as a right for every person, irrespective of any consideration relating to residence or non-residence in the Netherlands⁴³.

The aliens law of 1965 prohibits activities by aliens that threaten public peace, public order or public security. The question is whether the authorities may not apply double standards depending on whether the case is one of nationals or of foreign nationals. Hitherto this fear seems not to be justified, although the law has been in force since 1967. It is nevertheless the case that aliens known for their political activities are under closer surveillance by the local police⁴⁴.

Catherine Withol de Wenden notes that in the Netherlands private associations play a major part in the social integration of immigrant workers⁴⁵.

In Italy the freedom of expression of ideas in all areas is accorded to aliens just as to nationals (Article 21 of the Italian Constitution). This is also true for religious ideas (Article 19)⁴⁶. The Constitution recognizes for all the freedom of religious association, but only to citizens the freedom of association in general (Article 18), association in political parties (article 49) and assembly (article 17). However, as G. Paleologo notes, the ordinary law does not prevent the aliens from joining Italian associations, taking part in meetings or even joining political parties⁴⁷.

Italy is certainly not a classical country of immigration, even if in the last few years there has been fairly considerable - frequently clandestine - immigration of North African origin. Furthermore, it should be noted that the question of migrant representation is understood in Italy, above all as representation for Italian migrants as regards their country of origin.

In Belgium the right to freedom of association is reserved to citizens (Article 20 of the Constitution).

The law of 27 June 1921 giving civil personality to non-profit-making associations and to establishments of public utility requires that three fifths of the members have Belgian nationality. The legislator has provided a rather peculiar sanction in the event of non-respect: the association cannot take advantage of its legal personality vis-à-vis third parties, who can nevertheless use it against it (Article 26 of the law). Thus, as Jacques t'Kint⁴⁸ points out, a statement of the nationality of the members is required in order to enable verification of respect for these regulations.

As Alphonse Huss points out, in Luxembourg the right of association has always been widely granted to aliens⁴⁹; associations of all kinds, music, song, sport, made up purely of aliens of a given nationality, most notably Italians, proliferated in the country and often played part in events organized for the Luxembourgish population, notably in religious processions of the Catholic church and in secular processions of all sorts and union demonstrations.

Article 26 of the law of 26 April 1928 took over the same provisions on incapacity as the Belgian law on association of foreigners. But the Luxembourg legislator added an important stipulation, namely that the government can, on a favourable opinion of the Conseil d'Etat, grant dispensation from the formalities laid down in the law⁵⁰.

As Nicolas Majerus rightly points out⁵¹, the law of 10 August 1915 on commercial companies had anticipated in its article 158 that associations constituted or having their headquarters in foreign countries might carry on operations and go to law in the Grand Duchy of Luxembourg.

Belgian law excluded from this possibility non-profit-making associations.

French legislation on association of foreigners has been particularly severe until recently and has had great gaps^{52 53}. As Jean Morange points out⁵⁴, when the 1901 law on associations was passed two types of associations were particularly aimed at:

- religious associations above all, recalling the anticlerical climate in which the law was voted,
- international workers' associations: the 1872 legislative ban on the International had not yet been forgotten.

Nevertheless, this law of 1901 is a liberal law. Previously, the matter had been regulated by Articles 291ff of the Penal Code, declaring associations of more than twenty members unlawful⁵⁵. However, the 1901 law concerns itself equally with associations of foreigners, and contains in Article 12 stricter provisions in the matter⁵⁶, providing in particular for government checks and for the possibility of administrative dissolution.

A decree law of 12 April 1939 added a title IV to the 1901 law. Article 12 of the 1901 law was replaced in its entirety. On the eve of the Second World War, attention was directed at the activities of groupings of foreigners in France. And according to Jean Morange⁵⁷, it was feared that foreign powers might use associations as a Trojan Horse. The main object of the 1939 decree law was to establish the principle of prior authorization⁵⁸. We can characterize this decree law by three important themes:

1. Article 22 requires prior authorization for the formation of an association of aliens. The Minister of the Interior may revoke this authorization. It may moreover be granted on a purely temporary basis, or else made subject to periodic renewal.
2. The legislation is again rigorous because of the definition it gives to associations of foreigners. In the terms of the (new) Article 26 of the law of 1 July 1901, "all groupings under whatever form they may disguise themselves shall be considered to be foreign associations when they have the characteristics of an association with headquarters abroad or have headquarters in France and are de facto directed by aliens, or else have either alien administrators or at least one quarter foreign members".

The decree law of 1939 thus gives an imprecise definition of foreign associations, the term de facto leaving a very important margin of arbitrariness up to the Ministry of the Interior.

3. The administrative judge applies only the minimum check on the Minister's decisions. If an administrative judge asks the Minister to indicate the grounds for his decision, he may annul it because of errors of fact, errors of law or misuse of power⁵⁹ and likewise if he considers it shows manifest errors of judgment⁶⁰.

Let us further note that the foreign associations are subject to extensive control by the authorities⁶¹, and that the 1901 law provides for the nullity of unauthorized foreign associations⁶². Article 32 of the law provides for penal sanctions that may go up to five years of imprisonment and a fine of 10,000 francs on those who contravene its provisions.

French legislation on foreign associations is therefore very restrictive, not to say very repressive. It has its source in considerations of a political nature that reflected the "fifth column" psychosis and the struggle against Nazi or pro-Nazi groups in France⁶³. These considerations of a political nature ought no longer to count today at a time when we are talking of European integration and of solidarity among the peoples⁶⁴. In France movements have been set up to demand the abrogation of this xenophobic regulation. Chapus points out that the Minister of the Interior indicated in reply to parliamentary questions in 1972 that the liberalization or abrogation of the regulations on foreign associations was not being contemplated by the authorities⁶⁵. He considered this justified by the "need to avoid foreign groupings being able to carry on activities harmful to French interests and to the relations that France maintains with foreign States" and as constituting "one of the legal techniques that are effective in securing public order on the national territory"⁶⁶.

Let us further note that in France associations directed at immigrant workers and representative of migrants in France are very numerous⁶⁷.

B. The representation of foreigners through the trade union
This term covers often very distinct realities according to whether one adopts a more restrictive definition of trade union freedom or a fairly broad conception, taking account of everything having to do with the representation of collective occupational interests. Thus, one may distinguish trade union freedom understood as the right to be a member of the trade union of one's choice from trade union freedom in the broad sense implying access to representational functions⁶⁸. Catherine Withol de Wenden for her part distinguishes the exercise of trade union rights from membership in a trade union organization⁶⁹.

The importance of trade union representation no longer needs demonstration^{70 71}. It is at the workplace that links of solidarity between immigrant and indigenous workers can be formed, and the trade unions have a pre-eminent part to play in articulating the specific demands of migrant workers. But trade unions in host countries have not always been able to take the exact measure of the phenomenon of migration, and have often confined themselves to stressing the need for solidarity by all workers⁷².

The right to join the trade union of one's choice is generally recognized to foreign workers in all European Community countries, though with a restriction in Britain where imprisonment is provided for a foreigner who has been working for less than two years in a firm and engages in industrial unrest⁷³. In Denmark all trade unions are divided among the various occupation groups, and to join a skilled workers' union the foreign worker must prove that his professional qualifications are equivalent to those of a Danish worker in the same trade.

However, while the right to join a union is generally granted to the foreigner, things are different where the foreigner seeks to play a more active part in the life of the union, or at any rate to take up responsibilities. The right and exercise of trade union functions include the position of trade union delegate and that of official or director of a trade union. The first of these positions does not meet with particular objections in most European Community countries⁷⁴.

In France the question has gone through a rather interesting legal evolution. The law of 27 December 1968 setting up the trade union within the enterprise had subjected appointment to the post of trade union delegate to a condition of nationality (French), subject to the existence of an international treaty with reciprocity. We have seen that this reciprocity

condition has given rise to numerous criticisms^{75 76}. Since the law of 11 July 1975, foreigners can act as trade union delegates on the same terms as Frenchmen⁷⁷.

The same is true in most other European Community countries, though it is not always possible to compare situations relating to different political and socio-economic systems (single trade union or many trade unions, greater or lesser role of the unions in economic life).

Access to the post of trade union delegate thus seems to have become an established right everywhere in Europe. Things are otherwise as regards access to the post of trade union official or director. Thus, in France, until the law of 11 July 1975, foreigners were formally excluded from the posts of trade union official or director. Although favourable terms were to be provided for foreigners who benefited from an assimilation clause, practice refused them access to these posts. The assimilation clause ought in fact to produce its effect only as regards rights not considered as constituting political rights.

Since the law of 1975, foreigners can accede to the posts of trade union official or director, on condition that the proportion of foreigners in such posts does not exceed one third⁷⁸. The Benelux countries have no reservations in principle in this connection. In Germany too, all foreign workers who are members of one of the trade unions in the German Trade Union Federation (Deutscher Gewerkschaftsbund - DBG) have the same rights as their German comrades⁷⁹.

Let us further note that trade union freedom in the broad sense also implies access to representational functions within the firm: members of works councils in the Netherlands, staff delegates, union delegates and enterprise committee members in

France. Access to such positions is today fairly generally accorded to them. As regards Community workers, the 1968 regulation eliminated the condition appearing in regulation No. 38/64, by which the worker had to have been employed three years in the State concerned, and in the same firm, to be elected on to the workers' representative bodies, including in particular the French Comités d'Entreprise and the German Betriebsräte, but excluding the administrative and management bodies of firms⁸⁰.

If the reservations regarding the right to membership in a trade union of one's choice, or a fortiori the right to become a trade union official or director, seem scarcely comprehensible to us, it is nevertheless the case that the principal difficulty in the matter is a practical one. The rate of unionization is always very low (though obviously it varies from country to country and according to the contingencies of the various socio-economic systems)⁸¹. This unionization is also very variable, sometimes being massive during an industrial dispute, and thereafter declining considerably. The characteristics of immigrants' unionization are alleged to be due partly to the low interest in their specific problems by the unions and partly to the labour rotation policy wide spread in most host countries, at least until fairly recently, opposing any social integration⁸².

Thus appear the limits of principle to participation by foreigners in trade union life. We find these limits at all levels, both at that of membership in a union and at that of exercise of responsibility within the union. Catherine Withol de Wenden again notes a legal barrier, stressing "the inequality of rights between Community and non-Community migrants, and the lack of concordance between Community standards that recognize certain trade union rights and the national legislations providing more restrictive provisions, often irreconcilable with the foregoing

ones, which de facto prevail"⁸³.

We shall now see how unions in the host countries go about representing the specific interests of foreign workers.

In some countries immigrants have the right to set up their own trade union organization. This is so notably in the Netherlands, but the efforts made in this direction have had hardly any success. The Dutch rapporteur to the Louvain Colloquium⁸⁴ points out that the new unions have the right to take part in collective negotiations only to the extent that they are accepted by the traditional partners in the negotiating process, and consequently by the established unions. On the other hand, it is striking to note that in 1977 it was estimated that only 15% of immigrants were members of a Dutch union. In France too, some unions of the countries of origin (UGTA for the Algerians, INCA-CGIL for the Italians, the Spanish workers' coordination) have sought to ensure representation of their nationals' interests. These experiences are scarcely conclusive, and the traditional unions look unfavourably on a more or less parallel trade unionism for immigrants. They thus seek also to represent foreign workers' claims.

In Federal Germany the unions have always been associated with the immigration policy. They wish to protect workers on the spot, but not those who come from abroad in search of work⁸⁵. It was only in the period between 1969 and 1973 that the DGB recognized the structural nature of immigration, and called for the integration of the foreigners into German society. Since 1973 the DGB has shown a certain reluctance to defend foreigners' rights. On 16 November 1973, the DGB met with the employers to sign an agreement stopping recruitment of foreigners⁸⁶. In the United Kingdom, the Trades Union Congress has sought actively to promote equality of opportunity for foreigners within the

trade union movement, and has appointed a consultative committee on social relations for this purpose.

In France the major trade union organizations have not all adopted the same attitude towards the phenomenon of migration. Some like the Confédération Générale du Travail (CGT) stress the unity of the union movement, equality of rights and international workers' solidarity. Others like the Confédération Française Démocratique du Travail (CFDT) refuse to grant a special status to immigrants, attacking the inconsistency of asking on the one hand for equality of rights and on the other for a special legal provision. The CFDT put the emphasis instead on the theme of cultural identity. At European level, the ETUC (European Trade Union Confédération) supports the demands of migrant workers, notably that for "all the individual freedoms and all the trade union, social and cultural rights, and that of protection against arbitrariness", and that for "a growth in the openness of trade union organizations to migrant workers"⁸⁷. The ETUC also affirms that "trade union education is the responsibility of the union organizations in the host country"⁸⁸.

This survey has shown at least that the understanding of the phenomenon of migration is not clear and that the answers given by the various unions in the host countries are often divergent. Moreover, the low level of unionization of foreign workers shows that they cannot always find a place for themselves in the dominant trade-unionism of the host country. For many immigrants, too, trade-union--activity seems useless or even dangerous.

However, it does not suffice to organize simple forms of representation for foreign workers. The migrants ought not to form a completely separate population group of which only the cultural difference describes respect. The phenomenon of migration is a very important socio-economic phenomenon. We have seen the

numerical and statistical importance of this population, and it seems illusory and even very dangerous totally to exclude this important fringe of society from all participation in the State decision-making process.

II. Participation of foreigners

The participation of foreigners is conceived as a way of acting on the life of the nation and actively contributing to the working out of a project of society in the host country. It is in the long term impossible to take over a large part of the population and impose on it political and social choices that directly influence the conditions of existence of foreign workers. The economic strength of the foreign population is considerable. The immigrants not only constitute a labour reserve, but are men and aspire to become citizens, the more so as they find that their stay in the host country is taking on permanent form. The prolonged presence of a great mass of foreign workers in the industrialized countries ought also to be understood as a challenge to the model of democracy used in these countries.

The national phenomenon in Europe is fairly recent. Christian Tomuschat points out also that international law in no way commands discrimination against foreigners, but only authorizes it⁸⁹. However, the nation states have been guided by other political and economic considerations, and ferociously oppose any activity that might constitute participation by foreigners in the exercise of public power (right to vote, right to be elected, right to hold public office). This trend is strengthened by the extent of the migratory flow⁹⁰.

Below we shall consider essentially institutionalized participation, i.e. that exercised in well-determined frameworks. We shall first review experience with consultation of foreigners,

and then discuss political participation proper, i.e. the right of foreigners to vote and to stand for election.

A. The consultation of foreigners - "special" participation

This consultation is conceived of as a form of participation in local life. It seems in fact that the municipality and the conurbation are the best places to fit immigrants into the life of the nation.

In some countries, moreover, such as Belgium, Luxembourg, the Netherlands and the Federal Republic of Germany, the establishment of immigrants' local consultative committees is by some considered as a step towards the recognition of the right to vote at local level⁹¹. These consultative bodies have at least the merit of institutionalizing consultation and creating an initial network for participation by immigrants in political life⁹².

1. The experience of the immigrants' local consultative councils

It was Belgium that paved the way in setting up the immigrants' local consultative councils (CCCI), bodies with the task of submitting to local authorities "any problem of local interest that affects the life of the immigrants in the municipality". The initiative went back to a number of municipalities in 1968⁹³.

The Belgian legislator does not impose, and does not even provide for, the creation of these councils, which occurs spontaneously on local initiative and at local level, which also explains why the constitution and composition of the consultative councils are not based on general standards but quite simply reflect local circumstances⁹⁴. The CCCI on the one hand represent the immigrant communities and on the other hand the local councillors. Their powers are very variable and very diversified, extending to all problems that concern the conditions of life of the foreign

population in the area. However, they remain purely consultative bodies. They may deliver opinions and suggestions either on their own initiative or at the request of the authorities⁹⁵.

In the Netherlands, the most important step in this connection was the Migrantenraad set up by the burgomaster of Utrecht on 5 June 1973. The migrants themselves were at the origin of the Utrecht immigrants' consultative council. They have the right to vote and to stand for the council. The municipality meant thus to offer all the foreigners "the possibility of making their problems known and of expressing themselves on the way the problems are to be approached by the Dutch authorities. The council will have the right to make proposals to the municipality and other institutions. It can keep checks that remedies are provided for the foreigners' problems. The council may also be a forum, within which foreigners of various nationalities can seek solutions to their common problems⁹⁶.

Four communes out of 118 in Luxembourg have tried out the CCCI experiment. The three first councils (Schifflange, Diekirch, Ettelbruck) came out of the initiative of Italian immigrants' associations and were accepted as consultative bodies by the municipal councils concerned, but their representation remains confined to Italian immigrants. Their effectiveness and impact have remained very restrictive, and in fact they are more of a safety valve or excuse for inactivity for the local authority⁹⁷.

The experience of the town of Esch-sur-Alzette shows more original characteristics: the municipal committee for Social Affairs and Public Health was enlarged to take in representatives of the foreign communities. Having become a consultative committee, it is made up of representatives of the political parties and of "representative groups" (trade unions, employer associations and organizations of the foreign communities, which by the very

fact of the high immigrant concentration are sometimes in the majority in some municipalities, where their participation is not institutionally organized).

The administrative board of the Associations of Luxembourg Towns and Municipalities came out in an opinion of 18 June 1975 in favour of setting up consultative committees. More recently on 6 March 1980 the Chamber of Deputies adopted a motion asking the government to "invite all municipalities accommodating a certain percentage of foreigners to set up at the level of the municipal consultative committees a committee for foreigners". As regards the composition of these consultative committees, the law lays down that the members be appointed⁹⁸.

In Federal Germany the question of participation by foreigners in local elections had given rise to much discussion. But coordination committees and circles for foreign workers have existed for more than ten years now. These coordination committees and circles have generally a purely informative role. Since the early seventies consultative committees have arisen. They are fairly numerous, but are frequently still at an "experimental stage"⁹⁹. The CCCI of Nuremberg can be taken as a model. It is elected by universal suffrage for three years. It has the right to have its suggestions, recommendations and opinions studied by the town within three months. Its tasks consist of advising the town on all matters concerning foreigners, through suggestions, recommendations and opinions, to encourage closer relations between foreigners and Nurembergers, as well as cultural and social events for foreigners and collaboration with the Nuremberg labour office coordinating committee.

2. The limits of this participation and consultation

We have already seen this in the Luxembourg case. Frequently the local consultative councils serve only as safety-valve.

They are not always very active, and their field of activity is often very limited. The problems on which their opinions are taken are not very many. Thus, in Federal Germany the "Ausländerparlament" elected at Troisdorf (North Rhine Westphalia) in 1972 broke off its activities after some three years of operation in 1975, having found it had got nowhere¹⁰⁰. It should also be stated that these consultative commissions have often been the outcome of pressure by the foreigners' associations, and are certainly not due to an idea of the government¹⁰¹. It is therefore the sociological realities that have produced them. This also explains their existence in other towns where the number of immigrants is considerable. On the other hand, does the creation of CCCI for foreign workers not amount to cutting them off from the life of the host country? According to the Utrecht Migrantenraad itself, a movement reserved exclusively to migrants would risk their marginalization, and it would perhaps be more effective to integrate the various groups representing migrants into already existing trade unions and organizations. Likewise, the conclusions of the Luxembourg National Conference on Immigration (December 1975) stress that the creation of special bodies for migrants would amount to cutting them off artificially from Luxembourg life, and that it would be preferable to fit them into existing structures. Thus, these experiments are not always conclusive. The composition of these CCCI often stresses the division of foreigners by nationality. The method of appointing members to these consultative councils may play a decisive role. If lists are drawn up on a party basis, do these express the political stratifications of the host countries or the countries of origin? F. Rigaux notes that "by shutting each elector up in his nationality group, one indirectly encourages the reproduction in the host country of the political cleavages of the country of origin, and risks facilitating interference by certain diplo-

matic or consular agents in drawing up the lists of candidates, and perhaps even in the running of the elections"¹⁰².

In the European Community context the Commission has frequently had occasion when answering questions in the European Parliament to stress its position in favour of participation by foreigners in consultative committees conceived of as a preliminary step to participation in local elections¹⁰³. But we have just seen that these CCCI exist only in a few rare countries of the European Community (Benelux, the FRG)¹⁰⁴. C. Withol de Wenden notes that the creation in Belgium of the CCCIs "cannot fail to appear as a stopgap, and one may wonder how much these institutions are listened to by the immigrant population when their existence is frequently threatened by the frustration born of the limitation of their powers purely to the organization of folkloric events, or to the slight weight of their opinion"^{105 106 107}.

This is one of the reasons why migrant circles and some countries of origin insist on the granting of political rights (right to vote and stand) at local level.

B. Political participation by foreigners

The use of the adjective "political" does not mean that we are now going to split off participation called political from participation that would be completely apolitical. By political participation we understand the exercise of well-defined political rights, namely the right to vote and to stand and to hold public office. The criterion of political participation is participation in public power¹⁰⁸.

It is particularly the question of the right to vote (and especially participation in local elections) that has given rise to animated debate and to a largish output of legal scholarship. This is also the question that we shall interest ourselves

in. The holding of the European elections in June 1979 also gave new impetus to the authors' seeking to develop the concept of a "European citizenship". Here the issue would be the assignment of special rights to European Community nationals.

1. The question of voting rights for foreigners in the various European Community States

The right to vote, which is conceived of as pre-eminently participation in the formation of political will meets in most European Community countries with political reluctance and with both constitutional and social and political obstacles.

Let us however, note that it may happen that because of special links with certain countries, States agree even without reciprocity to give the right to vote to foreigners, especially those that formerly came under the same sovereignty. This is the case for Britain, which gives the right to vote to Commonwealth nationals holding a British passport because of the special circumstances surrounding the relations between the United Kingdom and those countries, and to nationals of the Republic of Ireland¹⁰⁹.

In Ireland, foreigners resident for a certain time have the right to vote, but only in local elections, and may also stand, since a law of 1974^{110 111 112}.

The exclusion in principle of foreigners is frequently set down in constitutions. In the case of local elections, the rule may also be found in the constitution (or more frequently deduced from an interpretation of the latter¹¹³), but it is most frequently to be found in the laws regulating local elections. In France, the exclusion also affects naturalized persons, who remain ineligible for the ten years following their naturalization to all elective offices for the exercise of which it is necessary

to be a Frenchman. In Belgium no distinction is made among Belgians for local elections. In the Netherlands the exclusion of foreigners is fairly recent. It was only in 1848 that the right to vote was reserved to citizens domiciled in the country. When a charter was drawn up for the Moluccans in 1974, these were assimilated to Dutchmen in every respect except precisely that of the right to vote¹¹⁴. Proposals for reform exist in the various countries, but they constantly come up against obstacles of a constitutional, political or technical nature.

In some countries (United Kingdom, Denmark) a simple act of Parliament would suffice to extend to foreigners who do not yet have it, the right to vote locally. In other countries (Belgium, Netherlands, Luxembourg, Italy, Germany, France)¹¹⁵ the authors underline the existence of a real constitutional problem¹¹⁶. An amendment to the constitution would be necessary, and the conditions for constitutional amendments are often difficult, and the procedures very cumbersome¹¹⁷. However, it is not so much the legal barriers that in our opinion block the granting of the right to vote to foreigners. Suffice it to refer to the study by Christoph Sasse and Otto Kernst Kempen¹¹⁸ to note that respect for the sovereignty of the people in no way excludes a priori the participation of foreign nationals in the formation of political opinion and political will. Sasse and Kempen show that the formation of political will and political communication take place not only through general elections, but more through constant participation in all activities that lead to the formation of public opinion¹¹⁹. At the level of participation in local elections, these authors stress essentially the double aspect of a municipality, on the one hand as administrative authority of the State, and on the other hand as "self-managed corporation" (Selbstverwaltungskörperschaft) and deduced from this the double nature of municipal legitimation. It follows that it is possible

to work a distinction between local citizenship and State citizenship, while reserving those activities conceived of as participation in public power only to citizens of the nation state¹²⁰.

The foreigner could thus play a part in local administration. When it comes to Community nationals, Sasse and Kempen reject as unfounded all reservations whatever based on international law as regards their partial political integration¹²¹.

2. Special rights for EEC nationals?

Should then special rights be granted to European Community nationals, and the concept of European citizenship be developed and defended¹²²? The preparations for the elections to the European Parliament in June 1979 relaunched this debate^{123 124}. However, to date, outside the special area of elections to the European Parliament by direct universal suffrage, no decisive step has yet been taken in this direction. It must then be stated that such a European citizenship - at least at the present time - would not be capable of giving any satisfactory solution to the problems of the political rights to be given to foreign workers, while in the majority of the EEC countries foreigners from Community countries are not even the majority of the immigrant population. On the other hand, democracy cannot be divided or arranged depending on the origin of foreigners. François Rigaux notes in his introduction to the Louvain Colloquium that "the problem of participation by foreigners in local elections is inseparable from that of the fundamental freedoms they are recognized to have"¹²⁵. What is at issue is in fact our model of democracy; it is up to us to express "in our countries our vision of a democratic society, and not to provide for new sources of discrimination"¹²⁶. Catherine Withol de Wenden, for her part, adds that "in a democratic system, the interests of one population group - whatever it may be - are taken into

account only when they are able to vote. In the logic of this system, the fundamental right is therefore the right to vote"¹²⁷.

In these circumstances, giving political rights like the right to vote, to stand or to hold public office solely to Community citizens would in fact be tantamount to perpetuating the image of a "restricted franchise Europe in which a whole class of workers is deprived of all political rights and sometimes even of the enjoyment of civil liberties"¹²⁸.

Notes to Introduction

1. See V. Gessner, "Das soziale Verhalten der Gastarbeiter", in Gesellschaft und Recht, C.H. Beck, 1974
2. G. Lyon-Caen, "Les travailleurs étrangers: étude comparative", in DrSoc, January 1975, p. 2
3. G. Lyon-Caen, op.cit., p. 7; see also the general report by Maurice Flory to the Colloquium of the French Society for International Law in 1978, "Ordre juridique et statut des travailleurs étrangers", in Actes du Colloque: Les travailleurs étrangers et le droit international, Pédone, 1979, p. 175
4. D. Lochak, "Observations sur un infra-droit", in DrSoc, Les travailleurs immigrés, no. 5, May 1976, pp. 43-44.
5. The creation in 1974 of a Secretariat for Immigration in France coincided with the official stoppage of all immigration. France even for some time prevented the bringing in of foreigners' families.
6. For the United Kingdom, see the critical commentary by R. Moore and T. Wallace, Slamming the door, the Administration of Immigration Control, Martin Robertson + Company Ltd., 1975
For the Federal Republic of Germany see T. Ansay and V. Volkmar, "Gastarbeiter in Gesellschaft und Recht", C.H. Beck, Munich, 1974.

See also F. Fritz, "Rückfall in den Polizeistaat", in Studentische Politik, 1970, p. 62.

For the Kingdom of Belgium, in another manner, see the critical evaluation by F. Rigaux, "La condition des étrangers en Belgique", in Droit international privé, t. 2, Larcier, Brussels, 1979, p. 28 ff.

7. See statistics, Labour force sample survey EUROSTAT, Statistical Office of the European Communities.

8. This concerns mainly refugees and stateless persons. With the events in Indochina, a considerable number of refugees have arrived in Europe, adding to the refugees from Latin America, the Near East and the countries of Eastern Europe in particular. Most of the countries have ratified the UN convention of 28 July 1951 on the status of refugees. But definitions and practice differ from one country to another. Thus, according to Amnesty International, the Chileans in the FRG have had much more difficulties in securing the status of political refugees than nationals of other countries (see in particular Amnesty International, Politisches Asyl in der Bundesrepublik Deutschland, Grundlage und Praxis, Nomos Verlagsgesellschaft Baden-Baden, 1977, 2. Kapitel ... und die Praxis, pp. 57-60). Moreover we can see in the FRG endeavours to limit or block the arrival of foreigners seeking asylum. The right of asylum is nevertheless contained in the Basic Law: "Politisch Verfolgte genießen Asylrecht" (Article 16 (2) of the Basic Law). The UN convention provides for treatment as nationals for the most important freedoms (religious freedom, access to justice and to education, labour legislation), the most favourable treatment given to nationals of any foreign State for certain other freedoms (freedom of association,...) and the most favourable treatment possible for other rights (right of property, right to accommodation). (See Ch. Rousseau, Droit international public, Paris, Sirey, 1974 no. 457 ff.).

The 1954 convention defines a stateless person as "a person who is not considered a national by any State under the operation of its law". The Contracting States undertake to accord stateless people the same treatment as refugees, in

the main. A convention of 30 August 1961 is aimed at reducing the number of cases of stateless persons.

9. Thus, the French legislator has broadened the notion of "jus soli" as grounds for the assignment of French nationality (law of 22 March 1849), and made it more difficult to repudiate French nationality (law of 7 February 1851).

See on this point P. Lagarde, La nationalité française, Dalloz, 1975, p. 57 and p. 71.

10. For the problems of patriation policies see G. Bellini: Les politiques du retour in Société française pour le Droit International, Colloque de Clermont-Ferrand, Les travailleurs étrangers et le droit international, Paris, Pédone, 1979, p. 138seq. and especially p. 144. According to the author, between September 1973 and March 1977 some 4000,000 workers left the Federal Republic of Germany to go back to their countries of origin.

See also R. Penninx and H. Van Renselaar, A Fortune in Small Change. Remplod Project, The Hague, 1977.

11. See R.M. White, "Report of the Select Committee on Race Relations and Immigration", in Modern Law Review, 1978, p. 559
12. G.F. Rosoli "Un secolo di emigrazione italiana: 1876-1976", CSER, Rome, 1978.
13. "There are (...) approximately 200,000 people of Indonesian Dutch descent, 30,000 person of Moluccan descent and about 120,000 persons born in Surinam. These people either have Dutch nationality or are treated as Dutch citizens by law". C.A. Groenendijk, "Rapport néerlandais", Actes du Colloque: La Participation des étrangers aux élections municipales, in Etudes Migratoires, no. 49, March 1978, pp. 121-122.

14. At 31 December 1976 the Algerian population in France was estimated at 9,103,916 people out of 4,205,503 foreigners. Source: Minister of the Interior, cited by H. le Masne, "Ils sont là", in Economie et Humanisme, no. 237, p. 9.
15. For the historical evolution see H. le Masne, op. cit., p. 7ff. For the legal and political evolution see S. Bendifalloch, L'immigration algérienne et le droit français, L.G.D.J., Paris, 1974.
16. Official Gazette of the French Republic for 22 March 1969.
17. The agreement of 27 December 1968 is not reciprocal and does therefore not apply to Frenchmen going to Algeria. See J. Picard, "Les conventions bilatérales passées par la France", in Société Française pour le Droit International, Colloque de Clermont-Ferrand: Les travailleurs étrangers et le Droit international, Pédone, Paris, 1979, p. 109.
18. By contrast with other foreigners, Algerians are admitted straight away, initially for nine months to seek work, then in the event of success, for the exercise of any other paid occupation on the whole of the territory.
19. The viewpoint of the Algerian government. See S. Bendifalloch, op. cit., p. 25.
20. On 18 September 1980 in Algiers, agreements on immigration were concluded between the French and Algerian governments. Algerian nationals whose residence cards expired will have them renewed for a period of three years and three months if they entered in France after 1 July 1962. If instead they resided in metropolitan France before that date, their residence permits will normally be renewed for ten years.

Measures have been taken and funds earmarked for encouraging the voluntary return of 35,000 workers per year.

Three types of measure have been decided:

- 1.) a repatriation grant equal to four months' wages, or for the unemployed some 12,000 francs;
- 2.) from two to eight months' vocational training, depending on the occupation concerned;
- 3.) for tradespeople and craftsmen, loans to help set up small businesses. (for a critical evaluation of these agreements, see the note by the Groupe d'information et de soutien des travailleurs immigrés, 46, rue de Montreuil, 75011 Paris, dated 30 September 1980).

This agreement was subsequently acceded to by the Congo (15 August 1960), Gabon (1 August 1960), the Central African Republic (7 October 1960) and Chad (15 January 1961).

21. See Official Journal of the European Community, no. 8, 15 August 1976.
22. Conventions d'établissement avec la République centrafricaine, 13.8.1960, Journal Officiel de la République française (J.O.R.F.) 24.11.1960; Congo, 15.8.1960, J.O.R.F., 24.11.1960; Gabon, 17.8.1960, J.O.R.F., 24.11.1960; Chad, 11.8.1960, J.O.R.F., 21.11.1960; Togo, 10.7.1963, J.O.R.F., 10.6.1964).
23. For the African countries as a whole (with the exception of Guinea) it was decided in 1963 to apply the same principle whether or not they had concluded with France a convention on establishment, so that all nationals of the States concerned would be on an equal footing (J. Picard, op. cit., p. 110).
24. Model convention on movement of 1963 with Mali, 8.3.1963 (J.O.R.F., 10/11.6.1963).

25. Model convention of 1974 with Senegal, 29.3.1974 (J.O.R.F., 30.11.1976).
26. J. Picard, op. cit., p. 111.
27. See A. Dummett, "Les migrations dans le cadre du Commonwealth", in Société Française pour le Droit International, Colloque de Clermont-Ferrand: Les travailleurs étrangers et le droit international, Paris, Pédone, 1979, p. 116 ff. This is a good introduction for continental lawyers.
28. See in particular C. Parry, Nationality and Citizenship Laws of the Commonwealth and of the Republic of Ireland, 2 volumes, Stevens, London, 1957-1960.
29. In 1981 the U.K. government introduced a British Nationality Bill which, after a controversial passage, received the Royal Assent on 30 October 1981 as the British Nationality Act. Its provisions and consequences are complex and difficult to summarize. What had once been the broad "imperial" category of "British subject" will henceforth be represented by three types of nationality. Only those entitled to the first type will have the right of abode in the United Kingdom. This first group is basically composed of those born in the United Kingdom of parents who enjoyed the right of abode and those born elsewhere at least one of whose parents was in that position. The second type of nationality comprises the inhabitants of the remaining British colonies (mainly living, in fact, in Hong Kong). The third group is composed of "British overseas subjects". These are persons in former colonies who at independence acquired and exercised an option for British nationality (they number about a million and a half, mainly in Malaysia, India and East Africa).
30. A. Dummett, op. cit., p. 117

31. See also A. Dummett, Citizenship and Nationality, A Runnymede Trust Publications, London, 1976.
32. A. Dummett, "Les migrations dans le cadre du Commonwealth", op. cit., p. 118.
33. I.A. MacDonald, N. Blake, The New Nationality Law, London, Butterworths, 1982; see also, I.A. Macdonald, N. Blake, Immigration Law and Practice of the United Kingdom, London, Butterworth, 1982.
34. C. Blake, "Citizenship, Law and the State: The British Nationality Act 1981", Modern Law Review, vol 45, March 1982, p. 179.
35. R. White, J.F. Hampson, "The British Nationality Act 1981 - Civitas in tres Partis divisa est", Public Law, Spring 1982, p. 6.
36. The 1981 Act splits the existing citizenship of the United Kingdom and Colonies into three citizenships, these are British Citizen, British Dependent Territories Citizen and British Overseas Citizen.
 1. A person born in the United Kindom after commencement shall be a British citizen if at the time of birth his father or mother is - (a) a British citizen, or (b) settled in the United Kingdom. There are detailed provisions concerning acquisition by descent, registration and naturalization. Part II (ss. 15-25) enacts corresponding provisions conferring the new status of British Dependent Territories citizenship on those born, etc., in the dependent territories. Part III (ss. 26-29) creates the residual category of British overseas citizenship.

Part IV (ss. 30-35) preserves the status of persons who before commencement were British subjects without citizenship. Part V (ss. 36-53) contains miscellaneous provisions (cf. also M.D.A. Freeman, British Nationality Act 1981, London, Sweet & Maxwell, 1982).

37. See also the problems of the British Nationality Act 1981 and the declaration on the meaning of a UK national for the purposes of the EEC or for the definition of Manxman or Channel Islander in Protocol 3: European Parliament, Motion on British Nationality Act 1981, 18 September 1981, Europäische Grundrechte Zeitschrift, 1981, p. 541.
I.A. MacDonald and N. Blake, The New Nationality Law, *op.cit.*, Chapter 9 : Changes to the Immigration Act and the Effect on the EEC, especially p. 76
38. For the new legislation see I.A. Macdonald, The New Immigration Law, Butterworths, London, 1972.
J.M. Evans, Immigration Law, London, Sweet & Maxwell, 1976
39. See T.C. Hartley, EEC Immigration Law, North Holland Publishing Company, Amsterdam - New York - Oxford, 1978, particularly Chapter 6 on Community Rights in the Law of the United Kingdom, p. 187.
- The adaptation of British law is particularly problematic; hence the fairly large number of referrals for preliminary rulings pursuant to Article 177 of the Treaty of Rome.
40. Immigration Act 1971, Article 2 (6).
41. Ibid., Article 2 (1) (a).
42. Ibid., Article 2 (1) (b).
43. Ibid., Article 2 (1) (c).
44. Ibid., Article 2 (1) (d).

45. The situation of married women is still more complicated: a woman is patrial when she is the wife of a patrial citizen, provided that she has had herself registered as a citizen after the marriage. But women married after the date of entry into force of the 1971 act, or who have had themselves registered later, are not "patrial".
46. A. Dummett, "Les Migrations dans le cadre du Commonwealth", op. cit., p. 123
47. British policy has been severely criticized because of its racist aspects. See in particular D. Humphry, M. Ward, Passports and Politics, Penguin Books Ltd., 1973. One should also mention those who have disputed the administration of immigration. See L. Grant, "Entering the United Kingdom" in Legal Action Group Bulletin, June 1978, p. 133; L. Grant, "Entering the United Kingdom" in Legal Action Group Bulletin, October 1978, p. 229; L. Grant, "Entering the United Kingdom", in Legal Action Group Bulletin, February 1979, p. 37. See also R. Moore, T. Wallace, op. cit.
On the racial aspects: I.A. Macdonald, Race Relations: The new law, London, Butterworths, 1977.
48. G. Lyon-Caen, op. cit., p. 13
49. H. Batiffol and P. Lagarde, Droit International Privé, Paris, LGDJ, 1974, p. 235.
50. Thus in France, Claude-Albert Colliard gives the following definition of civil liberties:
"By the name of civil liberties are designated legal and administrative situations in which the individual is recognized the right to act without constraint within limits set by the positive law in force and possibly determined, under control by the judge, by the police authority charged with

the maintenance of public order." See C.-A. Colliard, Libertés publiques, Dalloz, 1975, p. 25

51. All law is linked with the division of society into classes, since it is specifically a mode of social regulations by the State. The development of the productive forces, moreover, accentuates the social division of labour and affects all social relations.

Thus, "human needs can no longer be reduced to purely individual needs; to use Marx's expression, we pass from the atomized individual to the integrated individual... thus, for example, the concerns of the quality of life and the protection of nature and the environment raised by the regional planning policies of the monopolies show the awareness that exploitation does not stop at the factory gate". See M. Bourjol, A. Jeanmaud, M. Jeantin, "Le droit bourgeois en dépassement", in Pour une critique du droit, Presses Universitaires de Grenoble/François Maspéro, 1978, p. 55.

Notes - Part One

1. By right of residence we mean the questions relating to entry and stay in a foreign country (authorization for entry or not, rules on residence).

For the notion of Common Market and free circulation see P. Pescatore, "La notion du Marché Commun dans les traités instituant l'union Economique belgo-luxembourgeoise, le Benelux et les Commissions Européennes" in *Hommage à Victor Gothot*, Liège, 1961, pp. 497-546.

2. See in particular C. Leben, *Le droit international et les migrations de travailleurs*, in *Société Française pour le Droit International: Colloque de Clermont-Ferrand, Paris, Pédone, 1979*, p. 54. But C. Leben quotes the *Annuaire de l'Institut de droit international 1889-1892*, p. 282, Art. 7: "Protection of national labour is not in itself grounds for non-admittance".
3. On the dreadful recruitment conditions and the immigrants' journey see J. Bergor and J. Mohr, *A Seventh Man*, Penguin Books, Harmondsworth, Middlesex, 1971.
4. In France there have been expulsions of young foreign adults to their country of nationality when they had never known that country and had no links with it.
5. See in particular Ch. de Boeck, *L'expulsion et les difficultés internationales qu'en soulève la pratique* in *Recueil des Cours de l'Académie de droit international (R.C.A.D.I.)*, 1927, T. 3, p. 443.

A. Verdross, *Les règles concernant le traitement des étrangers* in *R.C.A.D.I.*, 1931, T. 3, p. 322.

R.O. Plender, *International Migration Law*, Leiden, Sijthoff, 1972.

G.S. Goodwin-Gill, *International law and the movement of persons between states*, Oxford, Clarendon, 1978.

6. See the general conclusions of Dean Colliard at the Colloque de Clermont-Ferrand, *op.cit.*, p. 443: "... there are international organizations the special character of which is to adopt texts which are not always strictly binding in the legal sense of the word, but do lay down principles..." For the same author, *op. cit.*, p. 443: "... there are texts the scope of which goes beyond that of their direct legal constraint."
7. See P. Reuter, *Droit international public*, Presses Universitaires de France, Paris, 1976, p. 36.
8. See R.J. Dupuy, *Droit déclaratoire et droit programmatoire: De la coutume sauvage à la "soft law"* in *Société française pour le droit international, Colloque de Toulouse: L'élaboration du droit international public*, Paris, Pédone, 1975, p. 132; especially p. 139: *De la résolution accord.*
9. See F. Catalano, *Les travailleurs migrants aujourd'hui: Réflexions, problèmes et solutions prioritaires*, *Annuaire Européen - European Yearbook*, 1976, p. 53 ff., especially p. 65: "For migrant workers the problem was to find, on the basis of numerous recommendations adopted by the Committee of Ministers, European standards regulating problems specific to their situation, at the time of departure or expatriation, during the stay in a foreign country and on return to the country of origin".

10. See N. Valticos, *Droit International du travail*, Dalloz, Paris, 1970, p. 186; and the same author, *Conventions internationales du travail et droit interne*, *Revue critique*, 1955, p. 251 and also Charles Rousseau, *De la comptabilité des normes juridiques contradictoires dans l'ordre international*, *R.G.D.T.P.*, 1932, p. 133.
11. C. Philip, *Normes internationales du travail: Universalisme et régionalisme*, Bruylant, Brussels, 1978, p. 253.
12. C. Philip, *op. cit.*, p. 254.
13. From the outset the I.L.O. has concerned itself with the question of migrants.

In 1919 the International Labour Conference adopted recommendation No. 1 concerning unemployment, recommending that the recruiting of bodies of workers in one country with a view to their employment in another country should be permitted only by mutual agreement between the countries concerned and after consultation with employers and workers in each country, and recommendation No. 2 on reciprocity of treatment. 1919.

Recommendation No. 19 asks each Member State to communicate to the I.L.O. "all information available concerning emigration, immigration, repatriation, transit of emigrants... and the measures taken or contemplated in connection with these questions".

In 1938 the International Labour Conference adopted convention No. 66 "concerning the recruitment, placing and conditions of labour of migrants for employment".

It is supplemented by recommendation No. 61 on the same subject and by recommendation No. 62 on cooperation between States in this field. These texts were recast into convention No. 97 of 1949.

14. See N. Valticos, op. cit., § 560.
15. They include in particular the undertaking to apply, without discrimination in respect of nationality, race, religion or sex, to immigrants lawfully within the national territory, treatment no less favourable than that applied to nationals in respect of a number of matters: "remuneration ... hours of work, overtime, arrangements, holidays with pay ... membership of trade unions and enjoyment of the benefits of collective bargaining". Equality of treatment seems to us to be an essential precondition for protection of the right of residence.
16. See migrants for employment: Comprehensive study by the Committee of experts for the application of conventions and recommendations. International Labour Conference, 66th session, 1980, International Labour Office, Geneva, p. 136.
According to the Committee of Experts, "in a general way, these provisions have not caused problems in the States that have ratified the convention". For the Federal Republic of Germany "the committee accepted the explanation supplied by the government, that expulsion could not be justified by the disease itself or by inability for work, but solely where a foreign worker suffering from an infectious illness refuses to be treated by a doctor or respect the quarantine regulations, thereby endangering public health". For the United Kingdom, "where expulsion of an immigrant is authorized if he is hospitalized for mental illness where that is in his interest, the committee accepted the governments's explanation that such a decision was taken only if it had been proved to the satisfaction of the competent authority that it was in the interest of the patient, for example because he himself or his parents in his country so desired, and adequate measures had been taken to assure him care and treatment".

17. See Convention No 97, Annex II, Article 3 (6): "before authorising the introduction of migrants for employment the competent authority of the territory of immigration shall ascertain whether there is not a sufficient number of persons already available capable of doing the work in question".
18. See J.H. Lasserre-Bigorry, *Règlementations internationales concernant les migrations clandestines* in *Société Française pour le Droit International, Colloque de Clermont-Ferrand: Les travailleurs étrangers et le droit international*, Paris, Pédone, 1979, p. 129 ff.
19. It should be noted that the most interesting provisions are contained in recommendation No. 151; a recommendation has less legal effect and its effectiveness is hypothetical.
20. See Article by A.H.J. Swart, *The legal status of aliens. Clauses in Council of Europe instruments relating to the rights of aliens*, Amsterdam, 1978.
21. F. Catalano, *op. cit.*, p. 53.
22. Among other achievements:
European Convention on Social and Medical Assistance of 11 December 1953; the European Convention on establishment of 13 December 1955; the European Social Charter of 18 October 1961 (see especially Article 18 on the right to engage in a gainful occupation in the territory of other Contracting Parties and Article 19 on the right of migrant workers and their families to protection and assistance); European Convention on the legal status of migrant workers of 24 November 1977.
23. Thus, the Council of Europe has been accused in drawing up the European Convention on the legal status of migrant workers of

competing with I.L.O. Convention No. 143, which at some points is more favourable to the migrant worker.

24. Since the creation of Benelux and the Nordic Pact, and especially since the creation of the European Communities, the standards worked out in the Council of Europe have lost weight.
25. The European Social Charter and the convention on the legal status of migrant workers provided for the setting up of bodies to coordinate and control provisions accepted by the countries (for the Charter see Articles 21-29; for the Convention Article 33).
26. See in particular S. Bastid, L'organisation européenne et le traitement réciproque des nationaux, Revue critique de droit international, 1953, p. 467 ff.
A.C. Kiss, La Convention européenne d'établissement et la clause de la nation la plus favorisée, A.F.D.I., 1957, p. 478 ff.
A.C. Kiss, Entrée en vigueur de la Convention européenne d'établissement et de la Charte sociale européenne, A.F.D.I., 1965, p. 686.
27. P. Mamopoulos, La Convention Européenne d'Etablissement, Revue hellénique de droit international, 1955, p. 172.
28. P. Mamopoulos, op.cit., p. 172.
29. J.F.F. van Essen, La Convention Européenne d'Etablissement, N.T.I.R., 1956, pp. 143-144.
30. An exception is provided for in Article 3: "imperative considerations of National security".

31. H. Wiebringhaus, Die ausländischen Arbeitnehmer und die Sozialcharta, in die Europäische Sozialcharta: Weg zu einer europäischen Sozialordnung, Nomos Verlagsgesellschaft, Baden-Baden, p. 278.
32. H. Wiebringhaus, op. cit., p. 279
33. See H. Wiebringhaus, op. cit., p. 280: "Aus dem Anhang zur Sozialcharta, insbesondere aus dem Zusammenhang mit dem dort zitierten Europäischen Niederlassungsabkommen von 1955 ergibt sich jedoch, daß die Bestimmungen des Artikels 18 Absatz 1 nicht die Einreise in die Hoheitsgebiete der Vertragsstaaten regeln wollen".
34. See Article 2 (2) of the Protocol to the Convention.
35. For the genesis of the text see F. Catalano, op. cit., P.R. Hammon, New Convention aimed at improving condition of Migrant Workers in Council of Europe Nations, Texas International Law Journal, 1978, p. 353 ff.
36. See Article 34 of the Convention.
37. See Article 37.3 of the same Convention.
38. Article 1 of the Convention: "for the purpose of this Convention, the term "migrant worker" shall mean a national of a Contracting Party who has been authorised by another Contracting Party to reside in its territory in order to take up paid employment".
39. See H. Golsong, op. cit., p. 233: "It will be noted that the definition of 'migrant worker' adopted in I.L.O. Convention No. 143 is broader. Article 11 of that Convention makes 'migrant worker' mean 'a person who migrates or who has migrated from one country to another with a view to being employed

otherwise than on his own account'. In particular, this concept does not contain the element of 'authorisation' found in the Strasbourg Convention".

40. See H. Golsong, op. cit., p. 241: "It has been accepted that this should mean an 'effective' right of appeal within the meaning of Article 13 of the European Convention on Human Rights".
41. K. Salvesen, Cooperation in social affairs between the northern countries, *Europe International Labour Review*, 1950, p. 334 - very interesting because of the history of the genesis of that cooperation.
42. A passport union was created by a convention of 12 July 1957.
43. Ch. Zorgibe, *Les Etat-Unis Scandinaves*, Paris, Pédone, 1968, p. 12. See also J. Nelhans, *Die Freizügigkeit der Arbeitnehmer in Europa. Eine vergleichende Darstellung der Rechtslage in den Europäischen Gemeinschaften und auf dem Gemeinsamen Nordischen Arbeitsmarkt: Schriftenreihe Europäische Wirtschaft*, Nomos Verlagsgesellschaft, Baden-Baden, 1975, pp. 33-37.
44. Ch. Zorgibe, op. cit., pp. 108-109.
45. W. Hermann, *Harmonisierung des Ausländerrechts der nordischen Staaten: Jahrbuch für internationales Recht*, 18 Band 1975, p. 361.
46. Recommendation No. 10/1973.
Nordiska Rådet, 21st session, 1st collection, translated from W. Hermann, op. cit., p. 356.

"The Nordic Council recommends the Governments of Denmark, Finland, Iceland, Norway and Sweden to apply aliens legis-

lation essentially corresponding to the proposals contained in the report on Nordic foreign policy and aliens legislation (NR 1970: 16), and to make a thorough investigation of possibilities of further coordination of aliens policy".

47. W.J. Ganshof van der Meersch, *Organisations Européennes*, T. 1, Bruylant, 1966, p. 416.
48. P. Pescatore, op. cit., p. 517.
49. P. Pescatore, op. cit., p. 516.
50. P. Pescatore, op. cit., p. 516.
51. W.J. Ganshof van der Meersch, op. cit., p. 448
52. Articles 48 to 51 deal with problems relating to the free movement of workers, Articles 52 to 58 with problems of freedom of establishment and Articles 59 to 66 with services.
53. Article 69 of the ECSC Treaty. "Member States undertake to remove any restriction based on nationality upon the employment in the coal and steel industries of workers who are nationals of Member States and have recognised qualifications in a coal-mining or steelmaking occupation, subject to the limitations imposed by the basic requirements of health and public policy".
54. See Euratom treaty.

Article 2 (g), end "freedom of employment for specialists within the Community"; also Article 96: "The Member States shall abolish all restrictions based on nationality affecting the right of nationals of any Member State to take skilled employment in the field of nuclear energy, subject to the limitations resulting from the basic requirements of public policy, public security or public health".

55. Since 1958 immigration from outside the Community has been more important than Community immigration. Moreover, some economists maintain that free movement has been a factor for imbalance between regions. See in particular A. Buzelay, *La Liberté d'établissement comme facteur d'accentuation des disparités régionales intracommunautaires en l'absence d'une politique régionale et budgétaire adéquate*, *Revue du Marché Commun*, 1980, p. 85 ff.
56. See Articles 2 and 3 of the Rome Treaty, in particular Article 3 (c).
57. See for a fairly summary overall treatment F. Rigaux, *Les migrations des travailleurs dans la C.E.E.*, *Revista de Direito e Economia*, No. 2, 1976, p. 295.
58. See in particular Regulation (EEC) No. 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community, OJ Special Edition 1968 (II) (Dec. 72) p. 475 No. L 257 of 19 October 1968, no. 2, and the Council Directive of 15 October 1968 on the abolition of restrictions on movement and residence within the Community for workers of Member States and their families (68/360/EEC), OJ Special Edition 1968 (II) (Dec. 72) p. 485, no. L 257, 19 October 1968, p. 13.
- For the scope of this regulation and this directive see G. Lyon-Caen, *La libre circulation des travailleurs (règlement et directive des Communautés Européennes du 15 octobre 1968*, *Semaine juridique*, 1969, Première Partie, No. 2222).
- E. Heynig, *La libre circulation des travailleurs à l'intérieur de la Communauté est instituée définitivement*, *Revue du Marché Commun*, 1969, p. 65 ff.
- R. Bonnet, *L'Europe du travail est-elle réalisée?*, *Droit social*, 1969, p. 160.

59. Regulation (EEC) No. 1251/70 of the Commission 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 Special Edition 1970 (II) (Dec. 72) p. 402, OJ No. L 142/24, 30 June 1970.
60. See the Council Directive of 25 February 1964 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, (64/220/EEC) OJ Special Edition 1963-64 (Nov. 72) p. 115; and especially the Council Directive 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 (73/148/EEC), OJ No. L 172/14, 28 June 1973.
61. In a directive, the Council of the European Communities, basing itself on Article 235 of the EEC Treaty, extended the right to remain to EEC foreign nationals who had been self-employed. See the Council Directive of 17 December 1974 on 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 (75/34/EEC), OJ No. L 14/10, 20 January 1975.
62. See the Council Directive of 25 February 1964 on the coordination of special measures concerning the movement and residence of foreign nationals which are justified on grounds of public policy, public security or public health (64/221/EEC), OJ Special Edition 1963-64 (Nov. 72) p. 117.

For criticism of this directive see H. Desmedt, *Les deux directives du Conseil de la C.E.E. concernant la police des étrangers*, C.D.E., 1966, p. 55 ff.

G. Le Tallec, La police des étrangers dans les Etats membres de la C.E.E. et le traité de Rome, R.M.C., 1964, p. 3 371 ff.

G. Lyon-Caen, La réserve d'ordre public en matière de libre établissement et de libre circulation, Revue trimestrielle de Droit Européen, 1966, p. 693.

63. E.C.J. Case 41/74 (Van Duyn) /1974/ ECR 1337.
E.C.J. Case 67/74 (Bonsignore) /1975/ ECR 297.
E.C.J. Case 36/75 (Rutili) /1975/ ECR 1219.
E.C.J. Case 48/75 (Royer) /1976/ ECR 497.
E.C.J. Case 118/76 (Watson) /1976/ ECR 1185.
E.C.J. Case 8/77 (Sagulo) /1977/ ECR 1473.
E.C.J. Case 30/77 (Boucherau) /1977/ ECR 1999.
E.C.J. Case 175/78 (Saunders) /1979/ ECR 1129.
E.C.J. Case 98/79 (Pecastaing) /1980/ ECR 691.
E.C.J. Case 131/79 (Santillo) /1980/ ECR 1585.
E.C.J. Case 157/79 (Pieck) /1980/ 3 C.M.L.R. 220.
E.C.J. Joint cases 115/81 and 116/81 Adoui and Cornuaille
(not yet published)
E.C.J. Joint cases 35/82 and 36/82 (Morson and Jhanyan)
(not yet published)

64. See the Van Duyn case cited, and particularly grounds of judgment Nos. 4 to 8 and operative part, part 1.

Article 48 of the EEC treaty has direct effect in Member States' legal systems and confers on individuals rights that national judiciatures have to safeguard.

See also G. Lyon-Caen, observations on this judgment, R.T.D.E., 1976, p. 128.

65. E.C.J. Case 9/70 (Franz Grad) /1970/ ECR 825, and the observations by L.J. Brinkhorst, *Ars aequi*, 1971, p. 143 ff.
D. de Ripainsel-Landy, C.D.E., 1971, p. 453 ff.
See also E.C.J. Case 33/70 (S.A.C.E.) /1970/ ECR 1213.

66. See the judgment in the Van Duyn Case 41/74 cited, operative part, para 2. Article 3 (1) of Council Directive 64/221 of 25 February 1964 /measures taken on grounds of public order or public security shall be based exclusively on the personal conduct of the individual concerned/ confers on individuals rights which are enforceable by them in the national courts of a Member State and which the latter must protect. See also the clear statement in paragraph 1 of the operative part of the Santillo judgment 131/79 cited: "Article 9 of Council Directive 64/221 EEC of 25 February 1964 imposes on Member States obligations which may be invoked before national courts by those who come before them".

Article 9 of Directive 64/221 - 1. Where there is no right of appeal to a court of law, or where such appeal may be only in respect of the legal validity of the decision, or where the appeal cannot have effect, a decision refusing renewal of a residence permit or ordering the expulsion of the holder of a residence permit from the territory shall not be taken by the administrative authority, save in cases of urgency, until an opinion has been obtained from competent authority of the host country before which the person concerned enjoys such rights of defence and of assistance or representation as the domestic law of that country provides for.

This authority shall not be the same as that empowered to take the decision refusing renewal of the residence permit or ordering of expulsion.

2. Any decision refusing the issue of a first residence permit or ordering expulsion of the person concerned before the issue of the permit shall, where that person so requests, be referred for consideration by the authority whose prior opinion is required under paragraph 1. The person concerned shall then be entitled to submit his defence in person,

except where this would be contrary to the interests of national security.

67. Minister of the Interior v. Cohn-Bendit, French Conseil d'Etat, [1980] 1 C.M.L.R. 543.

See Revue trimestrielle de droit européen, 1979, p. 157, text of the judgment, conclusions by Mr. Genevois, Commissaire du Gouvernement, and the observations by L. Dubouis.

Semaine juridique, 1979, Deuxième Partie, No. 19158, Note R. Kovar.

Europarecht, 1979, p. 294, Note R. Bieber.

See also J. Boulois, L'applicabilité directe des directives, à propos d'un arrêt Cohn-Bendit, R.M.C., 1979, p. 104.

F. Weis, Self-executing treaties and directly applicable EEC law in French Courts, Legal issues of European Integration, 1979, p. 51.

68. G. Lyon-Caen, op. cit., p. 240.

69. L. Dubouis, op. cit., p. 180.

70. L. Dubouis, op. cit., p. 180.

71. P. Pescatore, Le droit de l'intégration, A.W. Sijthoff, Leiden, 1972, p. 89.

72. See A. Pauly, La libre circulation des personnes dans la Communauté européenne sous le biais des restrictions d'ordre public, Questions sociales, 1977, p. 23-24. Thus in Luxembourg, as in most EEC countries, it is only a derogatory regulation from the aliens law that governs the situation of EEC nationals. One does not always know whether it is the derogatory regulation or the law that applies.

73. See the letters by J. Dubbers to the Retlingen Amtsgericht after the repercussions of the Sagulo case (judgment cited), EuGRZ, 1979, p. 556 ff.

See Th. Wurm, Tausende unsinniger Verfahren gegen Gastarbeiter, die Lektionen von Richter Dubbers - Ein Jurist überführt seine Kollegen des fahrlässigen Umgangs mit dem Ausländerrecht, Süddeutsche Zeitung, 18/10/79, p. 10.
Der Spiegel, 19. November 1979, Vermeidbarer Irrtum.

74. Mémoire de la CGT: La situation des travailleurs migrants dans le cadre de la Communauté économique européenne 21 ans après la signature du traité de Rome.
S. Cappé, L'application en France du droit communautaire: De la théorie à la pratique, Le droit ouvrier, 1979, p. 111 ff. and especially pp. 113-118.
75. T.C. Hartley, EEC Immigration Law, North-Holland Publishing Company, Amsterdam - New York - Oxford, 1978.
76. J.M.M. Tromm, Review of the book by T.C. Hartley, Netherlands International Law Review, 1979, p. 214.
77. J.M.M. Tromm, op. cit., p. 214
78. See T.C. Hartley, op.cit.: Chapter 6, Community Rights in the law of the United Kingdom, p. 187. Chapter 7, Community Rights in the Law of the Netherlands, p. 249.
L. Dubouis, Le juge administratif français et les mesures de police prises à l'encontre des étrangers, Revue critique de droit international privé, 1976, p. 301.
A. Pauly, op. cit.
See also the proceedings of the FIDE congress: Congrès de Luxembourg, 1973, Jurisprudence à la libre circulation des personnes à l'intérieur de la Communauté et aux questions sociales.
See also, D. O'Keefe, "Practical difficulties in the application of article 48 of the EEC Treaty", Common Market Law Review, 1982, p. 35; O. Audeoud, D. Berlin, Ph. Manin, "The

application of Community Law in France: Review of French Court Decisions from 1974 to 1981", Common Market Law Review, 1982, p. 289, especially p. 301; Decisions concerning articles 48-65 of the EEC Treaty, A. Barav, "Court recommendation to deport and the free movement of workers in EEC law", European Law Review, 1981, p. 139, J. Dubbers, "Das Sagulo-Urteil des EuGH und die deutsche Rechtssprechung zur EG-Aufenthaltserlaubnis", Euro-päische Grundrechts Zeitschrift, 1980, p. 689; Belgium and France have adopted a new, more "liberal" immigration law, Loi du 15 décembre 1980 sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers, Moniteur belge, 1980, p. 14584.

See, F. Rigaux, "Aspects actuels de la réforme de la condition des étrangers en Belgique", Journal des Tribunaux, 1972, p. 257, F. Rigaux, "Le projet de la loi sur l'accès au territoire, le séjour, l'établissement et l'éloignement des étrangers", Journal des Tribunaux, 1978, p. 394, F. Rigaux, "Vers un nouveau statut administratif pour les étrangers, la loi du 15 décembre 1980", Journal des Tribunaux, 1981, p. 85 and p. 105.

Loi du 29 octobre, 1981, no. 81-973 relative aux conditions d'entrée et de séjour des étrangers en France, Journal officiel de la République française, 30 octobre 1981, p. 2970 and for EEC citizens Décret no. 82-440 du 26 mai 1982 pris pour l'application de l'article 24 de l'ordonnance no. 45-2658 du 2 novembre 1945 modifiée relative aux conditions d'entrée et de séjour en France des étrangers et portant création de l'Office national d'immigration, Journal officiel de la République française, 29 mai 1982, p. 1711. See, D. Turpin, "Le nouveau régime juridique des étrangers en France: changement et continuité", Revue critique de Droit international privé, 1982, p. 25, J.Y. Vincent, "La réforme de l'expulsion des étrangers par la loi du 29 octobre 1981, J.C.P., 1982, Première Partie, Doctrine, no. 3054 for the stay of execution in cases of expulsion R. Vandermeeren, Tribunaux administratifs, le sursis à exécution des décisions intéressant l'ordre

public, Décret no. 80-339 du 12 mai 1980 modifiant l'article R. 96 du Code des Tribunaux administratifs, Actualité juridique de droit administratif, 1981, p. 425; Y. Gaudemet, Le juge administratif et le prononce du sursis, Actualité juridique de droit administratif, 1982, p. 629; Concerning the motivation of the judgments: see, R. Viargues, "Forme et contenu de la motivation des actes administratifs: l'exemple des décisions d'expulsion des ressortissants étrangers", Revue de droit public, 1982, p. 773. See also, the "British Nationality Act 1981" modifying the "Immigration Act 1971".

79. See W. Bongen, *Schranken der Freizügigkeit aus Gründen der öffentlichen Ordnung und Sicherheit im Recht der Europäischen Wirtschaftsgemeinschaft*, Duncker Ex Humblot, Berlin, 1975. In view of the author's very abstract approach, the conclusions of the book do not convince us. See Simson, Reinecke and Malhyser, *der Gerichtshof und die unbestimmten Rechtsbegriffe in der Rechtssprechung des Gerichtshofs der Europäischen Gemeinschaften*. Congrès européen de Cologne, April 1963, *Kölner Schriften zum Europarecht*, Volume 1, p. 396 ff.

Notes - Part Two

1. P. Lagarde, "Rapport général", Actes du Colloque: La participation des étrangers aux élections municipales, in *Etudes Migrations*, No. 49, March 1978, p. 16.
2. D. Ruzié, "Les droits publics et politiques du travailleur étranger", in *Société Française pour le Droit International*, Colloque de Clermont-Ferrand; *Les travailleurs étrangers et le droit international*, Pédone, Paris, 1979, p. 325.
3. D. Ruzié, op. cit., ibid.
4. C. Withol de Wenden, "La représentation des immigrés en Europe", in Revue française des affaires sociales, 1978, p. 161.
5. P. Lagarde, op. cit., pp. 17-18.
6. See C. Tomuschat, "Zur politischen Betätigung des Ausländers in der Bundesrepublik Deutschland", in Völkerrecht und Außenpolitik, No.4, Verlag Gehlen, Bad Homburg, p. 24.
"Das Ausweisungsrecht als Prüfstein der politischen Freiheiten des Ausländers".
Tomuschat cites the arbitration in the Ben Tillet case in 1898: "Whereas a State's right to prohibit its territory to aliens where their activities or their presence seem to it to compromise its security cannot be disputed; whereas also in the fulness of its sovereignty it evaluates the scope of the facts motivating this prohibition".
See in Journal de Droit International, 26 (1899), p. 203.
7. The German law speaks here of "fundamental interests" and is worded as follows:
(wenn) "seine Anwesenheit wesentliche Belange der Bundes-

republik Deutschland aus anderen Gründen beeinträchtigt"
(§ 10 Abs. 1, Ziff. 11 Ausländergesetz).

Among types of behaviour considered as prejudicial to fundamental interests are in particular those of a political nature. This is the case for disturbing the good relations between the Federal Republic of Germany and the alien's country of origin; involvement in the internal political affairs of the FRG, a Land or a municipality; or participation in demonstrations against the visit of a head of State.

See on this point E. Grabitz, Europäisches Bürgerrecht zwischen Marktbürgerschaft und Staatsbürgerschaft, Europa-Union Verlag GmbH, Köln, 1970, p. 53.

See also A. Kloesel and R. Christ, Deutsches Ausländerrecht, Loseblattkommentar, Grundwerk, Stuttgart, 1965, § 6 Ausl. G. Anm. 2 am Ende, Anm. 3 am Anfang.

D. Ruzié, op. cit., p. 366.

8. See in particular the very detailed study by C. Withol de Wenden, La représentation des immigrés en Europe, Paris, 1976, 183 p.
9. See in particular E. Grabitz, op. cit., 120 p.
10. C. Sasse and O.E. Kempen, Kommunalwahlrecht für Ausländer? Staatsrechtliche Möglichkeiten und Grenzen, Europa-Union Verlag GmbH, Bonn, 1974, p. 56.
11. C. Sasse und O.E. Kempen, op. cit., p. 57.
12. N. Rettenbach, "Droit à la différence", in Economie et Humanisme, n° 237, p. 21.

13. C. Withol de Wenden, op. cit., p. 83 ff.

"There is in the 'emigrant individual' a difficulty in finding stability and continuity, a necessary condition for long-term planning of collective work. This difficulty is in a certain sense logical: it results in the first place from the instability inherent in the condition of an emigrant, and in the second place from the lack of time and interest of an individual who considers that his definitive centre of interests is not in his present situation".

See Centre social protestant, Les associations d'immigrés, plate-formes de représentativité, Etude sur les conseils consultatifs des immigrants, p. 41.

14. P. Lagarde, op. cit., p. 16

15. J.A. Frowein, "rapport allemand", op. cit., p. 30

16. German doctrine draws the distinction between "Jedermann-Rechte" (rights granted to everyone) and "Deutschen Rechte" (rights reserved exclusively to Germans). Thus, Dolde notes that the right of assembly takes the form of a "Jedermann-Recht" in Bavaria, in Berlin and in Bremen, contrary to what is laid down in the Basic Law. The same is true for the right of association in the above-mentioned Länder and also in the Rhineland-Palatinae. However, the effectiveness of this additional protection is minimal where the federal government has legislative competence, given that the federal rules take primacy, pursuant to article 31 of the Basic Law, over the fundamental laws of the federated Länder.

See K.P. Dolde, "Die politischen Rechte der Ausländer in der Bundesrepublik Deutschland", Berlin, Duncker ex Humblot, 1972, p. 43 ff.

17. See paragraphs 1 and 14 of the law on associations (Vereinsgesetz) of 5 May 1964, BGBI. I, p. 593.
18. See paragraph 1 of the law on assemblies and processions (Gesetz über Versammlungen und Aufzüge) of 24 July 1953, BGBI. I, p. 684.
19. See in particular C. Tomuschat, op. cit., p. 51
20. Aliens law of 28 April 1965, BGBI. I, p. 353.
21. See J.A. Frowein, op. cit., p. 30.
22. Constitutional Court decision of 18 July 1973, BverfGE 35, 362, 386 ff. Frowein points out that cases of bans under the aliens law are few. J.A. Frowein, op. cit., ibid.
23. Law on political parties (Gesetz über die politischen Parteien) of 24 July 1967, BGBI. I, p. 773.
24. See E. Grabitz, op. cit., p. 50, who recognizes that the statutes of parties constituted as "private law associations" do not always permit aliens to become members.
25. K.P. Dolde, op. cit., pp. 50 and 209.
See also the articles by C. Sasse and O.E. Kempen, op. cit., p. 30 ff. These authors point out that where a party loses the privileged status of political party, alien members are no longer protected other than by the human rights content of article 9 (1) of the Basic Law taken together with article 1 (2) of the Basic Law.
26. See in particular article 1 II of the law on associations, Dolde draws the conclusion that associations of aliens and foreign associations may be banned only on the basis of paragraph 3, 14 and 15 of the law on associations.
See K.P. Dolde, op. cit., p. 199.

27. K.P. Dolde, op. cit., ibid.
28. Dolde indicates that in similar circumstances (visits by heads of State) aliens are banned from leaving their place of residence or from going to the place of the State visit. K.P. Dolde, op. cit., p. 200.
29. J.A. Frowein, op. cit., ibid.
30. BVerfGE 49, 36.
31. These are the Caritas, the Diakonisches Werk and the Arbeiterwohlfahrt.
32. On this point see C. Withol de Wenden, op. cit., p. 94.
33. See schedule 2 of the Public Order Act 1976, banning paramilitary organisations, and section 1 and schedule 1 of the Prevention of Terrorism Act - Temporary Provisions 1976 outlawing the IRA. Section 21 and schedule of the Northern Ireland (Emergency Provisions) Act 1978.
34. See also de Smith, Constitutional and Administrative Law, Penguin, 4th, ed., 1981, p. 494.
35. Sex Discrimination Act, 1975, p. 12.
Race Relations Act, pp. 11 and 25.
36. E. Kjelberg-Clark, "Rapport anglais", op. cit., pp. 49-50.
37. Articles 77, 78 and 79 of the Danish Constitution.
See also a brochure published by the Information Service of the Ministry of Labour, The Foreign Worker in Denmark, 1969, p. 18.
38. So Paul Andersen, 680.

To be sure, this position is maintained neither by Ross, 503, nor by Max Sørensen, 339.

Cited in H. Rasmussen, "Danish report", *op. cit.*, p. 71.

39. C. Withol de Wenden, *op. cit.*, p. 90.
40. Council of Europe, Parliamentary Assembly, Committee on Population and Refugees, The rights and political status of aliens, Strasbourg, 6 March 1976, p. 12.
41. C.A. Groenendijk et A.H.J. Swart, "Rapport néerlandais", *op. cit.*, p. 125.
42. C.A. Groenendijk et A.H.J. Swart, *op. cit.*, *ibid.*
43. C.A. Groenendijk et A.H.J. Swart, *op. cit.*, *ibid.*
44. C.A. Groenendijk et A.H.J. Swart, *op. cit.*, p. 128.
45. C. Withol de Wenden, *op. cit.*, p. 95
46. G. Paleologo, "Rapport italien", *op. cit.*, p. 156
47. G. Paleologo, *op. cit.*, *ibid.*
48. J. t'Kint, Les associations sans but lucratif, 2. édition, Larcier, Bruxelles, 1974, p. 81.
49. A. Huss, "Rapport luxembourgeois", *op. cit.*, p. 166
50. N. Majerus, Les associations sans but lucratif et les établissements d'utilité publique au Grand-Duché de Luxembourg. Luxembourg, Imprimerie St. Paul, 1930, p. 48
51. N. Majerus, *op. cit.*, pp. 48-49.
52. C. Withol de Wenden points out that the some 3.000 foreign associations recognized (then) by the Ministry of the

Interior are subjected to prior application and to permanent control by the Ministry.

C. Withol de Wenden, op. cit., p. 84

53. See, Loi no. 81-909 du 9 octobre 1981 modifiant la loi du 1er juillet 1901 relative au contrat d'association en ce qui concerne les associations dirigées en droit ou en fait par des étrangers, Journal officiel de la République française, 10 octobre 1981, p. 2759 et rectificatif, op. cit., 16 octobre 1981, p. 2808: Article 2 - the restrictions for foreigners are removed; foreigners now have the same rights as French nationals. D. Turpin, "Le nouveau régime juridique des étrangers en France: changement et continuité", Revue critique de droit international privé, 1982, p. 25 and especially p. 52. The new law does not concern the départements du Bas-Rhin, Haut-Rhin et de la Moselle because they have their own legislation. J. Grosclaude, "Un vestige législatif: les limitations à la liberté d'association en Alsace et en Lorraine", Revue de droit public, 1972, p. 811. For the opportunity of the new legislation, see G. Vernant, "Quelle reconnaissance des associations d'immigrés, les droits politiques des immigrés", Compte rendu du colloque des 5 et 6 décembre 1981, Paris, Etudes, 1982, p. 37.
54. J. Morange, La liberté d'association en droit public français, thèse Paris II, 1971, p. 346.
55. See on this point the brochure Les étrangers et le droit d'association published by the Committee for the abrogation of the decree law of 1939 on foreign associations, ed. CIMADE, Paris 1977.
56. Article 12 of the law of 1/2 July 1901 reads as follows:
"Associations made up predominantly of aliens, those having

alien administrators or their headquarters abroad and those whose actions are of a nature either to disturb the normal conditions of the currency or goods market or to threaten the internal or external security of the State may on the conditions laid down in articles 75 - 101 of the Penal Code be dissolved by decree of the President of the Republic, promulgated in the Council of Ministers. The founders, directors or administrators of an association which has been continued or reconstituted illegally after the decree of dissolution shall be punished by the penalties provided for in article 8".

57. J. Morange, op. cit., p. 349.
58. Comité pour l'abrogation du décret-loi de 1939 sur les associations étrangères, op. cit., p. 5.
59. See motifs, C.E. Sect. 22 avril 1955, Assoc. franco-russe dite Rousky-Dom, Rec., p. 202, Rev. adm., 1955, p. 404, concl. C. Heumann; 6 mai 1957, Assoc. des étudiants chinois de Paris, Rec., p. 287; Tribunal administratif, (T.A.) Paris, 11 janvier 1971, Fédération internationale des Archives du Film, Rec., p. 287.
60. See also R. Chapus, "French report", op. cit., p. 108. Chapus notes that "it is moreover incumbent on the judge to give an opinion on the question, if it is raised, whether the minister is right to consider the association as a foreign association" (C.E. Sect. 20 June 1958, Fédérat. mondiale de la jeunesse démocratique, Rec., p. 363; T.A. Paris, 11 January 1971, Fédérat. internat. des archives du film, préc.).
61. With a view to seeking out and maintaining checks on such associations, article 27 of the 1901 law gives prefects

power at any time to "invite" the leaders of "any grouping or establishment operating in their département to supply them in writing within one month all information needed to determine the headquarters to which they are attached, their real object and the nationality of their members, of their administrators and of their actual leaders". False declarations are punishable by imprisonment.

See Comité pour l'abrogation du décret-loi de 1939 sur les associations étrangères, op. cit., p. 7.

62. Thus article 30 of the 1901 law provides as follows: "Foreign associations, whatever be the form under which they may dissemble themselves, that do not request authorization on the conditions laid down above shall automatically be null and void. This nullity shall be found by declaration of the Minister of the Interior".
63. Comité pour l'abrogation du décret-loi de 1939 sur les associations étrangères, op. cit., p. 4.
64. As the International Conference of non-governmental organization held at Geneva in September 1975 noted, "this regulation, which arose in special circumstances (the immediate post-war period) is today particularly untoward, both because of the extension it gives to the notion of a foreign association and because of the arbitrary power it gives the Minister of the Interior. It is of such a nature as to embarrass the efforts of immigrant workers both to defend their rights and simply to seek to preserve their national culture".

See Conférence internationale des ONG sur la discrimination à l'égard des travailleurs migrants en Europe. Comité spécial des ONG pour les droits de l'Homme: Droits civils et politiques des travailleurs immigrés en France et en Belgique,

Genève, 16-19 septembre, 1975 p. 5.

Citée in C. Withol de Wenden, op. cit., p. 87.

65. R. Chapus, op. cit., pp. 108-109.
 66. J.O., Débats, Ass. nat., 1972, pp. 5968-5969; Sénat, 1973, p. 2042.
 67. C. Withol de Wenden, op. cit., p. 91 ff.
 68. P. Lagarde, op. cit., p. 17
 69. C. Withol de Wenden, op. cit., p. 146.
 70. The international stances on trade-union rights bear witness to this, whether they come from international organizations such as the ILO or the Council of Europe, or from non-governmental organizations (International Conference of Jurists, the Catholic International Commission on Migrations). Let us mention only recommendation No. 86 of the ILO General Conference concerning migration for employment (revised 1949) which reaffirms in article 17 of its Annex the principle of equality of treatment for immigrants, in particular as regards membership of trade-unions and enjoyment of the benefits of collective bargaining. Again, in conventions not dealing specifically with migrant workers, these principles are reaffirmed. This is the case with ILO Convention No. 87 (1948), concerning freedom of association and protection of the right to organize.
- Moreover, several studies are in hand at the ILO on the integration of migrant workers into the professional relations systems of the countries of employment, on trade union freedom for such workers and on their participation in trade union activities in those countries.

See C. Withol de Wenden, op. cit., p. 148.

71. The European Convention on the legal status of migrant workers provides in article 28 that "each Contracting Party shall allow to migrant workers the right to organize for the protection of their economic and social interests on the conditions provided by national legislation for its own nationals".

Article 29 of the same convention provides that "each Contracting Party shall facilitate as far as possible the participation of migrant workers in the affairs of the undertaking on the same conditions as national workers".

See the European Convention on the legal status of migrant workers, European Treaty Series No. 93.

72. C. Withol de Wenden notes that the trade unions in the countries of immigration do not always take up with the same intensity the demands of migrant workers, according to the country and the type of immigrant concerned, and find that "this attitude raises the problem of the balance between the nature of foreign workers' aspirations and the ability of the trade-union structures in host countries to represent them and satisfy them". See C. Withol de Wenden, op. cit., ibid.

73. P. Lagarde, op. cit., p. 17.

It should likewise be noted that trade union regulations sometimes limit membership to British subjects or else allow an alien temporary membership, given that he will have to leave his job as soon as a Briton can replace him.

74. Let us note immediately that Community nationals are given a special place. The right of membership in trade-union organizations given to Community workers extends not only to the right to vote but also to that to be elected to

trade-union administrative or executive posts.

Equality of treatment in being "...eligible for the administration or management posts of a trade union" is provided for explicitly in regulation (EEC) No. 1612/68, since the addition, by the Council Regulation No. 312/76 of 9 February 1976, of this phrase to article 8 (1).

See Regulation (EEC) No. 1612/68 of the Council of 15 October 1968 on freedom of movement for workers within the Community.

See also J.J. Ribas, J.-J. Jonczy, J.L. Séché, Traité de Droit social européen, P.U.F., Paris, 1978, pp. 227-228.

75. Thus, certain authors have found that the use of the notion of reciprocity feature for feature or right for right "leads to a very restrictive method of assigning rights to aliens, the application of which is moreover very disputable in relations between countries with different social systems and levels of economic development".

See J.-M. Verdier, A. Couvret and M. Veron avec la collaboration de M.-N. Jobard, "La participation des travailleurs étrangers aux institutions représentatives des salariés en France", in Droit social, No. 1, January 1973, p. 45.

76. Difficulties have arisen essentially in case law. Thus, the Algerians have been refused access to trade-union delegate posts by two decisions of 18 May 1971 of the Social Chamber of the Court of Cassation, which gave a very narrow interpretation to the notion of reciprocity. C. Withol de Wenden notes that it "implied the existence in the co-signatory countries of a right structurally identical to that being claimed in France by the national of that country".

See C. Withol de Wenden, op. cit., p. 153.

See also M. Buy, "Réflexions sur la situation juridique des travailleurs étrangers en France", in Dr.Soc., June 1974, pp. 282-283.

77. Article 1 of that law provides that "the trade union delegate(s) must be 18 years of age, have worked in the firm for at least one year and not have incurred any of the penalties provided for in articles L 5 and L 6 of the electoral code".

78. Article 4 of the law of 11 July 1975 provides that

any foreign national who is a member of a trade union may be elected to trade union administrative and executive posts if he has not incurred any of the penalties provided for in articles L 5 and L 6 of the electoral code and has worked in France for at least five years on the date of his appointment. This last condition does not apply to nationals of a Member State of the EEC. The proportion of aliens among trade union members occupying administrative and executive posts may not exceed one third.

We refer also to our remarks under footnote 68 above.

79. See N. Notter, "Le statut des travailleurs étrangers en Allemagne fédérale", in Dr.Soc., No. 4, April 1973, p. 229.

80. J.J. Ribas, M.J. Jonczy, J.C. Siché, op. cit., p. 228.

81. In France the level is about ten per cent among immigrants as against 20% to 25% among Frenchmen. In Germany, foreign workers are estimated at being between 22% and 25% unionized, as against around 30% for Germans.

82. C. Withol de Wenden, op. cit., p. 158 et également p. 146.

83. C. Withol de Wenden, op. cit., p. 147

84. C.A. Groenendijk, "rapport néerlandais", op. cit., p. 126.

85. v. Notter, art. cité, ibid.
86. C. Withol de Wenden, op. cit., p. 168
87. Confédération européenne des syndicats, Objectifs de la CES: 1976-1979, Bruxelles, pp. IX.5-IX.6.
88. Confédération européennes des syndicats, "Déclaration", in CES-Information, CES, Bruxelles, 21 nov. 1978, p. 3.
89. Ch. Tomuschat, "Zur politischen Betätigung des Ausländers in der Bundesrepublik Deutschland", in Völkerrecht und Aussenpolitik, n^o 4, Verlag Gehlen, Bad Homburg v.d. H - Berlin - Zürich, 1968, p. 43
90. v. également Ch. Tomuschat, op. cit., p. 56
91. D. Ruzié, op. cit., p. 345
92. See also F. Rigaux, "Aspects juridiques de la participation des immigrés à la vie politique communale dans les pays de la CEE", in Hommes et Migrations, No. 860, 15 March 1974, p. 14.
93. The first consultative councils were set up in 1968 at Cheratte and Flémalle-Haute, two municipalities in the Province of Liège, and in 1969 in Huesden, in the Province of Limburg. Since then, twenty-four other municipalities have set up consultative councils. On 5 March 1972, the European Union of Immigrants' consultative councils was set up with the objective of encouraging the creation of new councils, coordinating their actions and promoting the participation of immigrants in the society they live in, and of linking up similar organizations that might arise in neighbouring countries.

See C. Withol de Wenden, "Les immigrés dans la cité", in Migrations et Sociétés, La Documentation Française, 1978, p. 37.

94. Catherine Withol de Wenden notes the two procedures used for appointing members of the CCCIs, either initially through appointment by the Municipal Council or the board of aldermen after consultation with or on proposal by representative circles or associations of immigrants in the municipality, then for renewal by organizing elections by universal suffrage of all immigrants living in the municipality, or by proceeding immediately to election by direct universal suffrage aiming at optimum representation of all the foreign communities established in the municipality, or at proportional representation of the various nationalities.

See C. Withol de Wenden, op. cit., p. 39.

95. Over and above their consultative function, some councils have organized other activities. Their relations with the municipal council consists generally in passing on to it the minutes of discussions. They may also send any opinion or approval to other CCCIs, to provincial immigration and reception services and to any local, national or international body or authority. Since 1973, the Belgian Ministry for Employment and Labour has supported them financially.

See C. Withol de Wenden, op. cit., p. 41.

96. Extract from the invitation to take part in the elections, addressed in March 1973 by the town council to the foreign population, cited in F. Rigaux, Etude et analyse des statuts des CCCI auprès des conseils municipaux, étude effectuée à la demande de la commission des communautés européennes, September 1973, p. 4.

97. C. Withol de Wenden, op. cit., p. 43
98. However, nothing prevents the appointment or acceptance of persons previously elected.
99. C. Withol de Wenden, op. cit., p. 44
100. C. Withol de Wenden, op. cit., pp. 45-46.
101. The motions adopted by national parliaments hardly express a real conviction of the members. The terms of these motions are often very vague, and often reflect purely electioneering aims.
102. F. Rigaux, "Etude et analyse des statuts des comités consultatifs pour immigrés auprès des conseils municipaux", op.cit., p. 4.
103. Reply to written question No. 536/71 by Mr. Glinne, O.J. No. C32/10 of 1 April 1972.
Reply to written question No. 532/73 by Mr. Marras, O.J. No. C39/9 of 6 April 1974.
Reply to written question No. 533/73 by Mr. Marras, O.J. No. C29/12 of 18 March 1974.
Reply to written question No. 768/76 by Mr. Pisoni and others, O.J. No. C127/11 of 31 May 1977.
E.P. Debates, Annexe No. 185, January 1975, p. 226 ff.
See also D. Ruzié, op. cit.
104. In France there do not exist consultative councils of migrants at local level like the German or the Belgian CCCI's; the departmental consultative committees for social action on behalf of foreign workers created in April 1973 were made up exclusively of members of the departmental administration, and no representation of migrant workers was provided. The political forces seem rather reluctant. However, a number

of experiments carried out in various French towns deserve mention. In some towns, commissions operate without representation of migrants (Nanterre, Villejuif, Laval, Verrières-Le-Buisson, Valenciennes); in other towns the representation of migrants is mediated through associations (Gennevilliers, Vierzon, Dammaris-les-Lys), or through the consultation of a migrant leader (Aubervilliers) or through the presence of migrants invited on a personal basis, who represent only themselves (Orléans-la-Source). These, then, are extra-municipal commissions. Lastly, we should like to point to the experiments in some towns where commissions operate that ensure representation of the various nationalities. These are appointed either by cooption (Marseille, Grenoble, Roubaix) or by election (La Rochelle).

For details see C. Withol de Wenden, op. cit., pp. 56-71.

105. C. Withol de Wenden, op. cit., p. 52.
106. In Federal Germany too the experiments with immigrants' consultative councils seem to have ended in failure: most have been set up on German initiative, without the immigrants themselves having expressed a wish for them.

C. Withol de Wenden, op. cit., p. 53.

107. Concerning city-twinning and migrant workers in France and Germany see especially, T. Grunert, Langzeitwirkungen von Städte-Partnerschaften: Ein Beitrag zur europäischen Integration, Kehl-am-Rhein, Strasbourg, N.P. Engel Verlag, 1981.

108. K. Doehring speaks of state power as the exclusive sphere of the people of the State in question (Staatsvolk).

See K. Doehring, op. cit., p. 35.

See also a more recent study: K. Doehring, "Nationales Kommunalwahlrecht für europäische Ausländer?" in

W.G. Grewe, Europäische Gerichtsbarkeit und nationale Verfassungsgerichtsbarkeit, Festschrift zum 70. Geburtstag von Hans Kutscher, Baden-Baden, Nomos-Verlagsgesellschaft, 1981, p. 109.

109. Representation of the People Acts 1949 and 1969.
110. See D. Ruzié, op. cit., p. 345 ff.
111. The right to vote at local level will be looked at since the integration of foreign workers into the social fabric of the host country takes place primarily at local level. Furthermore, the participation by foreigners in local elections is more easily realizable than that in national elections. Ireland constitutes a special case. P. Lagarde explains this "generous solution" by the small number of strangers living in Ireland, whose "votes do not risk changing the election", P. Lagarde, general report, op. cit., p. 21.
112. In Denmark, Nordic nationals had the right to vote and stand for the first time at the municipal elections of 7 March 1978. In 1981, for the first time all the foreigners living in Denmark for at least three years had the right to vote and the right to stand for election at the local and the departmental elections of 17 November 1981.
- See H. Rasmussen, Danish report, op. cit., p. 76.
113. P. Lagarde, general report, op. cit., p. 21.
114. C.A. Groenendijk and A.H.J. Swart, Dutch report, op. cit., pp. 132-133.
115. For the Netherlands, see article 152 of the Constitution. For Belgium article 4 of the Constitution reserves to Belgians the exercise of political rights in general.

However, the constitutional exclusion of aliens from local elections is based solely on an interpretation of the expression "political rights". In Luxembourg, article 11 of the Constitution reserves to nationals access to "military and civil service posts". It is through an interpretation of these terms that the exclusion of aliens at least from the right to stand for election has been arrived at.

See in particular A. Bonn, "Réflexions sur la révision de la Constitution", Imprimerie Centrale, Luxembourg, 1978, p. 17 ff. Article 51 of the Italian Constitution provides that in respect of access to elective posts, the law may treat in the same way as citizens Italians not belonging to the Republic, which a contrario excludes aliens.

In Federal Germany. the Basic Law indicates that sovereignty emanates from the people, of whom the members of parliament are the representatives (articles 20 and 38), and article 28 likewise guarantees the "representation of the people" in local governments. Everything depends on the interpretation to be given to the notion of the people. For K. Doehring, as we have seen, the people in question is the people of the State (Staatsvolk).

See K. Doehring, op. cit., p. 35.

In France the constitutional exclusion of aliens is certain, but indirect.

116. See in particular C. Sasse and O.E. Kempen, op. cit., p. 17.

117. In Luxembourg the provision procedure is very cumbersome and presupposes voting on the draft by the Chamber of Deputies, then dissolution and the election of a constituent assembly to approve the draft.

See A. Huss, Luxembourg report, op. cit., pp. 172-174.

In the Netherlands, amendment of the constitution requires two readings of the draft by Parliament, separated by elections.

See C.A. Groenendijk and A.H.J. Swart, Dutch report, op. cit., p. 132 ff.

118. C. Sasse and O.E. Kempen, op. cit., pp. 18-19.

119. C. Sasse and O.E. Kempen, op. cit., p. 21.

120. C. Sasse and O.E. Kempen go on to consider at length the conditions and extent of giving the right to vote in local elections to aliens.

See C. Sasse and O.E. Kempen, op. cit., p. 53 ff.

121. C. Sasse and O.E. Kempen, op. cit., p. 57.

122. It is in point 11 of the final communiqué of the Conference of Heads of Government held in Paris on 9 and 10 December 1974 that this suggestion was made and the principle of a working group decided on. This question has subsequently been the occasion for many debates in the European Parliament.

On this point see D. Ruzié, op. cit., p. 366 ff.

Commission of the European Communities, "Towards European Citizenship", Bulletin of the E.C. Suppl. 7175, Commission of the European Communities, "Protection of Fundamental Rights within the European Community", Bulletin of the E.C. Suppl. 5176.

123. See the report by the Round Table on special rights and the European Community Civil Rights Charter held at Florence from 26 to 28 October 1978, in particular the introduction by Mario Scelba, rapporteur of the European

Parliament's Political Affairs Committee, European Parliament document of 10 October 1978, No. 55600.

124. See also R. Bieber, "Besondere Rechte" für die Bürger der Europäischen Gemeinschaften, in EuGRZ, 1978, p. 203 ff. And also K.M. Mussen, "Grundrechte für Europa", in Europa-Archiv, 19/1978, p. 641 ff.

G. Van den Berghe, Political Rights for European Citizens, Aldershot, Gower Publishing Co. Ltd., 1982, Chapter 2, "Special Rights" for citizens of the European Community, p. 21, E. Denza, "Le passeport européen", Revue du Marché Commun, 1982, p. 489, G. Montagnier, "Civis Europaeus sum", Mélanges dédiés à Robert Pelloux, Lyon, Ed. L'Hermès, 1980.

For the problems concerning direct elections and European citizenship see Sasse, Georgel, Hand (et. al.), The European Parliament: Towards a Uniform Procedure for Direct Elections, Florence, European University Institute, 1981; G. van den Berghe, C.H. Huber, "European Citizenship", in Bieber, Bleckmann, Caporti (eds.), Das Europa der zweiten Generation, Gedächtnisschrift für Christoph Sasse, Kehl am Rhein/Strasbourg, N.P. Engel Verlag, 1981, Band II, p. 755.

125. F. Rigaux, Introduction, op. cit., p. 7.
126. See P. Lagarde, General Report, op. cit., p. 27.
127. C. Withol de Wenden, op. cit., p. 175.
128. F. Rigaux, op. cit., p. 7.

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