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**For the attention of the Committee of Ministers
and the Parliamentary Assembly**

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*“It not because things
are difficult that we do not dare,
but because we do not dare
that they are difficult”
Seneca.*

INTRODUCTION

The mandate to which I was elected by the Committee of Ministers and the Parliamentary Assembly is coming to an end. Over the years I have written and presented several reports recounting my activities as Commissioner for Human Rights.

My intention here is not, therefore, to repeat what I have already had occasion to relate in detail, but to share a number of parting thoughts based on my experience of the past six and a half years and to explain the criteria behind my attempts to fulfil the mandate conferred on me, without forgetting the errors made and the difficulties inherent in the establishment of a new institution. I hope, above all, that this experience will yield positive conclusions for the future, which might improve the effectiveness of the institution of the Commissioner. The report concludes with a personal view of the human rights situation in Europe and the challenges we all face, citizens and politicians, to ensure their effective respect.

Generally speaking, I leave with a sense of satisfaction over the work achieved but also regret at the enormous amount still left undone. This leaves, at least, considerable room for my successor to impress his own personality on an institution that is, I think, established, but which has still has much potential to grow. I have no doubt that Mr. Hammarberg, with whom I have had the privilege of cooperating these last few months, will succeed in this.

I. THE ORIGINS OF THE INSTITUTION

It strikes me as useful, before analysing the institution's evolution and the difficulties it has faced, to briefly retrace its origins, establishment and essential competences.

Already in 1972, the Consultative Assembly of the Council of Europe adopted a Recommendation on the "Need for a Commissioner of Human Rights or equivalent solution at European level"¹. A quarter of a century later, in 1997, on the initiative of Finland, a seminar was organised to examine the possibility of creating the said Commissioner, whose three essential functions would be the provision of information and advice, the treatment of complaints and an *amicus* role before the European Court of Human Rights (the Court)².

This initiative was finally officially approved on the occasion of the Second Council of Europe Summit of Heads of State and Government, in Strasbourg on 10-11 October 1997.

Though the Final Declaration makes no explicit reference to the institution of the Commissioner, it does state the decision "to reinforce the protection of human rights by ensuring that our institutions are capable of effectively defending the rights of individuals throughout Europe." As a result the second point in the Action Plan approved at Summit declares that "the Heads of State and Government welcome the proposal to create an office of Commissioner for Human Rights to promote respect for human rights in the member States and instruct the Committee of Ministers to study arrangements for its implementation, while respecting the competences of the single Court."

There follows two years during which the Committee of Ministers, the Steering Committee for Human Rights (CDDH) and the Parliamentary Assembly, with the consultative participation of the Court, work on the drafting of a text, which is finally adopted by the Committee of Ministers in Budapest in May 1999.

When drafting the initial text, the CDDH took into account the requests made by the Directorate General for Human Rights and the Court that the creation of the new institution should in no way entail a reduction in their own budgets. The Court also insisted on the fact that the Commissioner should not be given any jurisdictional competences.

For its part, the Parliamentary Assembly initially conceived the Commissioner's main role contributing to the better functioning of the Court on the grounds that "it is more important than ever [...] that the European Court of Human Rights should become what it was always meant to be, namely a subsidiary judicial body, intervening only when national legal systems fail". It goes on to state that "instituting a Commissioner for Human Rights is likely to assist this process if he or she succeeds in the — essentially preventive — task which it is proposed to assign him or her"³.

¹ Doc. 3092, 24 January 1972

² Strasbourg, 25 January 1997, CM(97)109

³ Doc. 8295, 12 January 1999 Council of Europe Commissioner for Human Rights: draft terms of reference.

At the same time the Assembly suggested a number of modifications to the original draft including an extension of the Commissioner's competences to allow the Commissioner "... if he or she deems it appropriate, deal with individual cases, provided that they are not already before the European Court of Human Rights or are not likely to be the object of an application to the Court. individual complaints providing that"⁴; the possibility of drafting reports for the Assembly and Committee of Ministers independently of each other; the introduction of an age limit of 70 and the principal of a non-renewable mandate. It made 18 suggestions in total, of which half a dozen are accepted by the Committee of Ministers.

One of these proposals has proved to be of particular importance. This is the suggestion to strengthen the Commissioner's role as monitor of the "effective" respect for human rights, by referring to this role in the first substantive article in the text. And by inverting the order of paragraphs a) on the Commissioner's promotional role and b) on his interventionist one, in the final Article 3.

In a communication of 15th June 1999 to the Parliamentary Assembly⁵, the President of the Committee of Ministers, explained the reasons for rejecting these suggestions : "The existing wording of Article 2, paragraph 1, is a closely negotiated formula aimed at establishing a compromise between those governments who favour an interventionist role for the Commissioner and those who do not. In the drafters' opinion, the existing wording, read in conjunction with the whole of the text, provides a balanced picture of the Commissioner's task, while the more interventionist wording proposed by the Assembly would have upset that balance. The same applies to the proposal to invert sub-paragraphs a and b of Article 4."

The response to the suggestion that the Commissioner be able to take individual cases before the Court was also negative as "the doctrine according to which the Commissioner should not interfere in the jurisdiction of the European Court of Human Rights has been an absolute priority for the drafters. It was also firmly insisted upon by the Court itself when consulted"⁶.

It is clear that the Committee of Ministers sought to create a balanced institution that would combine an interventionist role to promote the effective respect for human rights with a more general awareness raising role. The Committee of Ministers also resisted attempts to strictly define references to "other Council of Europe human rights instruments" or "human rights structures" in the interest of the freedom and flexibility of the Commissioner's action.

⁴ Doc. 8295, 12 January 1999 Council of Europe Commissioner for Human Rights: draft terms of reference.

⁵ Doc. 8439, 15 June 1999, The Council of Europe Commissioner for Human Rights.

⁶ *ibid.*

II. THE MAIN CHARACTERISTICS AND COMPETENCES OF THE COMMISSIONER FOR HUMAN RIGHTS

1. General Characteristics

The institution's most important quality is, without doubt, its independence, which is reinforced by the Commissioner's election by the Committee of Ministers and the Parliamentary Assembly.

The institution cannot receive individual complaints (Resolution 99(50), art 1.2) and cannot, therefore, be considered an Ombudsman. The institution is defined rather as a non-judicial body, whose action need not be hampered by strict procedural rules and whose decisions cannot be challenged in court. The Commissioner has a regular monitoring role, which is to be exercised through recommendations and legal opinions, as well as an advisory and mediation role.

It must be said that the independence of the institution has never been formally called into question. Problems have, however, often arisen in practice in the understanding of this special and somewhat unique quality.

The fact that Article 12 states that "An Office of the Commissioner for Human Rights shall be established within the General Secretariat of the Council of Europe" has led to serious operational difficulties, resulting from the need to reconcile the needs and priorities of the Secretariat in general with the specific role of the Commissioner's Office, which has, despite official declarations to the contrary, never constituted a priority. It is only since the arrival of the new Secretary General, and for the year 2006 that a serious attempt has been made to address the glaring lack of resources that the institution has endured for over five years now.

So long as the Commissioner does not have sufficient means, and is not free to select his own staff, starting with his Director – questions I will come back to later – it is difficult to say that the principle of independence is respected.

The Commissioner is not part of the hierarchical structure directed by the Secretary-General, which enables him to exercise his functions independently and impartially. These qualities are explicitly stated in Article 2 of the Commissioner's mandate and their respect requires that the his Office, and the personnel that compose it, fall entirely under his authority. Even if the Commissioner must take regard to Article 4 of his mandate⁷, he can receive no imperative instruction, must act in accordance with his own political criteria and must be able to establish direct contacts with the Governments of member States. None of this, however, precludes the fact that the Commissioner is responsible for his actions before the Committee of Ministers and the Parliamentary Assembly, even if no statutory mechanism is foreseen for this purpose.

⁷ The Commissioner shall take into account views expressed by the Committee of Ministers and the Parliamentary Assembly of the Council of Europe concerning the Commissioner's activities.

It is, I believe, precisely the political independence of the Commissioner that makes it such a unique institution for the promotion of the values the Council of Europe was created to uphold. The Commissioner is able to launch initiatives and examine issues with a large autonomy, which should render the institution a precious instrument for the Council of Europe as a whole, as the Commissioner is able, as it were, to make breaches that its other, more technical services can follow up on.

The potential of such an institution should be exploited and not underestimated, or, simply, ignored. For this it is necessary to improve the mechanisms for coordination and the transmission of information. This coordination must not, however, be conceived as requiring the integration of the Commissioner into pre-determined activity, nor the transmission of information as an obligation on the Commissioner alone that need not be reciprocated by others.

I am bound to acknowledge that I have perhaps not devoted all the necessary energy to this ensuring this coordination, beset as I was by the many other difficulties I faced in setting up a new institution. If this is the general impression, then I hold up my hand, but note, at the same time that coordination is a game for two or more players.

2. Competences

In so far as the Commissioner's competences are concerned, Resolution 99(50) clearly reflects both the desire to create a new institution capable of promoting the effective respect for human rights in member States and the concerns of others already active in this area, both within the Secretariat and on the part of the Court.

Thus the Commissioner's mandate rather oddly begins by saying what the Commissioner should *not* do; he shall perform functions other than those fulfilled by the Court, he shall not take up individual complaints and must not duplicate the activities of existing organs and institutions⁸. One might wonder what the strict application of these criteria would actually have left.

If one recalls the initial ambitions of the Parliamentary Assembly, and the original Finnish proposal, it is striking how much was subsequently jettisoned in favour of the creation of an institution that would concentrate on the promotion of "education in, awareness of and respect for human rights" (Article 1.1), all of which the Council of Europe had already been doing since the very beginning. It is difficult to find a vaguer formulation than the one contained in paragraph 1 of article 1, which is moreover, difficult to reconcile with the second paragraph of the same article, requiring the Commissioner not to duplicate the activities of other Council of Europe bodies. Indeed the Article reveals all the distrust of the established towards the unknown and the desire to orient the Commissioner towards a promotional role.

Fortunately Article 3 outlines four broad areas of action and it is on this Article that I have sought to construct the institution's activity, focusing on:

⁸ Resolution (99)50, Article 1(2).

- a) the promotion of the effective observance and full enjoyment of human rights
- b) the identification of possible shortcomings in the law and practise of member States concerning the compliance with human rights
- c) the promotion of education in and awareness of human rights
- d) facilitating the activities of national ombudsmen or similar institutions in the field of human rights

Over the years, I have tried to orient the institution's activity towards the fulfilment of these four tasks, and, in respect of all of them, I must admit to the difficulties faced in establishing activities and practises that did not touch on the competences of other Council of Europe bodies and mechanisms. Indeed, the very vagueness of the Commissioner's mandate, the enormous field of action it leaves open, has made this impossible and I am grateful to the different services for the understanding that they have shown.

For all this, I think that my Office has succeeded in developing a range of activities that distinguish it from what the Council of Europe previously offered and which represent a genuine added value. It is my belief that, even if the work is not completed, and my successor still has long road ahead, the institution of the Commissioner enjoys an autonomous standing and reputation both within the human rights community and within the public at large, at least in the countries in which it has been most active.

The main branches of the institution's activities have been amply outlined elsewhere and not least in my last annual report. I will restrict myself, therefore, to a short description of them here.

a) The promotion of the effective observance of human rights

The institution of the Commissioner is, I think, best known for and most often associated with its activity in this area.

From the very outset of my mandate, I was motivated by the desire to ensure that the expression "promotion of the *effective* respect for human rights" should constitute not a vague encouragement, but an explicit mandate to examine for myself how human rights are being respected in practice in each member State on a daily basis.

The only way to fulfil this task was to visit member States, making use of the provisions of Article 6(1) of resolution 99(50), which obliges member States "to facilitate the independent and effective performance of [the Commissioner's] functions" and to assist in the organisation of his travel and provide requested information in good time.

Two different types of visit, and hence reports, rapidly evolved – regular visits and reports, and visits relating to extraordinary or crisis situations.

Thus the outbreak of the second Chechen conflict just as I took office obliged me to travel almost immediately to Moscow to express my wish to visit the Republic to the Minister of Foreign Affairs. This visit, my first proper visit on the ground, took place

in December 1999. In the years following this visit, I travelled a further five times to Republic presenting reports and making fresh recommendations for the respect for human rights each time as the situation evolved. But I have also intervened in other exceptional situations during my mandate – not least in my own country, in respect of human rights concerns relating to terrorist activity in the Basque Country. I have also travelled to Georgia and Moldova to examine and intervene in human rights issues arising in their breakaway regions: to Abkhazia in February 2001 and Transnistria in 2000 and again, in respect of the threatened closure of the Latin alphabet Moldovan schools, in 2004. I travelled to Adjara in March 2004 in response to the tensions in the region prior to the Parliamentary elections. I also visited Kosovo, Serbia and its neighbouring countries on the request of the Parliamentary Assembly in 2002 to examine the respect for human rights in Kosovo and the situation of persons displaced from it.

In addition to these exceptional visits, I have tried to visit as many member States as possible for the purposes of preparing regular reports on the effective respect of human rights in each country. We managed, in the end, to visit the thirty two countries listed below in my six and half years in office. Though far short of the original target of all member States, I think that this represents a reasonable achievement given the Office's extremely limited resources particularly in the first three years. As regards the countries that I have not presented reports on, I nonetheless visited most of them, either for contact visits (in italics below), including visits on the ground in Armenia and Azerbaijan and Albania, or for other activities or seminars.

1999- 2000	2001	2002	2003	2004	2005 - 2006
Georgia Moldova - <i>Russia</i>	Andorra Norway Slovakia Finland Bulgaria - <i>Switzerland</i>	Greece Hungary Romania Poland - <i>Albania</i> <i>Armenia</i> <i>Azerbaijan</i>	Czech Republic Slovenia Portugal Turkey Cyprus Lithuania Latvia Estonia Malta - <i>Serbia &</i> <i>Montenegro</i>	Luxembourg Denmark Sweden Croatia Russia United Kingdom Switzerland Liechtenstein - <i>Germany</i> <i>Latvia</i> <i>Russia</i>	Spain Italy Iceland France - <i>The Holy See</i>

The regular country visits typically consist of meetings with members of the Government, Parliament, local authorities and the judiciary, national Ombudsmen and human rights institutions and, at the beginning of each, NGO representatives, who provide me with a vital overview of the main human rights problems. I have also attached great value to visits on the ground to all kinds of sites where human rights issues frequently arise, such as prisons, police stations, psychiatric hospitals, shelters for victims of domestic violence or human trafficking, holding centres for foreigners and refugee camps. My aim is always to obtain a direct, first hand understanding of the situation on the ground and to raise subsequently, in my discussions with national

authorities and in my report, only those issues that I have been able to evaluate for myself. This first hand knowledge is, I believe, essential to the institution's credibility and its ability to make constructive recommendations at the end of each of report.

I have made an attempt to keep track of the implementation of the recommendations contained in country reports by presenting, ideally some two years after the original visit, a "follow up" report. These reports have been prepared on the basis of a new visit by members of the Office. All told, I have managed to present fifteen follow up reports – eleven of them now, just before I leave. Whilst they show that several problems identified by the Commissioner remain, they also show that many have been addressed; not always, of course, on the exclusive encouragement of the Commissioner, but thanks to the concerted action of several national, international and non-governmental instances and organisation. I do believe, however, that the Commissioner's direct discussions with national authorities and the public attention enjoyed by many of the institution's reports have prompted both general and, often enough, quite specific improvements in the respect for human rights.

A further tool open to the Commissioner, but which I have unfortunately not been able to develop much, is the *ad hoc* Recommendation on a given issue in a given country or region. In all my time in office, I only succeeded in presenting two such Recommendations, concerning allegations of involuntary sterilisation in the Slovak Republic, and arrest and detention procedures in Chechnya. I believe that such Recommendations could usefully complement the Commissioner's regular country reporting. They will only be possible to produce on a regular basis, however, once the Office possesses sufficient resources to consistently follow new developments as they evolve in all countries and this is not currently the case.

A final, again under-developed, possibility provided by the Commissioner's mandate is the presentation of thematic reports analysing structural or recurring human rights challenges identified in several Council of Europe member States during official visits. Again, I managed to produce only one such report, right at the end of my mandate, on the situation of Roma, Sinti and Travellers in Europe. Again, I believe that the potential of such reports and their possible combination with general recommendations is considerable.

b) The identification of legislative shortcomings

Early in my mandate, I decided that, in addition to the identification of legislative shortcomings in country reports, there was potential to develop this activity through the possibility to present Opinions and general Recommendations.

The very first Recommendation I made, indeed, was a general one to all the member States of the Council of Europe on the respect for the fundamental rights of foreigners in expulsion procedures. The Recommendation was the result of a seminar organised by my Office in 2001 to which Government representatives, experts and NGOs were invited. The seminar took place before the problems linked to irregular immigration began to arise with the intensity we are witnessing today, particularly in the

Mediterranean basin. The question of expulsion procedures was one, however, that already concerned almost all Council of Europe countries and required, therefore, a more general treatment than the specific recommendations contained in individual country reports.

The Recommendation was addressed to the Committee of Ministers and the Parliamentary Assembly, but there was little immediate reaction; it was perhaps too early for this type of Recommendation from the Commissioner, and no procedure for examining it existed. The Parliamentary Assembly has, however, picked up on certain aspects of the Recommendation in a number of its own Resolutions and Recommendations and I welcome this. This general Recommendation remains the only one of its kind that I produced, but I believe that there is considerable potential for the institution to develop this activity in the light of the experience it is able to acquire on the ground in member States during country visits. Such Recommendations could usefully be combined with thematic reports.

The requests of a number of national instances – Parliamentary Committees and national human rights mechanisms – for the views of the Commissioner on specific human rights issues early on in my mandate enabled me to develop the activity of preparing Opinions. These texts allow for a more in depth analysis of legislation, whether existing or in draft form, than cannot always be included in country reports that must perforce cover a wide variety of subjects. My Office produced six such opinions during my mandate; three on issues relating to the creation or competences of national human rights institutions and three on substantive human rights issues.

The very first Opinion, which set the tone for those thereafter and which demonstrates the value of this activity, was on the United Kingdom's 2002 derogation from Article 5 of the ECHR to permit the indefinite detention of foreigners suspected of involvement in terrorism that could not be expelled. The Opinion was requested by the UK Parliament's Joint Committee on Human Rights and, though not followed by the Government, was widely and approvingly quoted by the House of Lords in a judgment declaring the relevant legislation to be incompatible with the Convention⁹.

The second, on the 2003 Draft Alien's Law in Finland shows the usefulness of requesting an Opinion of the Commissioner at the preparative stage. In this case the Opinion was again requested by a Parliamentary Committee, which took many of the Commissioner's considerations into account when formulating its own views on the draft. Such recourse to the early intervention of the Commissioner allows potential human rights shortcomings to be identified before entering into force.

The Commissioner can also present Opinions *ex officio*, as was the case for his Opinion on certain procedural safeguards in the application of pre-trial detention in Portugal. The Opinion was prepared in the light of shortcomings identified in the course of my visit to Portugal, but which were too complex to be dealt with immediately in the resulting report. The Opinion was subsequently drafted with the

⁹ [2005] UKHL 71.

cooperation of the Minister of Justice and its essential concerns were incorporated in a subsequent draft bill reforming certain aspects of the Code of Criminal Procedure prepared by the Ministry of Justice, but which has unfortunately not made much progress in Parliament.

I firmly believe that such Opinions and Recommendations should constitute an important aspect of the institution's activity and that there is, therefore, much scope for expansion here, if the necessary resources are provided. These Opinions, as their use in Parliaments and the courts have shown, can provide important tools to national instances and correct shortcomings before their arrival at the Court in Strasbourg.

c) The promotion of education in and awareness of human rights

In so far as the general promotion of human rights is concerned, the most obvious challenge has been to avoid reproducing activities and initiatives already well conducted by other parts of Council of Europe.

My activities in this area have focused on the organisation of seminars on topical human rights concerns bringing together Government officials, NGOs and independent experts to examine the main concerns and suggest avenues for future action. These seminars have focused on the protection of vulnerable groups. Seminars have been organised on the rights of the elderly, of persons with mental disabilities, on arriving foreigners and on the trafficking of children and the human rights challenges in the field of immigration.

Other seminars have been organised in order to promote dialogue, the activity of civil society and encourage the search for practical solutions to the human rights challenges presented in conflict and crisis situations. In addition to a seminar in Pitsunda on the state-legal aspects of the Abkhaz conflict, organised together with the Venice Commission and held under the Aegis of the United Nations Mission in Georgia, my Office has organised six seminars on the promotion of human rights in Chechnya - in the Northern Caucasus, in Grozny and in Strasbourg - which have resulted in a several concrete initiatives.

I have, lastly, sought to organise regular meetings and maintain an ongoing dialogue with important actors in the field of human rights – with the leading international NGOs, of course, but also with others whose role in society entails a special responsibility to respect, and promote the respect for, human rights such as religious leaders and the armed forces.

Having examined the respect for human rights both within the armed forces and by the armed forces on active service over the course of two seminars, I was unfortunately unable to maintain this series for lack of resources, as I concentrated on the preparation of country reports. I have no doubt, however, that there is still much work to be done in this area, particularly regarding the awareness of servicemen of their rights and the drafting of guidelines on the respect for human rights within the armed forces.

I was, however, able to organise a series of five seminars on human rights and religions, to which religious leaders, national authorities and a variety of experts were invited to discuss such issues as the role of religions in armed conflicts, church-state relations, and the importance of combating the ignorance at the heart of intolerance through education in religious traditions in state schools. The participants at the final seminar, held in Kazan, Russia, in February this year, supported the creation within the framework of the Council of Europe of an European institute for the promotion of religious tolerance and respect through education and I strongly hope that this idea will be taken up by the Committee of Ministers. Another idea to have been raised in Kazan, and one which I believe to be of great interest, is the possibility of establishing a consultative body of representatives of the traditional religions in Europe to the Council of Europe.

d) The promotion of national human rights institutions

Having been a national Ombudsman myself, I have naturally attached considerable importance to the part of my mandate requiring the Commissioner to promote national human rights mechanisms. Indeed, I am convinced that national and regional Ombudsmen, National Human Rights Commissions and other specialised bodies such as Ombudsmen and Commissions for children and equality, have an extremely important place in the European human rights architecture. They are, moreover, the natural partners of the Commissioner at the national level and have, therefore, been of enormous assistance in the organisation of my visits and in informing me of the main human rights problems in their countries. I would like to express my gratitude for this cooperation.

I have sought both to encourage the creation of new human rights institutions and to assist them in their development during my country visits and in my subsequent reports, sixteen of which refer to issues relating to national Ombudsman and a further fourteen to National Human Rights Commissions or other specialised bodies in the field of human rights such as equality commissions and Ombudsmen for children or persons with disabilities.

In order to promote the exchange of experience between national Ombudsmen and between National Human Rights Institutions, and to develop their ties with the Council of Europe as a whole, my Office has organised alternating bi-annual Roundtables for each type of institution. I have also added a Round-table for Regional Ombudsman, believing that such local actors have an important role in the monitoring of the administrative acts of, and the respect for human rights by, local authorities in the provision of the many essential services they are responsible for. Indeed, I very recently had the occasion to repeat these convictions before the Congress of Local and Regional Authorities.

Much of work in Chechnya has been directed towards the creation of effective local human rights structures. Following my very first visit to the region, and given the gravity of the situation, I proposed that an Ombudsman capable of serving as an intermediary between the civilian population and the military be exceptionally appointed. This proposition was not accepted in full, but did give rise to the appointment of a Special Representative of the President of the Russian Federation for Human Rights in the Chechen Republic, in whose office Council of Experts worked

for several years. I am glad that, just before my departure the new Chechen Parliament adopted a law on the Regional Ombudsman, elected its first title-holder. I have been able to place a member of my Office in the Office of the Chechen Ombudsman in Grozny, and of the Interim Ombudsman before him, to assist the institution's development and, at the same time, the organisation of the Council of Europe's activity in the Region¹⁰.

Beyond the Chechen Republic, my Office has also run a programme for the promotion of Regional Ombudsman throughout the Russian Federation, bringing their number from eighteen to thirty-three over the last three years, thanks to funding provided by the European Union. I have, lastly, established a programme for the collective defence and encouragement of the creation of National Human Rights Institutions in Europe, called "JOIN", to coordinate the activity of the European Group of National Human Rights Institutions, my Office and the Office of the UN High Commissioner for Human Rights in this area.

I am pleased to note that the development of national human rights mechanisms over the last few years has been impressive. Thirty-seven Council of Europe's member States now have national Ombudsmen and even if the number of National Human Rights Commissions respecting the Paris Principles is less, plans for their creation are well under way in several European countries. This commitment to effective national institutions reflects what I have always firmly believed – that the responsibility for monitoring and intervening in respect of human rights problems lies firstly with national authorities and institutions and only thereafter with international instances.

III. THE CRITERIA AND PRINCIPLES BEHIND THE INSTITUTION'S ACTIVITY

Given the extreme breadth of the Commissioner's mandate, it has proved indispensable to establish certain criteria and principles governing the institution's activity in order to allay the fears of duplicating the activity of existing structures that always arise when new human rights institutions are created.

In my view, four core features define the nature of the institution. These are, firstly, its independence and its direct contact with national authorities at all levels. These two features, essential to the Commissioner's ability to mediate and recommend initiatives, lend an inevitably political quality to the institution. Thirdly, the institution must, I think, make every effort to acquire a firsthand understanding of the situation on the ground. It is this direct experience that gives the Commissioner and his recommendations their force. One might add to these three features the further important characteristic of openness to other actors – notably other international instances such as the European Union, the OSCE and UN bodies, national human rights mechanisms and, of course, NGOs – with whom the Commissioner must be sure to work and establish close, flexible relations.

¹⁰ I greatly regret that the extension of the contract of the Commissioner's representative in Chechnya is at risk owing to a lack of funds.

1. The promotion of the effective respect for human rights

I have tried to ensure that the Commissioner's reports and recommendations, both regular and extraordinary, always reflect my personal experience based on visits on the ground and direct contacts.

It is clear, therefore, that the regular reports present a personal view of the human rights situation in a given country and do not claim to analyse exhaustively all possible human rights violations, but only the most important ones identified at the time of my visit. It has, moreover, always been my intention to analyse the situation and make recommendations in as cooperative a spirit as possible. The Commissioner is neither a judge, nor a prosecutor, nor an NGO. I have tried, simply, to be an accurate recorder and constructive suggester of improvements, for which an engagement with national authorities is essential. I have tried also to reflect good practises and I believe that this is an important part of the Commissioner's work.

It is also important that the Commissioner should examine the situation in all countries and apply the same standards in each. Whilst some problems in some member States will inevitably require more frequent attention than others, there are shortcomings in all member States. The Commissioner must, in my view, make an attempt to visit and report on all countries, old members and new, Eastern and Western, during his mandate and critically, but loyally, analyse the problems they face. The Commissioner must, however, seek to avoid becoming embroiled in domestic party politics. For this reason I have sought to avoid conducting visits, or publishing reports during electoral periods.

I also believe it is important that the Commissioner's reports should reflect the concerns of ordinary citizens and that they should see that their concerns over human rights violations are the subject of consideration by European institutions. At the same, whilst my reports are addressed to the Committee of Ministers and the Parliamentary Assembly and my recommendations to national authorities, I have always tried to ensure that they are written for a national audience and not just for international institutions and civil servants.

The Commissioner's recommendations may target both practises or legislation violating or presenting a risk of violating the rights guaranteed by the ECHR. They may address acts, or omissions, they may suggest the abrogation of laws or the introduction of new ones. They may seek to prevent violations, to put an end to them or to repair them. It is this flexible preventive and corrective function that Commissioner adds to the international human rights architecture.

It is precisely this function that makes the Commissioner complementary to the Court. The Commissioner is, and, in my view must remain, a non-judicial instance whose contribution to the work of the Court and the reduction of its case-load, must lie in his work both up-stream, in identifying and attempting to correct sources of violations before their arrival in Strasbourg, and downstream, in encouraging the implementation of measures that remove the source of repetitive violations already identified by the Court. The Commissioner ought not, in my view, be involved in the handling of cases themselves.

2. The identification of legislative shortcomings

The Commissioner's Opinions can be provided both on request and *ex officio*. They might deal with issues identified during the Commissioner's visits or brought to his attention by others. They may deal with draft or existing legislation, perhaps even with lacking legislation. I think it is important, however, that the Commissioner respect the domestic legislative process in each country and that his formal intervention in respect of draft legislation should only be offered on the express request of national authorities.

Generally speaking, I think it is always best for the Commissioner to present Opinions in response to requests and I have responded to all of those I have received – from National Parliaments, from National Human Rights Institutions and from the Committee of Ministers itself. But the Commissioner may find it necessary to present Opinions *ex officio* – a practise that one might imagine developing further in the future in conjunction with the Commissioner's ability to intervene in cases before the Court under Protocol 14.

As for the possibility to make general Recommendations, I believe that these are best made in the light of a preliminary thematic analysis of an issue or issues identified in the country reports. In this way the Commissioner can maintain the link between his recommendations, even general ones, and his own personal experience.

3. The promotion of education in and the awareness of human rights

The Commissioner's net contribution in this area, bearing in mind the excellent promotional activity already undertaken by other services of the Council of Europe, can never be huge. The Commissioner's reports do, however, in so far as they are written for the public as much as they are for professionals, seek to promote an awareness of human rights and their essential place in the our democratic societies. Their generally wide diffusion in national media, particularly as the institution has developed, has served to promote national debate and reflection on human rights issues.

Indeed, I have always considered it important that the Commissioner should work as much as possible in the public domain. My reports, recommendations and opinions are consequently all made public at the moment of their presentation before the Committee of Ministers and transmission to the Parliamentary Assembly. In addition to remaining open to the media, I have also always sought to attend as many public debates, hearings and seminars as possible. Indeed, I think that the Commissioner has a certain role to play as a public face in Europe for the promotion of human rights and I am confident that my successor will be able to take this role forward.

I have sought to concentrate the institution's own specific awareness raising activities on seminars. The aim has been to provide fora in which national authorities and relevant actors could freely discuss topical issues, without ever having predetermined conclusions half-written already, but always with the aim of going beyond theoretical debates and identifying concrete proposals and measures to resolve difficulties. In

addition to these general seminars on isolated subjects, I think the Commissioner has a role to play, as suggested above, in promoting dialogue with and between actors whose activities, though not immediately related to human rights, nonetheless impact considerably on their enjoyment. I think of religious communities, and the armed forces, with whom I have sought to establish a regular dialogue, but one might add others to this list.

This dialogue is, I think, essential and the Council of Europe is a forum for dialogue *par excellence*. Indeed, one of the criteria for the Commissioner's seminars and dialogues is the possibility of their resulting in proposals for activity that the Council of Europe as a whole can follow up on – such as the elaboration of guidelines for the respect for human rights in armed forces, or the creation of an European Institute for the promotion of religious tolerance and respect through education.

4. The promotion of national human rights institutions

There is a wide variety of institutions to be found in Council of Europe member States and it seems to me that there need be no fixed model for each State to adopt. The national context and institutional framework varies from country and it is appropriate that national institutions should reflect this diversity. Indeed, the distinction between national Ombudsmen and National Human Rights Institutions is often hard to draw. This is not, in itself, problematic, but care must be taken to ensure that their respective competences are well articulated when both exist in the same country. Further reflection in this area may well prove necessary in the future as both kinds of institution continue to develop at a rapid rate. For my part, I am certain that the two types of institution can happily co-exist and that both should be encouraged.

IV. INSTITUTIONAL RELATIONS

Much of the Commissioner's work has taken place within the Council of Europe itself and in the early years of the institution's establishment these contacts proved essential not only to enable a better understanding of the aims and working methods of the Commissioner, but also to secure the necessary support for its activity.

1. The Committee of Ministers

I am pleased to record that the institution's relations with Committee Ministers have been positive. Whilst at all times respecting my independence, the Permanent Representatives have constantly expressed and offered their support, without which it would have been impossible to fulfil my functions. They have regularly commented both favourably and critically, on the Commissioner's reports and activities, whilst generally encouraging the institution's work and I would like to express my gratitude.

This encouragement was particularly crucial right at the very beginning of my mandate, when it came to supporting the various initiatives I presented regarding the situation in the Chechen Republic just as the second conflict began. In particular, on

my return from my first visit to the Republic, in December 1999, I received the necessary support for the negotiation of the presence of Council of Europe experts in the Office of the Representative of the President of the Russian Federation for Human Rights in Chechnya – known to most as the “Kalamonov Office” – whose creation I had urged. It was this support, and the complete cooperation of the Russian authorities, that set the precedent and laid the foundations for the kind of institution that the Commissioner for Human Rights has become. The Committee of Ministers has continued to support the institution’s attempts to improve the respect for human rights in the Republic and to intervene crises in other parts of the Council of Europe. Indeed the Committee of Ministers has also expressly requested it on occasion.

The Committee of Minister’s has only very rarely reacted in the form of decisions or initiatives in response to the Commissioner’s recommendations. At the same time, it is true that I have had never occasion to formally request any particular action on the part of the Committee of Ministers, either in respect of a non-cooperating member State, or in respect of a repeatedly ignored recommendation.

One area where closer cooperation and greater engagement on the part of the Committee of Ministers may prove desirable in the future is in respect of the thematic reports that the Commissioner can present. I only ever presented one such report, on the respect for the human rights of Roma, Sinti and Travellers in Europe, which contained recommendations addressed directly to national authorities. One might well imagine, however, that, on the basis of the general conclusions of a thematic report, the Commissioner should recommend that the Committee of Ministers respond to a particular issue through the Council of Europe’s inter-governmental activity.

The Commissioner’s participation in the Council of Europe’s inter-governmental work, in its different committees working in the field of human rights has been somewhat ad hoc. Whilst the Commissioner has often been invited to address the different Committees, and his Office is increasingly being invited to participate as an observer in Committee meetings on particular issues, the Commissioner participates of right, as a non-voting member, only in the Committee of Experts on Issues relating to the Protection of National Minorities (DH-MIN). Whilst the fact that the Committee of Ministers itself invited the Commissioner to give an Opinion on the Draft Convention on the Prevention of Terrorism, testifies to a growing awareness of the contribution the Commissioner might make to the Council of Europe’s inter-governmental work, it remains the case that the Commissioner does not have any permanent status at all within the Steering Committee for Human Rights (CDDH), nor its dependent Committee of experts for the improvement of procedures for the protection of human rights (DH-PR) and Committee of experts for the development of human rights (DH-DEV). This compares unfavourably, by way of example, to the OSCE’s Office for Democratic Institutions and Human Rights, which has observer status on the CDDH. No doubt this omission owes more to oversight than anything else, but I am sure that the greater participation of the Commissioner in this work would bring considerable benefits to all.

2. Parliamentary Assembly

The Commissioner is elected by the Parliamentary Assembly from a list of three candidates proposed by the Committee of Ministers. I have always considered the Commissioner's relations with the Assembly to be particularly important, therefore, and that the Commissioner must seek to regularly inform it of his activities and be prepared to appear before its Plenary or Committees whenever requested.

This has been my attitude each time I have been requested by the Assembly to appear before it, as I consider the Assembly's knowledge of the Commissioner's activities, its support and critical evaluation to be extremely valuable. I should add that I have never felt any attempt to abuse this regular relationship to put pressure on the Commissioner, contrary to the expectations of certain experts who foresaw in such ties a danger for the Commissioner's independence. Quite the opposite, in fact; the Assembly has always respected it.

I have appeared before the Assembly on different occasions over the years – before the Plenary, to present my Annual Report and, once, my activities in the Chechen Republic; and, more frequently, before its many different Committees. There was a while a certain confusion over the question of whether the Commissioner should present his Annual Report before the Plenary or at a meeting of the Standing Committee. Finally a precedent was established whereby the Commissioner presents his report first to the Committee on Legal Affairs and Human Rights, which may prepare a reply and then before the Plenary. The Assembly does not vote, however, on the Commissioner's report, in keeping with the practise of European Ombudsmen when presenting their annual reports to national Parliaments. This procedure strikes me as entirely suitable. It is regrettable, only, that since the presentation to Plenary in January 2004 of the Commissioner's annual report for the year 2002, my annual report for 2003 remains to this day without response before the Committee of Legal Affairs and Human Rights.

I have, however, been invited with increasing regularity before the Assembly's different Committees in the last few years. The number of references to the Commissioner's activities and recommendations in the Assembly's own texts and during its debates has also increased. I am particularly appreciative of the support expressed by the Assembly for my initiatives in the Chechen Republic, especially in the early years of my mandate. I must also acknowledge the Assembly's repeated calls for greater resources for the Office of the Commissioner.

At the same time, I have not once been requested to present or discuss issues arising from my various country reports, though all are addressed to the Parliamentary Assembly as much as they are to the Committee of Ministers, which has by contrast, held debates on each one. For my part, I have always sought to meet with the national delegations during my country visits and have appreciated the frank discussions.

I hope that in the future a better cooperation can be established on this point and that the Commissioner might have greater opportunity to inform the Assembly of his reports, recommendations and opinions and to listen to the views and assessment of its members.

In six and a half years, thirty-four Assembly Recommendations and Resolutions refer to the Commissioner, eleven of which call for specific action on the Commissioner's behalf, ten refer to institutional issues, seven refer to an aspect of the Commissioner's activity and six call for the implementation of specific recommendations I have made. I do not think this is a bad score for a new institution, which had, after all, to prove its worth. But I do think that there is room for improvement.

It has, indeed, sometimes been difficult to understand the Assembly's criteria. In 2002, for instance, it urgently requested that the Commissioner prepare a report on the respect for human rights in Kosovo and the situation of persons displaced from the region. The resulting report, however, produced on the basis of two long visits to the region, provoked no discussion either in the Plenary or in the Committee on Migrations, Refugees and Population where I was briefly able to present it. None of the five recommendations and resolutions that the Assembly has adopted on Kosovo since, despite the reports raising a number of very serious human rights concerns – some of which continue to be of relevance today, as I recently recalled to the Committee on Legal Questions and Human Rights. I might list many other texts adopted by the Assembly on subjects that my Office has worked on extensively that make no reference to its work.

I remain convinced that close cooperation between the Commissioner and the Assembly is important and that further efforts are required to attain this objective.

3. Congress of Local and Regional Authorities

The cooperation between my Office and the Congress of Local and Regional Authorities was slow to take off, but has, since the co-organisation of two seminars in Barcelona in 2004 on the institution of the Regional Ombudsman and on the role of local authorities in the promotion of human rights, developed very positively. My country visits, during which I have regularly met with local and regional authorities, have convinced me of their essential role in the protection of human rights as it is often to them that residents turn first with their problems and on them that key services depend. Close cooperation between the Commissioner and the Congress will no doubt continue to be important in the future.

4. Relations with the European Court of Human Rights

As I have mentioned above when referring to the origins of the institution and the *travaux préparatoires* of Resolution (99) 50, the drafters of the Commissioner's mandate, i.e. the member states of the Council of Europe, made a deliberate choice in separating incisively the activities of the Commissioner for Human Rights and those of the European Court of Human Rights (hereafter "the Court"). This will is evident in Article 1 § 2 of the Resolution which instantly, and paradoxically, gives a negative definition of the Commissioner's competences by explicitly pointing out what he/she should not do: "The Commissioner shall not take up individual complaints". Yet, as has already been noted above, certain other proposals, including the Finnish one of

1997¹¹ – supported by the Parliamentary Assembly¹² and a number of governments – were far from desiring such a radical separation of the respective roles of the Commissioner and the Court. These proposals envisaged the intervention of the Commissioner in the litigations as a “facilitator”, counsel to applicants, etc.

Practice has subsequently demonstrated that the Commissioner could have a useful role in certain activities of the Court. Generally speaking, the President of the Court may, on his own initiative or as a result of a request, invite the Commissioner for Human Rights to intervene in pending cases. However, this has only happened once during my mandate when the Grand Chamber requested the Commissioner’s intervention “within the limit 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 no. 48787/99.¹³

Protocol no. 14 to the ECHR, in its Article 13, confers the Commissioner a new power to present written observations and participate in hearings in cases pending before the Chambers and the Grand Chamber. It consists therefore of a right of third-party intervention which does not require a specific invitation and which is formulated in general terms. As this new power is treaty-based – new Article 36 § 3 of the ECHR – Protocol no. 14 marks a visible departure from the traditional approach of total separation between the Commissioner and the Court.

Since Protocol no. 14 has not yet entered into force, I do not possess any experience of the application of Article 36 § 3, mentioned above, that would enable me to draw conclusions, even preliminary, for the benefit of this final mission report. Nevertheless, I would still like to avail myself of this opportunity to put on record a number of initial thoughts on these new competences granted to the Commissioner. In the first place, I believe that this power will remain useless if the question of the Commissioner’s access to information on pending cases is not first resolved in a satisfactory manner. The explanatory report to Protocol no. 14 is limited to pointing out that it is not conceivable to apply Article 44 § 1 of the Rules of Court - which requires that the Contracting Party whose national is an applicant is given notice of the decision to declare an application admissible - in the Commissioner’s case. The reason put forward in § 88 of the explanatory report is the excessive work load such a procedure would engender to the Registry of the Court in view of the great number of decisions involved.

The Office of the Commissioner is incomparably weaker, however, in terms of human resources than the Court’s Registry. Therefore, it seems to me to be inconceivable that the Commissioner will be able to follow the thousands of admissible cases which remain pending before the Court. A system of communication should consequently be put into place through which cases of potential interest to the Commissioner and likely to justify his intervention in the Court would be brought to his attention in a timely

¹¹ CM (97) 109: the establishment of the post of Commissioner for Human rights would “*lighten the future workload of the Court by making it possible to deal with certain types of cases, under a simpler and faster procedure*”.

¹² Parliamentary Assembly Doc. 3092, *Motion for a Recommendation on the Need for a Commissioner of Human Rights or equivalent solution at European level*, 24 January 1972.

¹³ Ilaşcu, Ivantoc, Lesco and Petrov-Popa v. Moldova and Russia. It is interesting to note that the intervention of the Commissioner had been requested by the defendants.

manner. These would certainly be cases which would involve the public interest, expose structural or systemic shortcomings, or general problems which would affect a great number of victims or challenge the collective consciousness.

That leads me to my second comment on the subject. This right of third-party intervention should be used with care and self-restraint so as to avoid an excessive recourse to it that would make the Commissioner appear as a kind of (free) counsel to the applicant. My experience as an ombudsman (*Defensor del Pueblo*) in Spain - an institution endowed with considerable powers of referral to the Constitutional Court, including through an “*amparo*” appeal - clearly demonstrates that there is a risk of pressure being brought upon the Commissioner so that he accepts to exercise his right of third-party intervention to support a multitude of causes. It would therefore appear to me as essential that the Commissioner draws up clear and transparent criteria to be used as the basis for his decision to intervene in a case. The applicants, State parties to the ECHR, non-governmental organisations and the general public should be able to know these criteria in advance. Moreover, the application of these criteria should render third-party interventions the exception rather than the norm – without which the nature of the institution would soon be distorted.

The precedent of Protocol no. 14 has led, especially in the context of the current debate on the next reform of the ECHR, to a number of proposals associating the Commissioner more closely to the work of the Court. Suggestions have again been made that the Commissioner should have the power to refer certain cases to the Court. Some proposals, such as those put forward by Lord Woolf in his report, aim to associate the Commissioner with national mechanisms designed to reduce the number of cases brought before the court. Yet other proposals are aimed at granting the Commissioner a role in the procedure for determining the admissibility of applications, providing for the transfer of cases to the Commissioner when they could be settled by non-judicial means, or calling for the Commissioner’s intervention in the procedure of friendly settlements or that of the execution of the decisions of the Court.

At this stage, I would not like to pronounce on the respective merits of the proposals I have just referred to, at least not in any exhaustive manner. I have the duty, nevertheless, to warn everyone concerned of the risk of judicialising the institution of the Commissioner. I do not think that now is the moment to review the strategic choices made seven years ago, at the moment of the adoption of Resolution (99)50. In reality, the Commissioner’s mandate amply compensates for its lack of powers to touch upon individual cases by granting the Commissioner, on the one hand, several other competences to address structural problems and, on the other, a large flexibility of intervention which is hardly compatible with proceedings of the judicial kind. The practice of the first mandate has demonstrated the potential of the institution of the Commissioner for finding remedies at the source of violations, tackling situations of collective violations as well as rectifying shortcomings and filling gaps identified through evaluation visits. In my opinion, it should be avoided at all cost that efforts aimed at reducing the incredible number of pending cases before the Court should result, however unintentionally, in the distortion of the institution and the impossibility to carry out successfully the functions set out in the mandate.

A certain realism is also required as the lack of material and human resources that Commissioner for Human Rights is confronted with will not even allow him to assume fully the new powers foreseen by the Protocol no. 14.

5. The European Union

Whilst the Resolution 99(50) ties the institution to promoting to the respect of the Council of Europe's human rights instruments, it explicitly encourages the Commissioner to cooperate with other international institutions. The institutions's independence and flexibility greatly facilitate such contacts and it has always been my view that the Commissioner should actively cooperate with all who have an interest in and work for the promotion of human rights.

I have always been convinced that close ties with the different institutions of the European Union were important for the Council of Europe as a whole, and for the Commissioner in particular. The Union's evolving competences are bringing it into ever closer contact with its citizens and increasingly impact on their enjoyment of fundamental rights. Engaging the European Union on human rights issues is consequently vital. The Union's support for the Commissioner's activity in the Council of Europe member states beyond its own borders has also been significant, as the promotion of democracy and human rights represents a core aim for the European Union and not just in respect of own members.

I have over the years been fortunate to be able to establish good relations with the Union's different institutions. I have been able to meet with the European Council's EU High Representative for the European Security and Defence Policy, Mr. Javier Solana, whenever necessary and have maintained close contact with Mr. Matthiessen, his Personal Representative for Human Rights, whose appointment has contributed greatly to ensuring coordination between the Commissioner and the Council in areas of mutual interest.

Contacts with the Commission have also been frequent and fruitful. Thus I prepared reports on all ten 2004 accession countries on the request of the Commissioner for Enlargement, and have been able to assist, and enjoy the support of successive Commissioners for External Relations in our respective activities to promote human rights in the countries falling within the neighbourhood policy and in the Russian Federation. Relations with the Commissioner for Justice, Freedom and Security have focused on issues relating asylum and immigration and procedural guarantees in criminal proceedings – areas in which the Union is increasingly active, though the Commissioner for Human Rights is only indirectly competent to examine its policies.

Relations with the European Parliament have also developed positively over the years – beginning with meetings with individual Parliamentarians in Strasbourg and concluding with established contacts with, and regular appearances before, its Committee on Justice and Civil Liberties and Sub-Committee on Human Rights.

Contacts with the European Ombudsman have also proved extremely useful in my efforts to promote national institutions and have facilitated further reflection on the shape of human rights protection in Europe in the future.

As noted above, however, the Commissioner is not, formally, competent to comment on the compatibility of EU legislation with ECHR, though he may, and often will, be called upon to examine the consequence of the application, in individual member States, of regulations and directives impacting on the enjoyment of human rights (eg. in the field of asylum). In practise, I have discussed such issues with, for instance, Mr. Vittorino, then Commissioner for Justice and the European Parliament's Civil Liberties, Justice and Home Affairs Committee. But the Commissioner could not provide a formal opinion or recommendation to EU institutions.

This formal obstacle extends the Council of Europe as a whole and will do so for so long as the Union is not a party to the European Convention on Human Rights. Even then, however, there will be gap in Europe's human rights architecture.

For this reason, I welcome the proposed creation of a European Fundamental Rights Agency. It seems to me to be entirely desirable that the European Union should have its own formal structure to examine the human rights impact of its policies and legislation and to make the corresponding recommendations to its institutions. Whilst there will inevitably be a certain overlap with Council of Europe activities, and those of the Commissioner in particular, this overlap ought, with the necessary coordination, to be more to advantage than detriment of both.

There will certainly be much room for constructive cooperation between the Commissioner and the future Agency. The Commissioner should be able to offer his views on the development of the EU's domestic human rights policy and legislation through the Agency. The Agency, in turn, should be able to profit from the Commissioner's fact-finding powers and direct contacts with national authorities, to inform its own investigations and recommendations in the areas in which it will be competent, but in respect of which its own monitoring powers are likely to be weak.

Such coordination will be difficult without the presence, as many have suggested, of the Commissioner within the management structure of the Agency. Direct channels of communication between the Commissioner and the EU institutions have already been established and this should, in my view, be reflected in the Agency's composition. As an independent authority, the Commissioner could not, however, represent the Council of Europe as a whole.

I might conclude on this issue with an appeal for the maintenance of a certain proportion in the resources of Europe's different human rights institutions. Whilst new institutions filling real gaps are certainly welcome, particularly in the field of human rights, it does not strike me as wise to create an imbalance that reflects not the role of each, but their relative funding. This goes for the Agency, for the Council of Europe as a whole and for the Commissioner in particular.

6. International Organisations

Whilst there are certainly many international human rights organisations and institutions, I think that the institution of the Commissioner has more or less found its place. The institutions relations with other international players have reflected this development. They have focused on the coordination of policy with the heads of

organisations, rather than day-to-day cooperation and information sharing, for which my Office's resources have in any case been too small. Meetings with representatives of different international organisations during my visits have, however, proved vital. I have always, in return, sought to assist the activities of other organisations wherever I have had influence.

I have met annually with the United Nations High Commissioner for Human Rights to coordinate our activities and priorities in Europe and the cooperation at this level has always been excellent. I would like, in particular, to pay homage to Sergio Vieira de Mello, with whom I was able to speak at length on Europe's human rights problems. On a more regular basis, my Office has maintained close ties with the UNHCHR's National Institution's Unit, to combine efforts to promote the creation of National Human Rights Institutions' respecting the Paris Principle's in Europe. Contacts with individual Special Rapporteurs have also been maintained. Beyond these contacts, however, I think it would be fair to say that the Commissioner's work has only gradually begun to penetrate the UN's consciousness. I must admit that relations with UN treaty bodies have been limited and with the Human Rights Commission non-existent. I hope that these relations might develop more fully in future as the institution continues to expand.

Relations with the United Nations High Commissioner for Refugees have been particularly regular and profitable. In addition to meetings with the High Commissioner on strategic concerns, my Office and I have regularly profited from the generous assistance of the UNHCR on the ground. This assistance has been particularly visible in the organisation of visits to refugee camps throughout Europe's conflict and post-conflict regions. But it has been equally important in my visits to the Council of Europe's older member States, whose more recent problems in dealing with migratory flows have resulted in difficulties in maintaining the integrity of asylum systems. I have always been grateful, therefore, for the views of the UNHCR delegates I have met during almost all my visits, which have greatly assisted my comprehension of the erosion of the right to asylum in many of the Council of Europe's member States.

I might reserve a special mention for the UNHCR's Representation to the European Institutions in Strasbourg, which has ensured the smooth organisation of all these contacts and whose presence within the Council of Europe brings considerable benefits to organisation as a whole. I have been glad, in turn, to offer my good offices where possible, raising issues relating to the UNHCR's activities in member States during my visits and in my reports (in particular, only last year, in assisting the UNHCR to establish a permanent presence on the island of Lampedusa).

The International Committee of the Red Cross is another organisation whose assistance has been invaluable and with which I have sought, within the framework of our respective independence, to maintain close ties. I am particularly grateful, indeed, to its President, Mr. Jakob Kellenberger, for conversations that were always rich and encouraging. On the ground the ICRC has organised numerous visits for me and my Office over the years and I have greatly profited from their experience, in particular on the issues of missing and displaced persons in the Balkans and the Caucasus.

Relations with the OSCE have also followed the pattern of high-level coordination and contacts on the ground during my visits. The OSCE's heads of mission have, indeed, been particularly vital contacts during my visits to Europe's post-conflict regions and my intervention in different crisis situations, in respect of which I have always sought to ensure the maximum coordination. I have met variously with the Director of the Office for Democratic Institutions and Human Rights and the High Commissioner for National Minorities over the years, though there is no doubt scope for more structural cooperation here.

7. NGOs

The importance for the Commissioner's work of constant contact with NGOs cannot be overestimated. Without them, the Commissioner would often be both blind and mute, not to mention alone. NGOs are always the first point of contact during my country visits and the information they have provided me both then and in Strasbourg has been essential to gaining an understanding of the human rights challenges in each country. More often than not, it was NGOs that alerted me to problems and that recommended places to visit. NGOs have also played a key role in the dissemination of my reports and in calling for the implementation of my recommendations.

No doubt, I have not been able to act on all the requests for intervention, nor meet the expectations of each. Judgments and criteria, have occasionally differed. The Commissioner cannot, after all, take up every baton and the nature of his work – which is to seek to constructively engage national authorities in the resolution of human rights problems – does not always suit. I have, however, always tried to ensure that my Office remained open to all organisations wishing to bring matters to my attention and to carefully consider criticism when voiced. On the whole, though, I can only express my gratitude for the support and cooperation that I have received.

I have tried, for my part, to support the activities of NGOs and defend the freedom of association and expression in the countries of the Council of Europe where they are not yet fully respected. Even in the Council of Europe's older members I have cause to call for greater cooperation with NGOs so that they can work effectively in the areas and places in which their activity greatly contributes to the respect for human rights.

At the international level, the cooperation of Human Rights Watch, the International Federation for Human Rights and Amnesty International has been of inestimable value. I am grateful to all of them for their support and the respect that they have always shown this young institution, whose special role and methods I think they have appreciated. I would like, in particular, to record my thanks to the staff of Amnesty International for their support and for their views and criticisms that have always made me think twice. Indeed, I am convinced that Amnesty's regular contribution, not just to my own work, but to the Council of Europe's inter-governmental activity more generally is invaluable.

V. STAFF AND BUDGET

Article 12 of resolution (99)50 states that the Office of the Commissioner shall be established within the General Secretariat and that its expenditure shall be borne by the Council of Europe. Article 2 states that the Commissioner shall function independently and impartially. I would like to draw some conclusions on the application of these articles in practise.

It should, firstly, be recalled that this institution started in 1999/2000 with a budget of only 608,200 €, and that, by 2003, it had risen to no more than 896,205 €.¹⁴ Some additional information might drive home the point: practically 85% of these funds were intended to pay for staff, and in 2000, for example, the Commissioner and the members of his Office had a total budget of just 8,100 € for missions for that year. Without forgetting that in 1999/2000 the human resources at the disposal of the Office of the Commissioner for Human Rights were 2 administrators, one of whom was the Director of the Office, and 2 Grade B assistants, and that we had to wait until the end of 2001 before we had 3 administrators, and the end of 2004 before reaching the extraordinary number of 4 administrators, which is where we stand today, whilst waiting for the appointment of the 3 supplementary administrators foreseen in the 2006 budget.

I will go no further in describing this difficult situation, so well known to all. In any case, my urgent demands for an increase in staff and budget, have scarce been heeded - to cap it all - the Commissioner's budget was even reduced by 10,000 € in 2002, no doubt to ensure that the Office did not get accustomed to excess.

The choice was therefore simple. Either the institution was to succeed in finding additional sources of finance and personnel, or it would rapidly enter a terminal phase of purely symbolic and moribund activity. I consequently requested the support of several governments, by way of voluntary contributions, in the form of qualified staff or funding to cover the Office's structural expenses or one-off activities.

I would like to acknowledge that all the countries to which I resorted for help, agreed to co-operate with me, some in a more general way, and others by way of programmes or concrete seminars, but all with an absolute and unconditional generosity.

Experience has also shown the importance of the Commissioner's team containing people coming from outside the Organisation, not only because the freedom to select desired personnel is larger, but also because the institution benefits in a positive way from their different experience and vision. Closer ties with the outside world are also facilitated.

That said, it is clear in the light of the experience of the last years, that the Office of the Commissioner should be endowed with an adequate number of permanent staff from the Organisation. However, this seems to be a somewhat distant goal. Even

¹⁴ To give some idea of the scale of this budget, one could mention the fact that for the same year, i.e. 2003, the budget allocated to the Programme for Intergovernmental Activities reached a figure of near to 65,000,000 Euros. The budget of the Communication and Research Division, also for 2003, was over 7,000,000 Euros and that of the European Court of Human Rights, to give only a few examples, was over 35,000,000 Euros.

though at the Third Summit in Warsaw, the Heads of State and Government declared the strengthening of the Office of the Commissioner to be a priority for the Council of Europe, it seems clear that the constraints of a zero growth policy for the budget of the Organisation as a whole render unlikely the disposal of the human and financial resources necessary for the accomplishment of this mandate.

In any case, I would like to draw some conclusions from the experience of the past few years, both in terms of the institution's budget and in terms of its staff.

Firstly, even if the Office of the Commissioner for Human Rights is part of the Secretariat, it is not a Directorate General, nor an ordinary service or administrative entity. As I have stated elsewhere, the Office is not an integral part of the hierarchical structure of the Secretariat. Whilst the Commissioner is required to exercise his functions independently, this independence would be a mere fiction, if he did not have the full authority to set the objectives of his Office, to determine its organization, establish his budgetary needs, choose his staff and fix the objectives of the Director and other managers in his Office. The members of the Office, in particular the Director, must be responsible to the Commissioner, when carrying out their functions and executing the instructions given by him.

For this reason it is essential that a balance be found between the practical exercise of the competences which nominally corresponds to the Secretary General in matters of staff appointment (which I do not wish to call into question) and the effective respect of the Commissioner's independence.

The procedure which has gradually been established in respect of the appointment of the Director of the Office of the Commissioner, has set a good example. Indeed, despite earlier examples entirely at odds with the independence of the Commissioner, we have arrived today at a procedure which seems to be perfectly acceptable. Thus, once the post of Director is declared vacant, the Secretary General invites the Commissioner to draw up a list of candidates, to interview them and to propose the candidate in whom he has the most confidence. The Secretary General then interviews the proposed candidate and formally nominates him/her. A positive precedent respecting the independence of the Commissioner has been established by the appointment of the third Director of the Office in this manner. In my view, this procedure respects the competences of the Commissioner and the Secretary General on the basis of the principle of mutual trust. The same spirit of trust should also govern the selection of the rest of the Office's staff.

The same perspective, fully respecting the Commissioner's independence, was taken by the present Secretary General when he decided to invite the Commissioner himself to set the objectives and appraise the performance of the Director of his Office. This seems to me to be another good practice which ought to be placed on a sounder footing.

Turning now to budgetary questions, one can only note that since its creation in 1999, the institution of the Commissioner has never enjoyed the budgetary attention, let alone priority, of the Council of Europe. In fact, article 12 para. 2 of the Statute,

stipulating that the Office's costs shall be borne by the Council of Europe, has largely remained a dead letter. Quite apart from the shortage of permanent personnel, the minimum expenses of the Commissioner's Office have never really been covered by the budget of the Organisation; operational costs for 2006 are still less than 260,000 €.

Today the Commissioner for Human Rights' budget is an integral part of Chapter II of the General Budget of the Council of Europe; a chapter devoted to Intergovernmental co-operation activities. The institution is therefore subjected to the same budgetary procedure as the Directorates General and other administrative entities of the Secretariat. This is an anomaly which does not take into account the specificity of the Commissioner, who is an authority with his own democratic legitimacy. Nor does it reflect the true nature of his activities - which are not intergovernmental - nor the independence of an institution that must establish its own priorities.

This being so, the Commissioner for Human Rights should have his own budgetary chapter, as is the case with Council of Europe's other institutions, namely the European Court of Human Rights, the Parliamentary Assembly or the Congress of Local and Regional Authorities. Moreover, the procedure for preparing budgetary proposals should better reflect the nature of the institution and allow the Commissioner to present his own budgetary requirements to the Committee of Ministers, in coordination with the Secretary General of course¹⁵.

As to the figures, it is perhaps useful to recall that in 2006 the Commissioner for Human Rights' budget has risen to 1,639,000 €, all expenses taken into account¹⁶.

I share the general view¹⁷ that this budget does not meet the Commissioner's minimum needs. The consolidation of the Institution of the Commissioner, which was expressly desired by the Heads of State and Government in Warsaw in 2005, requires a significant increase of the means allocated to the Commissioner, in such a way as to permit the execution of the numerous tasks foreseen in his mandate. If it does not receive the necessary means, the potential of the Institution will not be fully exploited. Moreover, a number of expectations, which were created when the Institution was first set up, will be not be met. This will again cause a gap between the possibilities which the mandate offers in theory, and the perception of its usefulness by European citizens and its authorities.

I cannot stress this point enough. In the future, the Commissioner will need an Office with sufficient means without, for all that, there being any need to create a cumbersome bureaucracy. It will be preferable to maintain a flexible and dynamic structure capable of answering to the priorities established by the Commissioner, and a system of funding that guarantees the independence so essential to the Office's effectiveness.

¹⁵ As is the case for the European Court of Human Rights, for example.

¹⁶ The Office is composed of a Director, 6 administrators (3 currently working and 3 to be appointed from elsewhere in the Secretariat), 6 administrative/personal assistants (of whom 4 are currently working and 2 are to be appointed). In addition, the Office currently has 3 temporary and 2 part-time staff paid through voluntary contributions.

¹⁷ See for example, Recommendation 1644 (2004) of the Parliamentary Assembly.

VI. THE INITIATIVE TO EXTEND THE TERM OF THE OFFICE OF THE 1ST COMMISSIONER FOR HUMAN RIGHTS

At the end of 2004 the Permanent Representatives of a group of Member States took the initiative of requesting the inclusion of an item in the Committee of Ministers' agenda dealing with a possible limited extension of the term of office of the first Commissioner for Human Rights. This item was discussed on several occasions throughout the year 2005 not only by the Ministers' Deputies but also by the Bureau of the Parliamentary Assembly and within the Joint Committee. When the topic was raised for the first time in a meeting of the Deputies in December 2004, I replied to a question put to me by saying that I felt honoured by such a proposal. Subsequently I never participated in the debate even if it concerned me personally. Indeed, I was never invited to give my opinion on this issue. Neither when the Deputies examined it, in the light of reports prepared at their request, nor when the Parliamentary Assembly did.

I do not wish to revive a debate which was, at certain times, quite heated. However, it would be difficult to avoid making any reference to this topic in this final report in view, notably, of its institutional dimension. In any case, what follows is my personal opinion on the matter.

In my view there are two issues which deserve some at least a brief analysis:

- a. Who is competent to fix the starting date of the Commissioner's term of office?
- b. Is it possible to extend the term of office beyond the date on which it is scheduled to come to an end?

I will try to give brief answers to these questions.

- a. Resolution 99(50) on the Commissioner for Human Rights of the Council of Europe does not deal with this matter in any of its provisions.

A close examination of the "*travaux préparatoires*" shows that the beginning of the term of office was fixed by the Committee of Ministers itself (668th meeting of the Ministers' Deputies, April 1999, item 11.2) which provided that the "*the Commissioner and the Office of the Commissioner shall begin work on the first working day of January 2000 at the latest*". Both the call for candidates,¹⁸ and the letter from the Secretary General¹⁹ of 23 September 1999 inviting me to take up my functions as from 15th October of that year, were based on the above mentioned Committee of Ministers' decision.

¹⁸ Addressed to the Ministers of Foreign Affairs of Member States in a letter from Mr. Tarschys, Secretary General at the time, which expressly referred to the decision of the Committee of Ministers and indicated that "*the Commissioner and the Office of the Commissioner shall begin work on the first working day of January 2000 at the latest*".

¹⁹ Following my election, Mr. Walter Schwimmer, who had in the meanwhile become Secretary General, sent me a letter dated 23 September 1999 informing me, in conformity with the decision of the Committee of Ministers, that he had "instructed the Director of Administration assist [me] in taking up my Office, which could, if this were convenient for [me] be effective from 15th October 1999".

Thus, I took up my office on 15th October 1999. On the same day, I had a meeting with the Secretary General and on the following days with the President of the Parliamentary Assembly and the President of the Ministers' Deputies. Nobody expressed the slightest reservation about the legality of my taking up office on 15 October 1999. Nor did the Russian authorities, with whom I started preparing without delay my first official visit to Chechnya – which took place in December 1999 – wonder whether their interlocutor was indeed the Commissioner for Human Rights.

b. Is it possible to extend the term of office of the Commissioner for Human Rights?

Article 11 of Resolution (99)50 states that “*the Commissioner shall be elected for a non renewable term of Office of 6 years*”. This provision remains completely silent, however, about the possibilities of temporarily extending the term of office of the Commissioner.

Having said that, unless one maintains that “*extending*” and “*renewing*” mean the same thing – which is difficult to argue - ²⁰ there is, in my view, no legal basis to support the view that the decision to extend the Commissioner's mandate would be illegal in the light of the prohibition of its renewal.

Since the term of office of the 1st Commissioner started on 15 October 1999, it should have come to an end, by virtue of article 11 of the statute, on 15 October 2005. However, the Committee of Ministers, which is the competent body in this area, decided, at the 921st meeting of the Deputies, ²¹ to authorise the extension of the term of office by providing that “*the transfer of powers should take place on 16th April 2006 at the latest*”. Thus, I continued to exercise fully all my functions for several months after the 15 October 2005 deadline. This enabled me, in particular, to conclude a certain number of activities and to organise appropriately the transition with Mr Hammarberg who will take up his office as Commissioner for Human Rights as from 3 April 2006.

²⁰ CM/inf 2005(3)

²¹ On 30 March 2005, item 4.3. This decision was taken after the Deputies were informed of the outcome of the meeting of the Bureau of the Parliamentary Assembly on 18th March 2005 [doc SG-AS 2005(03)]

VII. LOOKING TO THE FUTURE

I have tried in the preceding pages to describe the origins of the institution, the competences attributed to it, how they have been put into practise and the criteria I have applied in doing so. I would like to conclude with a number of thoughts on the future of this institution that I have had the honour of shaping and the challenges it will likely face.

1. If there is one thing that remains with me at the end of my mandate, it is that the daily violation of human rights is a painful reality for millions across the globe, from which our continent is not preserved.

The difference is that, after the ravages of the Second World War, we decided to build a Europe on broader foundations than economic development, free markets and relations of force alone. It was, rather, thought necessary to rebuild the Continent on the basis of the respect for certain values, rights and liberties that define our conception of the rule of law and which constitute the very backbone of our democratic societies. Following the tragedy and the horrors endured by so many millions, we decided that a society could not be built without placing the individual, the respect for his dignity and the rights that flow from it, at its very core.

The Council of Europe and the European Convention on Human Rights were born of this need and these convictions. The establishment of a Court with a jurisdiction unique in the world testifies to the desire to ensure that this Convention should be more than just another declaration.

Since then the Council of Europe's action has concentrated on assisting the greater respect for these values in the law and practise of its member States, whilst monitoring shortcomings and adverting national authorities to unacceptable developments. In this context the Court has been essential to transforming rights into realities for the hundreds of thousands who have sought redress in Strasbourg, whilst its decisions have resulted in countless changes to the law and practise of member States to the benefit of all. The Court is clearly essential to the credibility and effectiveness of Europe's human rights protection system and must, therefore, be assured of the necessary resources, personnel and procedures to fulfil this function.

But the Council of Europe also has a broader purpose. Its inter-governmental activity and other, non-judicial, preventive and advisory mechanisms have a vital and complementary role to play in the promotion of the values that the Convention enshrines and the Organisation was created to uphold. All the technical work done by the Council of Europe over the last 50 years to consolidate the rule of law, to improve domestic legislation and to assist national structures involved in the defence of human rights, seems to me to have been of inestimable and enduring value. One need think only of the work of such specialised bodies as the CPT, ECRI and the Venice Commission to be reminded of the Council of Europe's enduring relevance.

There is, no doubt, a temptation to think that as the European Union expands and the democratic transformation of countries further East advances, so the work of the Council of Europe nears completion – as though the Council of Europe had a fixed and attainable goal, rather than a constant obligation to uphold values that no society

can ever claim to have definitively anchored. Indeed, democracies are not inevitably self-perpetuating. Rights once respected are not forever enjoyed. My experience of the last six years suggests to me rather that the Council of Europe's broader work in the promotion of human rights, democracy and the rule of law is more rather than less relevant today than when I first took up my post.

I have consequently found it difficult to understand the current policy of denying the Council of Europe the necessary means for the fulfilment of its tasks – because this is, in effect, the net result of a zero growth budgetary policy.

Given the need to satisfy the ever-burgeoning demands of the Court, the inevitable result is the concentration of limited resources on this objective at the expense of the organisation's other activities, many of which are already under-resourced. Against this background, I can perfectly understand the concerns, referred to elsewhere in this report, of those who feared that the creation of the Office of the Commissioner would result in a further reduction of their budgets.

This fear ultimately proved unfounded, for the simple reason that my Office never received the funding that it needed. This understandable concern nonetheless reflects a reality that is difficult to accept if one supposes that there should be a certain correspondence between the importance of the Organisation's aims and the means that its member States are prepared to invest in their fulfilment.

I think that the usefulness of the institution of the Commissioner has been recognised by member States, which have taken many of its recommendations into account, but also by NGOs, by national human rights institutions and, increasingly, by the public in several countries who have followed the discussions resulting from the publication of its reports and recommendations. I would like to think that for many human rights are a little less abstract today. If this is the 'complementarity' sought when creating the Commissioner for Human Rights, then I am glad. But now that one can clearly see its potential, it seems to me to be essential to encourage the institution to exploit it to the full and to provide the necessary resources for this purpose.

2. For there are still significant human rights problems and challenges in Europe and they can be found in every country. I do not intend to give an exhaustive list here, nor place them in any order of priority, but I would like, in parting, to share some general conclusions based on my experience of these last few years.

But there is, perhaps, a prior question that needs to be asked, which concerns the very place of human rights in our societies, and the value that we really attach to them. It is, I think, quite easy to detect a wavering in our commitment to human rights in recent years in the face of new challenges and, on the part of many, a growing frustration at the restrictions that their respect is perceived to entail. This sentiment can perhaps best be summed up by the expression "the rules of the game are changing" and the feeling that in the face of new challenges old rules are no longer applicable – as though human rights were transient luxuries for when times are good; as though their respect and the effective administration of justice were not intimately linked, but somehow incompatible. This attitude is increasingly evident in the measures that have been taken in response to the challenges of immigration, new

terrorist threats and the maintenance of law and order in general. Even where the importance of ensuring the full respect for human rights has not been called into question, the distance between formal texts and declarations and the daily reality often remains great.

Whilst much progress that has undoubtedly been made in the respect for human rights in many parts of Europe over the last six years, this worrying tendency to consider that the bar for the respect for human rights has been set too high, and needs therefore, to be readjusted, mitigates against a globally positive assessment of the last six years.

This tendency can perhaps most clearly be seen in the response, in Europe and elsewhere, to the new threat of international terrorism. With a few exceptions, the real need to ensure a strong response has resulted in a calling into question of rights and liberties that would previously have been unthinkable. One need think only of the willingness of politicians and leaders to question the limits of torture and ill-treatment – precisely how much torture is acceptable? where can one do it? who can do it? and whose evidence obtained under what conditions can we use? These questions are all seriously being asked. Indeed, measures are already being taken that seek to redefine the limits of Article 3 of the ECHR such as the use of diplomatic assurances to permit the expulsion of foreigners where they face a known risk of torture.

One might also point to the extension in many countries of the length of detention without charge and the redefinition of the limits of the freedom of expression. Whilst some of these measures may individually be necessary and justified, the general tendency has been to place efficacy before rights. It is my firm conviction, however, based on the experience of my own country, that terrorism can only effectively be combated through the full respect for human rights.

A similar attitude can also be detected in response to ordinary crime and the growing sense of insecurity of many European citizens. Increasingly, repressive policies, privileging, even for minor incidents, the criminal justice system over other forms of intervention, and detention over other types of sentence, are being introduced. I would certainly not want to contest that all offenders must be punished, sometimes harshly and always assiduously. But I have often stressed that the security of society is not always best served but by throwing offenders, and particularly the young, into jail.

All the more so given the fact that the majority of prisons across Europe are overcrowded, in poor material condition and lack the necessary resources to effectively prepare detainees for their social reintegration so that they might return to society less likely to offend than when they went to prison. Today, we are rather fuelling despair, hatred and resentment in many who spend years detained under these conditions. I find it difficult to believe that this deliberately security oriented policy actually succeeds in addressing the real insecurity that is felt – indeed, the recidivism statistics in these countries rather suggests the contrary.

The increasing pressure of irregular immigration has also placed the enjoyment of fundamental rights under threat. This issue has placed several countries before genuinely difficult problems. These countries have been confronted by waves of irregular immigrants that cannot, clearly, simply be allowed to enter at will. This has

obliged states to plan for the temporary shelter and ultimate return of the great majority who do not qualify for asylum. These policies have not always respected the fundamental rights and dignity of immigrants, nor secured their access to the asylum system, and this not always as a result of the genuine difficulties in doing so even where there is good-will, but also on occasion as a result of deliberate policies to discourage future arrivals.

These problems will certainly require the elaboration of response at the European level; a response including aid to the countries of origin, so that individuals are not forced to flee poverty, famine and conflict, and resolute action against traffickers, whose criminal activity represents an extremely lucrative business at the expense of the poorest.

But our societies are also confronted with the challenge of properly integrating the millions of immigrants quite regularly living and working in Europe. For some time now, it has been easy to observe a worrying rise in xenophobic sentiment, which is becoming increasingly commonplace, such that racist, xenophobic or anti-Semitic acts no longer surprise. Is this not a first step on a slippery slope to accepting the unacceptable?

At the same time, the increasing calls to facilitate the integration of immigrants in our societies are often accompanied by the refusal to acknowledge a reality that can be more complex than we are often prepared to admit. In effect, it can't be ignored that the majority of those whose greater integration is called for are not themselves immigrants. They are often born in our countries and are citizens of them. When we talk of integration, therefore, we must be clear about what we are seeking. These young citizens do not need language classes or lessons in the history of a country that is theirs from birth.

The problem, it seems to me, is elsewhere. A great effort is needed to transmit to this new generation an understanding of the values and principles at the hearts of our societies. These values consist of rights and obligations, for rights entail responsibilities – to ourselves, to our families and our societies. Without such a generalised sense of responsibility we will not be able to sustain the equitable development of our societies.

Talk of rights is hollow, however, and appeals to responsibility futile, if we cannot also offer the equality of opportunity. One cannot forget that cultural differences, discrimination in the access to employment and housing, difficulties in obtaining family reunification and a general disinterest in the welfare of others, are daily realities at the source of tensions and distrust. If we do not prove capable of reacting to these challenges, we risk provoking a dangerous sentiment of exclusion – which will provide fertile ground for advocates of extremist ideologies and corrupted religious beliefs to encourage the complete rejection of our societies.

Discrimination and exclusion remain equally pressing concerns for several of Europe's minority populations. These two factors condition the daily lives of millions of Roma/Gypsies and Travellers throughout Europe. Even if great efforts have been made, the difference in living standards and the enjoyment of basic social rights, remains striking. Europe, we are accustomed to saying must avoid the creation of

dividing lines. This ought not to be taken to refer exclusively to geo-political considerations. Dividing lines are to be found, often enough, in many of our own societies – national minorities, and not just the Roma, are yet to fully find their place in a great number of Council of Europe member States. Here again the challenge is to integrate minorities into the social and political life of countries whilst respecting differences, whether linguistic, religious or cultural. There are, certainly, a great many positive examples of this achievement, but many more where success remains distant. Assisting this task will, I have no doubt, constitute one of the Council of Europe's main tasks in the future.

Such divisions are not all metaphorical. The Council of Europe continues, indeed, to include a number of member States in which internal conflicts have lapsed into uneasy stand offs and the de facto independence of certain regions. The resulting inapplicability of the European Convention of Human Rights in these regions remains a serious obstacle to the aims of ensuring, throughout Europe, the pre-eminence of the rule of law. The same must be said, indeed, for only country on the continent that is not yet a member of our Organisation.

At the same time, it is impossible to ignore the serious human rights violations in the regions of Europe in which armed violence has not yet been halted – where victims still demand justice and criminals remain untried. These questions have been a priority during all the years I have spent following the situation in the Chechen Republic of the Russian Federation. Defending the right to peace, the right of the local population to rebuild their lives and homes and to construct a democratic society in which the rule of law prevails – these are goals that the international community and the Council of Europe in particular, must carry on loyally seeking to contribute to.

Such have been the problems that I have faced during my mandate, and that, alas, remain for the next Commissioner. I have no doubt that my successor, who is both extremely able and profoundly committed to the defence of human rights, will confront these challenges with courage and skill. I ask that all the necessary cooperation and understanding be granted to him.

Just as I finish this writing this report, I have learnt that ETA has announced a permanent cease-fire. You will understand my emotion on hearing this news, which holds out hope for lasting peace and allows one to contemplate the possibility of ending the worst period of human rights human violations that democratic Spain has known, as a result of the criminal action of this terrorist group. The victims of this barbarity must be assured that their testimony and their suffering will not be forgotten.

I would like to conclude by expressing my thanks to all those who have assisted me during the course of these fascinating years and, particularly, to the members of my Office who have never hesitated to give the best of themselves and often much more than I could reasonably have asked for. It is difficult for me to fully express my gratitude, all the more so as their exemplary conduct stems from their strong belief in what they do.

To all again, my thanks.

ANNEX

THE ACTIVITY OF THE COMMISSIONER FOR HUMAN RIGHTS

October 15 1999 – 31 March 2006

I. HUMAN RIGHTS REPORTS (32)

2000	Georgia Moldova
2001	Andorra Norway Slovak Republic Finland Bulgaria
2002	Greece Hungary Romania Poland
2003	Czech Republic Slovenia Portugal Turkey Cyprus Lithuania Latvia Estonia Malta
2004	Luxembourg Denmark Sweden Croatia The Russian Federation United Kingdom Switzerland Liechtenstein
2005	Spain Italy Iceland France

Country reports outstanding: (14)

Albania, Armenia, Austria, Azerbaijan, Belgium, Bosnia & Herzegovina, Germany, Ireland, Monaco, Netherlands, Serbia & Montenegro, San Marino, the former Yugoslav Republic of Macedonia & Ukraine.

II. SPECIAL REPORTS / VISITS

1999	The Russian Federation (Chechnya, Dagestan and Ingushetia)
2000	Russian Federation (Chechnya)
2001	Spain (The Basque Country) The Russian Federation (Chechnya and Ingushetia)
2002	Serbia and Montenegro (Kosovo)
2003	The Russian Federation (Chechnya and Ingushetia)
2004	The Russian Federation (Chechnya and Ingushetia) Georgia (Adjara) Moldova (Transnistria)
2005	The Russian Federation (Chechnya)
2006	The Russian Federation (Chechnya)

III. FOLLOW UP REPORTS (15)

2003	Georgia Moldova Andorra Spain (The Basque Country)
2006	Norway Slovak Republic Finland Bulgaria Greece Hungary Romania Czech Republic Slovenia Cyprus Malta

IV. CONTACT VISITS

1999	Russian Federation
2000	Switzerland
2001	Turkey Russian Federation
2002	Armenia Azerbaijan Albania
2003	Serbia & Montenegro
2004	Latvia Germany Spain Russian Federation
2005	The Holy See

V. OPINIONS

2002	The United Kingdom Derogation from Article 5 of the ECHR The functions of the Northern Ireland Human Rights Commission
2003	Finland Draft Alien's Law
2004	Polish Anti-Discrimination Institution Procedural safeguards in the application of pre-trial detention in Portugal
2005	The Draft Council of Europe Convention on the Prevention of Terrorism

VI. RECOMMENDATIONS

2001	The rights of foreigners wishing to enter a Council of Europe member State
2002	Arrest and detention procedures in Chechnya
2003	The law and practice relating to sterilization of certain women in the Slovakia

VII. THEMATIC REPORTS

2005	The Human Rights Situation of the Roma, Sinti and Travellers in Europe
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VIII. SEMINARS

1. National Ombudsmen / Human Rights Institutions

2000	Budapest Paris	Roundtable of Central and Eastern European Ombudsmen Roundtable of Western European Ombudsmen
2001	Warsaw Strasbourg Ombudsmen Zurich	Roundtable Central and Eastern European Ombudsmen Meeting of Roma Groups & Central/Eastern European Ombudsmen Roundtable of European Ombudsmen
2002	Vilnius Baku	Roundtable of European Ombudsmen The creation of an Ombudsman institution in Azerbaijan
2003	Kaliningrad Strasbourg Oslo Ljubljana Slovenia Astrakhan	The development of the Regional Ombudsman in Russia National Human Rights Institutions and NGOs Round Table of European Ombudsmen The creation of a National Human Rights Institution in Slovenia The development of the Regional Ombudsman in Russia
2004	Strasbourg Capadocia Barcelona Irkutsk Berlin	The development of the Regional Ombudsman in Russia The creation of an Ombudsman Institution in Turkey Roundtable of Regional Ombudsmen in Europe The development of the Regional Ombudsman in Russia Roundtable of National Human Rights Institutions
2005	Copenhagen	Round Table of European Ombudsmen

Briansk	The development of the Regional Ombudsman in Russia
St. Petersburg	Training seminar for the Provisional Ombudsman of the Chechen Republic and his Staff
Kazan	The development of the Regional Ombudsman in Russia
Novosibirsk	The development of the Regional Ombudsman in Russia
Tver	The development of the Regional Ombudsman in Russia

2. Religious Communities

2000	Syracuse	The role of monotheist religions in armed conflicts
2001	Strasbourg	Church-State relations
2002	Louvain	Human Rights, Culture and Religion
2004	Malta	Religion and education
2005	Kazan	Dialogue, tolerance, education: the Council of Europe and Religions

3. The Armed Forces

2002	Moscow
2003	Madrid

4. Thematic Seminars

2001	Strasbourg	The rights of arriving foreigners
	Neuchâtel	The rights of the elderly
2003	Copenhagen	Human rights of persons with mental disabilities
	Athens	Human rights and immigration
2004	Tirana	Trafficking of Children
	Barcelona	Human Rights and Regional and Local Administrations

5. Other Seminars and Conferences

2000	Vladikavkaz	Democracy, the Rule of Law and Human Rights
	Paris	The role of NGOs in the work of the Commissioner
2001	Pitsunda	State-legal aspects of the settlement of the Georgian-Abkhaz conflict
	Strasbourg	The respect for human rights in Chechnya
2002	Ankara	The role of civil society
2004	Grozny	The role of civil society and the Ombudsman Institution in the respect for human rights in the Chechen Republic
2005	Kislovodsk	Strengthening the judiciary in the Chechen Republic
	Nazran	Training Seminar for Chechen Human Rights NGOs
	Strasbourg	Training Seminar for Chechen Human Rights NGOs