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**10th Round Table of European Ombudsmen and
the Council of Europe Commissioner for Human Rights –**

10th Anniversary of the Greek Ombudsman's Office –

with the special participation of National Human Rights Institutions

Athens, 12-13 April, 2007

**“Implementing human rights and the rule of law in Europe:
The co-operation between Ombudsmen, National Human Rights Institutions and the
Council of Europe Commissioner for Human Rights”**

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**Effective Protection of Human Rights in Europe:
Enhanced Co-operation between Ombudsmen, National Human Rights
Institutions and the Council of Europe Commissioner for Human Rights**

Background paper

I. INTRODUCTION

1. From the outset of its existence the Commissioner's Office has established close contacts with the ombudsmen and the national institutions for the promotion and the protection of human rights (NHRIs) in the Council of Europe member States.
2. Country visits of the Commissioner systematically include meetings with NHRIs and with national, regional or local ombudsmen as well as with thematic ombudsmen, as appropriate.
3. As of 2003 the Commissioner has been entrusted with organising traditionally biennial Round Tables with the ombudsmen of the member States on the one hand, and the NHRIs on the other hand. The decision to "institute regular conferences" of this kind had been taken before the institution of Commissioner was created. It is contained in Committee of Ministers Resolutions of 1985 and 1997 on the Organisation's co-operation with, respectively, the ombudsmen and the NHRIs of member States¹. Before it was passed on to the Commissioner, responsibility for the Round Tables lay with the Directorate General of Human Rights.
4. As the first Commissioner, Mr. Alvaro Gil-Robles, pointed out² the aim of the Round Tables is to promote the exchange of experience between national ombudsmen and between NHRIs and to develop their ties with the Council of Europe as a whole. He also took the initiative, together with the Congress of Local and Regional Authorities, to organise a first Round Table with regional ombudsmen, convinced of their important role for the monitoring of the respect for human rights by local authorities in the provision of the many essential services they are responsible for.
5. From the outset of the second mandate, Commissioner Thomas Hammarberg underlined that he intended to enhance and expand the co-operation with ombudsmen and NHRIs and to make it yet more continuous. Following the proposals made by the Group of Wise Persons ("the GWP") in their interim report³ regarding the extension of the Commissioner's duties, he submitted his comments in writing⁴, upon the invitation of the Chair of the GPW, Mr. Gil Carlos Rodriguez Iglesias. In his written comments as well as at a hearing before the GWP, the Commissioner stressed his willingness to fulfil the new functions envisaged for him by the interim report in order to contribute to the long-term effectiveness of the European Convention on Human Rights ("the Convention" or "the ECHR"). Indeed, as it was mentioned in the interim report, the Commissioner "*alone or in co-operation with European and national non-judicial bodies*" should "*play a more active role in the Convention's control system*". The Commissioner stressed that he could assist with his *natural* partners, the ombudsmen and NHRIs, in strengthening the

¹ Resolution (85) 8 on co-operation between the ombudsmen of member States and between them and the Council of Europe and Resolution (97) 11 on co-operation between member states' national institutions for the promotion and the protection of human rights, and between them and the Council of Europe.

² Final report of Mr. Alvaro Gil-Robles, Council of Europe Commissioner for Human Rights, 29 March 2006, CommDH(2006)17, II. 2. d.

³ Doc. CM(2006) 88, § 43-49.

⁴ Comments by Mr. Thomas Hammarberg, Commissioner for Human Rights on the interim report of the Group of Wise Persons to the Committee of Ministers, 12 June 2006, doc. CommDH(2006)18rev.; the document can be consulted at the Commissioner's website: <http://www.coe.int/t/commissioner>

protection of human rights at national level and thus give full effect to the subsidiarity of the Convention. He informed the GWP that he had already started to build on the proposals made in the interim report by means of consultations with his partners. As a result of a conference in Vienna in June 2006, the European branch of the International Ombudsman Institute (IOI) prepared a questionnaire for the attention of its members in order to collect their reaction to the GWP interim report and to the Commissioner's comments thereto⁵. Preliminary discussions with the European Group of NHRIs were held in September 2006 in Athens during the 4th Round Table of the Commissioner and the European NHRIs⁶. These discussions continued in Dublin in December 2006.

6. The GWP in its final report⁷ "*notes with approval that the Commissioner is extending his current co-operation with national and regional ombudsmen and national human rights institutes [...]*". NGOs noted and expressly welcomed that co-operation⁸.
7. On 11 January 2007, a meeting was held in Berlin at the invitation of the Petitions Committee of the German Parliament between representatives of the members of the IOI-European Region and the Commissioner. A representative of the European Group of NHRIs was present⁹. The aim of the meeting was *inter alia* to present the *final* report of the GWP, to discuss the above-mentioned survey carried out by the European branch of the IOI and to prepare the Round Table which will be co-organised by the Greek Ombudsman and the Commissioner in Athens on 12-13 April, 2007. That Round Table will bring together the ombudsmen and the NHRIs of all Council of Europe member States and will mark the kick-off of a new phase of co-operation. In order to take into account the dialogue that has already taken place with both sorts of national structures and to refine the issues to be discussed in Athens, the Commissioner tasked his Office to produce a paper defining the terms of the envisaged co-operation. This is the aim served by the present document. It presents the guiding principles of the co-operation (I), its content (II) and the next steps towards preparing and implementing a programme of enhanced co-operation (III).

⁵ Preliminary discussions between the Commissioner and National Human Rights Structures on possibilities of enhanced cooperation, German Parliament, Berlin, 11 January 2007: *Compilation of replies to a questionnaire of the International Ombudsman Institute-European Region*, CommDH(2007)1 Rev, 28 March 2007, document to be found on the Commissioner's website.

⁶ 4th Round Table of the European National Institutions for the Promotion and Protection of Human Rights and the Council of Europe Commissioner for Human Rights, Athens 27-28 September 2006 (organized jointly with the Greek Commission for Human Rights). The complete file of the Round Table can be consulted at the Commissioner's website.

⁷ Doc. CM (2006)203, 15 November 2006, para. 112.

⁸ *Council of Europe: Ensuring the long-term effectiveness of the European Court of Human Rights –NGO Comments on the Group of Wise Persons' Report*, 16 January 2007, §16. The comments were presented by the following NGOs: Amnesty International, European Human Rights Advocacy Centre (EHRAC), Human Rights Watch, INTERIGHTS, Justice, Liberty, Redress and the AIRE Centre. The relevant part reads as follows: «We welcome the work of the Council of Europe Commissioner for Human Rights in cooperating with, and facilitating, the activities of national human rights institutions and national and regional ombudspersons». On the side of the Committee of Ministers work, first step are now being taken with a view to follow-up on the GWP report that was officially presented to it on 17 January 2007. The Court, the Parliamentary Assembly, the Commissioner and the Secretary General of the Council of Europe were invited "to submit their views to it by 20 April 2007, including, as appropriate, impact and cost assessments" and a colloquy under San Marino Chairmanship has been scheduled for 22 and 23 March 2007 in San Marino "on future developments of the European Court of Human Rights in the light of the Wise Persons' Report, as a start of a broader multidisciplinary hearing at European level". The Commissioner will make a presentation in San Marino and he requested that an ombudsman and NHRI representatives to be invited to that meeting.

⁹ The initiative for that meeting came from the President of the European Chapter of the IOI, the Austrian Ombudsman Peter Kostelka.

I. THE GUIDING PRINCIPLES OF THE CO-OPERATION

- **The Commissioner's mandate and terminology**

8. The Commissioner's mandate makes specific reference to ombudsmen and NHRIs. Article 3 (c) of the Commissioner's mandate tasks him or her to *"make use of and co-operate with **human rights structures in the member States**. Where such structures do not exist, the Commissioner will encourage their establishment"*. Article 3 (d) sets out that the Commissioner shall *"facilitate the activities of national ombudsmen or similar institutions in the field of human rights"*. Article 5 authorizes the Commissioner to act on any information relevant to his or her functions and indicates that these *"will notably include information addressed to the Commissioner by governments, national parliaments, national ombudsmen and similar institutions in the field of human rights, individuals and organisations"*.
9. Commissioner Hammarberg has decided to use the term **"National Human Rights Structures"** ("NHRs") to cover both ombudsmen and NHRIs. Such use of a generic term for the purposes of his co-operation does not mean that the Commissioner denies specificities of both categories of NHRs, which he distinguishes where appropriate.
10. Unlike NHRIs (at least for the time being), ombudsmen can have a national, a regional or a local competence. Such competence can be general or thematic. The Commissioner considers all ombudsmen as important human rights structures in the member States.

- **Distinctive features of the NHRs with whom the Commissioner wishes to work**

11. The Commissioner considers that, for his purposes, the basic criteria of a NHR are those laid down in the Paris Principles of 1993¹⁰, based on independence, competence and effectiveness. The Commissioner respects the manifold ways in which NHRs can fulfil these criteria and has no desire otherwise to interfere in their competence.
12. For the designation of which institution is to be regarded as a NHR or not, the Commissioner will rely on the explicit or implicit evaluation of their peers (see hereafter).

- **Associations of NHRs**

13. Almost all national ombudsmen of Council of Europe member States but also a number of the regional and local ones are members of the European Chapter of the International Ombudsman Institute (IOI) seated in Canada. Many regional and local and national Ombudsmen are (also) members of the European Ombudsman Institute seated in Innsbruck (Austria).
14. On their side, the NHRIs have organised themselves for the purposes of their work in the framework of the UN. In that framework, they have created an accreditation system entrusted to the International Co-ordination Committee of NHRIs (ICC). The ICC confers A status (full status) and B status (observer status pending completion of file or of compliance with criteria). The recently created speaking right for NHRIs at the Human Rights Council has increased the significance of the accreditation as that right is depended

¹⁰ United Nations General Assembly Resolution 48/134.

on accreditation. The accredited NHRIs of the Council of Europe member States are called the “European Group”. They are represented by the European Coordination Committee (ECC) of NHRIs composed of four elected NHRIs of which one assumes responsibility as the Presidency of the European Group. They have observer status in the Steering Committee for Human Rights (CDDH) and all committees working under its aegis.

15. The Commissioner is committed to working with all the elected representatives of NHRs and to respect their rules of representation to all possible extent. As regards co-operation with NHRIs, a Liaison Unit was created within the Commissioner’s Office in January 2003. This Unit now also coordinates the work of the Office in dealing with ombudsmen.

- **Need for continued mapping**

16. In the 46 Council of Europe member States, there are now 40 national ombudsmen with a general national competence, around a hundred ombudsmen with a national thematic competence, several hundred regional ombudsmen and probably close to a thousand local ombudsmen with a general competence. There are 19 NHRIs¹¹ who hold “A status” and 5 who hold “B status”¹². About half of the NHRIs are at the same time national Ombudsmen. The elected holders of those institutions change as do the members of their secretariats, mandates are adjusted and new structures emerge. There is presently no place where up to date information on all NHRs in Council of Europe member States is available.
17. The Commissioner’s Office is mapping all these NHRs, including the regional and local ones. The associations of NHRs have been asked for help both for the initial mapping and for its continuous updating.

- **The spirit of the co-operation**

18. For the Commissioner the main guiding principle of the proposed co-operation is the strict mutual respect of each institution’s full independence in all circumstances. The partnership is seen as a standing offer of co-operation along agreed lines. Channels for co-operation will be organised between the Commissioner and the NHRs but participation – broadly or on limited aspects - will always remain entirely optional.
19. The Commissioner acknowledges the need of certain give-and-take in the relations between him and the NHRs. Co-operation with the Commissioner in order to enable him to better discharge his own functions will normally coincide with the mandates and missions which NHRs have anyway. There should be fair and mutual public acknowledgment of contributions of partners involved if that is their wish. In such cases, the Commissioner’s partners might receive enhanced attention in their country as well as internationally.
20. As one of the major aims of the proposed co-operation is to ensure the long-term effectiveness of the protection mechanism of the ECHR, the European Court of Human Rights and its Registry, the Directorate General of Human Rights, the Venice

¹¹ Four of which are from Sweden.

¹² « A status » means recognition as a Paris Principles abiding NHRI by the International Coordinating Committee of NHRIs, Sub-committee on Accreditation. « B status » is observer status granted to those NHRIs who are judged not to be in full compliance with the Paris Principles or who have provided insufficient information for the Committee to make a determination.

Commission and other competent instances of the Council of Europe have to be closely associated.

21. A number of major international actors with whom both the Commissioner and the NHRSSs have the habit to work constructively – namely the Office of the UN High Commissioner for Human Rights, the European Ombudsman, the OSCE/ODIHR, the EU Commission and the European Parliament, as well as NGOs – are associated with the setting-up of this co-operation and/or will be invited to contribute to its implementation with their respective competencies.

II. THE CONTENT OF THE CO-OPERATION

22. One purpose of the enhanced co-operation is to contribute to the long-term effectiveness of the ECHR control mechanism as envisaged by the GWP and the Commissioner's reflections thereto. The proposed reform measures of the GWP do not deal as such with Protocol No. 14 to the Convention. As the GWP explains *"it takes this protocol as a starting point. Its proposals go further than the protocol and are designed to ensure that the Court is able to perform its specific functions fully and on a long-term basis"*¹³ However, the enhanced co-operation between the Commissioner and NHRSSs is likely to bring substantial benefit also to the Commissioner's functions under Protocol n° 14 as well as to most aspects of his country-specific and even his thematic work. Indeed, all these areas of co-operation are interlinked and complementary. Implemented together, they can contribute to a more effective protection of human rights at both national and European level. All areas of co-operation are presented below. **The parts marked in bold show the gist of each issue, for ease of further discussion.**

A. COUNTRY SPECIFIC AND THEMATIC WORK

23. The information received from ombudsmen and NHRIs is used for the preparation of the Commissioner's country visits, of thematic reports and of bilateral meetings with national authorities.
24. **For the Commissioner the most important aim of the proposed co-operation is to turn the fruitful ad hoc co-operation between him and NHRSSs into permanent contact with a continuous exchange of information. The idea is that the Commissioner's Office will inform the national partners of concerns about their national situation being expressed in the Council of Europe, while the partners will keep the Commissioner's Office informed of the human rights situation in their country on a regular basis.**
25. Such continuous, structured dialogue will enable the Commissioner to gather a more complete and balanced overview of the situation of human rights in the member States. It will form a sound basis for his decisions on which country to visit at what moment.
26. Also, the Commissioner will be in a position to react fast and adequately on an *ad hoc* basis to major punctual human rights issues as they arise, thus hopefully containing damage and intervening before the situation is stuck for political or practical reasons or both.

¹³ GWP report, para. 33.

27. The continuous screening of the human rights situation in each member State and rapid mutual information on findings is also the prerequisite for the co-operation proposed with respect to the third party intervention by the Commissioner and the GWP proposals (see below B and C). It should, however, go beyond ECHR rights so as to enclose also the situation with respect to rights enshrined in the other Council of Europe human rights instruments.
28. **The Commissioner would appreciate that his partners use their prestige and their standing to ensure the follow-up of his reports at national level. In addition, the Commissioner would also like his attention to be drawn timely to positive developments in member States so as to be able to express his acknowledgment and satisfaction and, thus, react to human rights reality in a balanced, encouraging way.**

B. THE POSSIBILITY FOR NHRSS TO CONTRIBUTE TO THE COMMISSIONER'S THIRD PARTY INTERVENTIONS BEFORE THE COURT UNDER EXISTING ARTICLE 36 (2) ECHR OR UNDER ARTICLE 36 (3) AS WILL BE INTRODUCED BY PROTOCOL NO. 14

29. After the entry into force of Protocol No. 14, there will be an Article 36 (3) reading as follows: *"In all cases before a Chamber or the Grand Chamber, the Council of Europe Commissioner for Human Rights may submit written comments and take part in hearings"*. The Commissioner will make public the criteria which will guide his third party interventions. He believes that it is possible to apply this provision in a manner which is compatible with the explicit prohibition of a judicial role contained in his mandate¹⁴.
30. The Commissioner was set up to complement the Council of Europe's political and judicial human rights monitoring bodies, an institution that would exercise a sort of proactive prevention and correction of human rights breaches of a certain scale. Consequently any action by the Commissioner should always be limited to cases where there are systemic problems and where general measures need to be taken. Keeping this in mind, third party interventions of the Commissioner should only be used when they have the added value of opening new possibilities for addressing patterns of human rights violations, including ongoing ones. **The Commissioner believes that his comparative field experience in member States will allow him to put into a wider perspective individual cases and, by way of consequence, the Court's judgment. This is why information provided by NHRSS to the Commissioner could be extremely useful for the exercise of third party interventions. Information coming from different NHRSS can offer to the Court, via the Commissioner, a comparative view with respect to the issue which has given rise to an individual case. Of course, the Commissioner is aware that in certain cases, NHRIs may not be in a position to pass such information on (e.g. limitations implied by the pledge of secrecy, impossibility to grant access to secret documents, information obtained during investigations).**
31. The Commissioner recalls that, pending the entry into force of Protocol No. 14, there is already for him a possibility for third party intervention before the Court, upon invitation

¹⁴ Article 1 (2) of Committee of Ministers Resolution (99) 50 on the Council of Europe Commissioner for Human Rights : *"The Commissioner shall respect the competence of, and perform functions other than those fulfilled by, the supervisory bodies set up under the European Convention of Human Rights or under other human rights instruments of the Council of Europe. The Commissioner shall not take up individual complaints"*.

by the President of the Court according to Article 36 (2): *“The President of the Court may, in the interest of the proper administration of justice, invite any High Contracting Party which is not party to the proceedings or any person concerned who is not the applicant to submit written comments or take part to the hearings.”* Such an invitation was extended only once during the mandate of the first Commissioner when the Grand Chamber requested the Commissioner’s intervention *“within the limits of his competences”* to facilitate the application of article 39 of the Rules of Court (interim measures) in order to protect the health of the applicant in the case *Ilașcu and others v. Moldova and Russia*.

32. In this context particular emphasis is placed on the so-called pilot judgment procedure, considered as one of the main means of addressing the Court’s workload. According to Committee of Ministers Resolution Res (2004)3 on judgments revealing an underlying systemic problem, the Court should *“as far as possible identify, in its judgments finding a violation of the Convention, what it considers to be an underlying systemic problem and the source of this problem, in particular, when it is likely to give rise to numerous applications, so as to assist states in finding the appropriate solution and the Committee of Ministers in supervising the execution of judgments”*.
33. The GWP report does not mention explicitly the Commissioner in the part dedicated to pilot judgments¹⁵. However, the role envisaged by the GWP for the Commissioner and the ombudsmen at national level does have direct bearing for the issue of pilot judgments: *“This network could help the Court’s workload with the active support of the Commissioner, who could identify a specific problem in a state likely to trigger a large number of applications to the Court and help to find a solution to the problem at national level in conjunction with the national ombudsman”* (para. 113). This suggestion will be developed below. It has been frequently underlined that many complex elements lie behind an issue that gives rise to a pilot judgment. As Parliamentary Assembly’s (“PACE”) Resolution 1516 (2006) on the implementation of judgments of the European Court of Human Rights states: *“The Assembly also notes with interest the recent development of the pilot procedure before the Court to address systemic problems. It notes, however, with some concern that this procedure has been conducted in respect of certain complex systemic problems on the basis of a single case which may not reveal the different aspects of the systemic problem involved. Under these circumstances, the pilot procedure may not allow a global assessment of the problem and, since all other related cases are “frozen”, the risk emerges that this procedure will delay rather than speed up the full implementation of the ECHR”* (para. 21).
34. **The Commissioner believes that, with the input of NHRs, he could assist the Court in identifying cases that should give rise to a pilot judgment, in defining the domestic measures required by the execution of a judgment in such a pilot case and in understanding the difficulties that might prevent the national authorities from taking such measures. The Commissioner and his partners could help the Court to formulate realistic, inventive and precise prescriptions of the measures expected from the States concerned, not only the States party to the proceedings but also third States concerned by the substance of the judgment. As he stated in his comments to the GWP interim report *“the Commissioner could, in particular, suggest or validate the means proposed to redress the systemic defect”*¹⁶. In this respect, information provided by NHRs to the Commissioner would be of paramount importance.**

¹⁵ Paras. 100-105.

¹⁶ Para. 13.

C. THE PROPOSALS MADE BY THE GROUP OF WISE PERSONS

35. In its chapter on the Commissioner's contribution to the long-term effectiveness of the ECHR control system, the GWP report suggests various areas of possible co-operation between him and NHRSSs. It is recalled, however, that the Commissioner sees the GWP report as one amongst a number of important documents adopted for the purpose of addressing the difficulties encountered by the ECHR control system and that it has to be seen in the full context of ongoing activities and reflections currently undertaken by other Council of Europe instances, including his own Office.
36. Particular reference is to be made to the work carried out by the Committee of Experts for the improvement of procedures for the protection of human rights (DH-PR) working under the aegis of the Steering Committee for Human Rights (CDDH) following the new mandate given to the latter by the Committee of Ministers¹⁷. Two working groups are currently working with respect to the new mandate, namely Group A on the execution of judgments of the European Court of Human Rights (GT-DH-PR A) and Group B on the review of the implementation of the "reform" measures (GT-DH-PR B). Group A is instructed to draw up a draft recommendation to member States on efficient domestic capacity for rapid execution of the Court's judgments and to develop further draft practical proposals for the supervision of execution of judgments in situations of slow or negligent execution, for consideration by the Deputies in the context of their ongoing work on this issue. Group B is instructed to continue the review of the implementation of the five recommendations adopted by the Committee of Ministers and mentioned in the May 2004 Declaration¹⁸ with a view to obtaining a better assessment of the actual impact of implementation measures on the long-term effectiveness of the ECHR and to deepen this review by focusing henceforth on the verification of the effectiveness of implementation measures and filling outstanding information gaps, particularly in three priority areas: improvement of domestic remedies, re-examination or reopening of cases following judgments of the Court, and verification of compatibility of draft laws, existing laws and administrative practice with the Convention. The Commissioner's Office is represented in both working groups.
37. Group B requested that the Commissioner's partners in the member States give their views on the replies¹⁹ sent by the Governments of member States on the implementation of the « reform » measures. The European Group of NHRIs has observatory status in both groups and was directly consulted²⁰. The ombudsmen of members States, who have no representation in the CDDH and its working groups, have not been consulted although a number of the replies sent by Governments does mention the institution of ombudsman as

¹⁷ Declaration of the Committee of Ministers on sustained action to ensure the effectiveness of the implementation of the European Convention on Human Rights at national and European levels adopted on 19 May 2006.

¹⁸ Recommendation Rec. (2000) 2 on the re-examination or reopening of certain cases at domestic level following judgments of the European Court of Human Rights; Recommendation Rec. (2002) 13 on the publication and dissemination in the Member States of the text of the European Convention on Human Rights and of the case-law of the European Court of Human Rights; Recommendation Rec(2004)4 on the European Convention on Human Rights in university education and professional training; Recommendation Rec. (2004) 5 on the verification of the compatibility of draft laws, existing laws and administrative practice with the standards laid down in the European Convention on Human Rights; Recommendation Rec(2004)6 on the improvement of domestic remedies.

¹⁹ The member States' replies to the new questionnaire with regard to the five recommendations in the May 2004 Declaration figure in document DH-PR (2006)004 rev 3 Bil of 27 March 2007 which can be consulted at : http://www.coe.int/t/e/human_rights/cddh/

²⁰ See document DH-PR (2006)005 rev Bil of 15 February 2007 at http://www.coe.int/t/e/human_rights/cddh/

one of the pillars of ECHR implementation. **The Commissioner believes that the advisability of an ombudsman representation in the CDDH, when appropriate, should be considered and some concertation between the NHRI (and possible ombudsman) representation there and his own Office be secured when it comes to taking positions in and making contributions to the work of the CDDH and its working groups.**

1. Recommendation that the Commissioner and his partners “should respond actively to the announcement of Court decisions finding serious violations of human rights”

38. The report of the GWP contains the following recommendations (emphasis added):

“110. The Group considers that the Commissioner should have the necessary resources to be able to play a more active role in the Convention’s control system, acting either alone or in co-operation with European and national non-judicial bodies. In particular, the Commissioner should respond actively to the announcement of Court decisions finding serious violations of human rights [...]

[...]

113. This network could help to reduce the Court’s workload with the active support of the Commissioner, who could identify a specific problem in a state likely to trigger a large number of applications to the Court and help to find a solution to the problem at national level in conjunction with the national ombudsman [...]

39. **The Commissioner believes that the main means to “respond actively to the announcement of Court decisions finding serious violations of human rights” is to cooperate with NHRs in order to assist the other Council of Europe instances as well as national authorities in rapidly executing the Court’s judgments, in particular pilot judgments. Indeed, when it comes to monitoring the execution of judgments, NHRs and the Commissioner are very well placed to inform the Court and the Committee of Ministers as to whether or not practices or situations declared in breach of the Convention by the Court persist or have actually been stopped and the relevant Court judgment thus been implemented. Given their longstanding experience of constructive dialogue with the authorities at all levels, they could not only play the role of a watchdog, but also be helpful to the authorities for achieving that objective.**
40. In this respect, the Commissioner wishes to build on what he stated in his comments to the interim report of the GWP: *“The Commissioner notes that the Group of Wise Persons attaches great importance to the procedure of **pilot judgments** and to the execution of the Court’s decisions in these cases. In the Commissioner’s view this is indeed a key area. An area where the interaction between the Court, the Commissioner and the Committee of Ministers could prove very fruitful. In its Rules for supervision of the execution of judgments²¹, the Committee of Ministers has already stated that it will give priority to the judgments in which the Court has identified a systemic problem (Rule 4§1). The Commissioner further recalls that in its Resolution (2004) 3²², the Committee of Ministers*

²¹ Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements, adopted by the Committee of Ministers on 10 May 2006 at the 964th meeting of the Ministers’ Deputies, CM(2006)90, 12 May 2006.

²² Resolution Res. (2004) 3 on judgments revealing an underlying systemic problem.

*had already requested that the Court identify in its judgments the underlying systemic problems and notify these judgments not only to the States concerned and the Committee of Ministers but also to the Parliamentary Assembly, the Secretary General and to the Commissioner. The details of the Commissioner's participation in procedures on pilot cases will need to be worked out. In particular the rules of procedure should determine at what stage in the procedure the Commissioner is to become involved in dealing with the general problem, practice or legal gap in question. In any case, once in possession of the information about the general problem raised by the case, the Commissioner could offer his good offices to the Member State(s) concerned, either specifically or in the course of his visits, bilateral contacts or via his privileged relations with national Ombudspersons and/or National Human Rights Institutions. The idea is, basically, that the systemic problem should become a priority in the continuous dialogue between the Commissioner and the member State concerned by the pilot procedure or judgment. The Commissioner could, in particular, suggest or validate the means proposed to redress the systemic defect. Of course, the Commissioner would report back to the Court and the Committee of Ministers on the results of this dialogue. These last remarks would not appear to be restricted to the execution of pilot judgments but would seem applicable to the **execution of judgments in general**. The Commissioner could be involved in the relevant procedure by providing information and offering his good offices to the Committee of Ministers in accordance with the Declaration of 19 May 2006²³ providing for a framework of institutional relations between both. This could be useful in order to prevent infringement proceedings²⁴” (paras 12-14). **Two areas of co-operation between the Commissioner and NHRs emerge from these remarks:***

41. **On the one hand, NHRs could provide information to the Commissioner for use in his institutionalised relations with the Committee of Ministers and the Parliamentary Assembly (annual tripartite meeting). As regards NHRs, it is worth noting that they are already entitled, in accordance with the Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements, to provide information and documents directly to the Committee of Ministers²⁵. If all interested parties accept so, the Commissioner would suggest that information on the execution of judgments from both the NHRs and the ombudsmen be channelled through him to the Committee of Ministers.**
42. **On the other hand, the Commissioner, in reaction to information provided by the Council of Europe instances, could work with NHRs at the national level. This could be done in the context of his country visits or on an *ad hoc* basis. The latter modality might be appropriate with respect to pilot judgments where the GWP envisages a specific role for the Commissioner's partners (cf. para. 113 of the report). Ombudsmen could act as mediators in order to assist in addressing the issue at national level. The Commissioner stands ready to offer his advice and his guidance to them in order to ensure that the procedures are fair and in keeping with ECHR standards.**

²³ Declaration of the Committee of Ministers on sustained action to ensure the effectiveness of the implementation of the European Convention on Human Rights at national and European levels adopted on 19 May 2006, point X(c).

²⁴ Rule 11 of Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements, adopted by the Committee of Ministers on 10 May 2006 at the 964th meeting of the Ministers' Deputies, CM(2006)90, 12 May 2006; Article 46 (4) of the ECHR after the entry into force of Protocol No. 14.

²⁵ *Op.cit.*, Rules 8.2b (information and documents regarding the execution of judgments) and 14.2b (information and documents regarding the execution of the terms of friendly settlements).

43. **The Commissioner suggests that he and his partners stand also ready to provide the adequate follow-up to the future conclusions of the work of the GT-DH-PR A (see above paras. 36 and 37).**
44. **Furthermore, the Commissioner believes that findings by the Court, especially in pilot cases, should lead him and his partners to take a proactive approach in triggering verification procedures to assess the compatibility of draft laws, existing laws and administrative practices with the ECHR standards as they emerge from the Court's case law.** Although this is not mentioned in the final report of the GWP, the Commissioner included this function in his comments to the interim report of the GWP: It *"is deemed to constitute one of the main remedies of the Court's excessive workload. Established by Committee of Ministers Recommendation (2004) 5²⁶ this objective was reiterated in the Committee of Ministers' Declaration of 19 May 2006²⁷. The Commissioner should like to recall that he has already carried out compatibility exercises via Recommendations and Opinions²⁸. Provided that relevant information is given to him by the Court and the Committee of Ministers, the Commissioner could enhance his activities and direct involvement in this field, in close co-operation with National Human Rights Institutions and Ombudspersons"* (para. 15).
45. This corresponds to one of the recommendations the implementation of which is currently been reviewed by the DH-PR B (see above para. 36). **From the replies provided to Group B by member States and by NHRIs and NGOs²⁹ it becomes clear that NHRs have a key competence here. The Commissioner stands ready to assist the latter in initiating such compatibility exercises in their respective countries, in discussing the findings of such exercises with the authorities and in issuing himself opinions related to national legislation and administrative practices. Adequate communication channels and procedures between the Commissioner and his partners would need to be instituted for these purposes.**
46. **The improvement of domestic remedies called for by Committee of Ministers Recommendation Rec (2004)6 is an additional means of preventive action. The implementation of that recommendation is also being reviewed by Group B. Replies from some member States mention that NHRs are competent for drawing the attention of the authorities to situations where a domestic remedy does not exist or is not effective. If adequate communication channels and procedures are established between him and NHRs the Commissioner stands ready to support NHRs' findings with respect to deficient domestic remedies in the way they deem appropriate.**

²⁶ Recommendation Rec. (2004) 5 on the verification of the compatibility of draft laws, existing laws and administrative practice with the standards laid down in the European Convention on Human Rights.

²⁷ Points X (f) and (g).

²⁸ Final Report of Mr. Alvaro Gil-Robles, Council of Europe Commissioner for Human Rights (October 1999-March 2006) for the attention of the Committee of Ministers and the Parliamentary Assembly, 29 March 2006, CommDH (2006)17, pp. 10-11.

²⁹ See para. 37 above and footnote 20.

2. Dissemination of information on human rights and the Strasbourg Court

47. The report of the GWP contains a passage where:

“112. The Group notes with approval that the Commissioner is extending his current co-operation with national and regional ombudsmen and national human rights institutes in order to form an active network of all these institutions, so as to disseminate appropriate information on human rights and, as far as their competence permits, take action on alleged violations and abuses.

113. [...] National ombudsmen could also play a role in informing the public about the right to apply to the Court by distributing application forms and, above all, informing the public about the Court’s mandate and competence and about the Court’s mandate and about the admissibility criteria contained in the Convention.”

48. According to the Commissioner, dissemination of information in the sense of these paragraphs covers information regarding the execution of judgments already dealt with under point C.1 above. During the meeting in Berlin, the discussion focused on the dissemination of relevant information on the Court’s case law. The latter would be in line with the part of the GWP report on *Enhancing the authority of the Court’s case law in the States Parties*. Member States’ obligations in this respect are defined by Committee of Ministers Recommendation Rec (2002) 13 on the publication and dissemination of the text of the ECHR and of the case law of the European Court of Human Rights, CM Resolution (2002) 58 on the publication and dissemination of the case law of the European Court of Human Rights and CM Recommendation Rec (2004) 4 on the European Convention on Human Rights in university education and professional training. At present, Group B is reviewing the implementation of Recommendations (2002) 13 and (2004) 4 focusing *inter alia* on the dissemination of all relevant case-law of the Court concerning third States (i.e. States who are not Parties to a case). **From the replies provided by member States in the questionnaire regarding the implementation of the Recommendation (2002) 13, it seems that most of NHRs receive adequate information on the Court’s case law, which was confirmed by some ombudsmen at the meeting in Berlin in January 2007. However, it has been decided in Berlin to explore the desirability and usefulness of receiving information on the Court’s case law from the Commissioner’s Office on targeted issues dealt with by NHRs at national level. In this respect, the Commissioner also wishes to know whether there could be a need for special training of personnel from NHRs.**
49. **The Commissioner and NHRs should explore together concrete ways of implementing the proposal figuring in para. 113 of the GWP report. This issue raises the questions if it would not be desirable that NHRs, in co-operation with the Commissioner, accept the task of providing general information to individuals about the Court’s mandate and competence, admission criteria and reparation policies. The advantage of them providing such information to individuals in their countries would be that NHRs are more likely to be perceived as providing impartial information than, for instance, the Government’s agents before the Court.**

3. Need for new mandates for NHRs ?

50. This background paper explores a number of ways in which NHRs, together with the Council of Europe Commissioner for Human Rights, could play an increasingly important role for ensuring the respect of human rights in their country and help monitoring such respect on the international plane. However, the questions arise if their mandates allow them to do so. The GWP has addressed that issue in the following terms:

*“111. Under his mandate, the Commissioner facilitates the activities of national ombudsmen and similar institutions. However, these are not always competent in human rights matters. **The Committee of Ministers might consider adopting a recommendation with the aim of assigning such competence to them.**”*

51. **In the context of their enhanced alliance, the Commissioner and NHRs could explore further avenues of co-operation with a view to facilitating the activities of NHRs. With respect to their competence on human rights matters, it has been made clear in the meeting in Berlin, that in light of the replies to the IOI questionnaire, some NHRs cannot deal, without an extension of their mandate, with the issues envisaged by the GWP but also with the ones addressed in the present paper. This being a prerequisite for the implementation of the GWP’s proposals and for the other items of the enhanced co-operation, the participants of the Berlin meeting decided to consider during the discussions at the Round Table meeting in Athens if European standards should be set in that respect.**
52. NGOs have stated in their comments to the GWP report that *“in many member States more must be done to ensure that these institutions meet the minimum guidelines set out in the Paris principles and in particular, are truly independent, appropriately mandated, staffed with experts and adequately resourced”*. Indeed, the provision of necessary staff and resources for the Commissioner and for the NHRs constitutes an implicit prerequisite for the rapid and effective implementation of any programme of enhanced co-operation between them. Regarding the Commissioner, this has been stressed by the GWP which *“considers that the Commissioner should have the necessary resources to be able to play a more active role in the Convention’s control system, acting either alone or in co-operation with European and national non-judicial bodies”*³⁰. The Commissioner welcomes this support which should be also benefit to NHRs. However, he believes that much can already be achieved with mutual willingness and improved communication. Specific information provided to NHRs on the Court’s case-law (see above C. 2) as well as a special training for their attention could facilitate their work.

III. NEXT STEPS: PREPARING AND IMPLEMENTING A PROGRAMME FOR ENHANCED CO-OPERATION

53. **The target date for an in-depth discussion of the co-operation in light of the present document is the Round Table meeting to be held on 12-13 April 2007 in Athens, organised jointly by the Greek Ombudsman (on the occasion of the 10th Anniversary of his institution) and the Commissioner’s Office.**
54. It is intended that **implementation of the co-operation** start directly after the Athens Round Table with those nation-wide NHRs that wish to participate. It will be necessary to raise additional funds for that.
55. The co-operation programme also caters for action to be taken subsequently to the 2007 Athens conference in order to build a similar sort of partnership with those **National Human Rights Structures of member States, which have a regional or local competence in the field of human rights**. That part of the Action Plan strongly involves the Congress of Local and Regional Authorities of Europe. The target date for the “adoption” of that second part of the co-operation programme is end of 2007 / beginning of 2008.

³⁰ GWP report, para. 110.

56. It is likely that the biennial alternative **Round Tables** with NHRIs or ombudsmen with a national wide, general competence will be replaced by annual meeting with all NHRs to discuss topical issues, including the implementation of the co-operation programme.
57. It remains to be seen which kind of meetings will be organised together with the non nation-wide NHRs with a general competence. This is an item to be addressed in the context of the co-operation programme with them. Anticipated additional difficulties are that the regional and local NHRs are not well identified in all countries and that their number in some member States will require a system of representation on their side.
58. The Commissioner's Office will convene meetings with **thematic ombudsmen** (holding nation-wide or regional or local competence) whenever there is use or need for that. The first such meeting was the Conference on "Ombudwork for Children" co-organised with the Russian and the Greek Ombudsmen in Athens on 29 and 30 September 2006.