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CONTENTS

Foreword

It is a great pleasure to present this second annual report, which, covering the remaining nine months of 2001, should allow for the calendar year to be followed more regularly from now on (the first report having extended from October 1999 to April 2001).

Throughout this difficult period, we have continued to face serious human rights problems. The crisis situations afflicting certain regions of Europe on a daily basis are manifold; in addition to armed conflicts, economic and political difficulties frequently give to rise to human rights violations, the consequences of which are most keenly felt by the weakest members of society.

It has become increasingly necessary, therefore, to promote the universal value of human rights, both civil and political, and economic and social, as the surest means of constructing and reinforcing a free, democratic and cohesive society in which the respect for human dignity is not a hollow phrase but a living reality.

The significance suddenly assumed by the phenomenon of terrorism following the horrific attacks of 11th September, once more revealed the tragic fact that all terrorist acts are brutal offences and an affront to the cause of human rights, as, indeed, we sought to show in our report on human rights violations in the Basque Country, Spain.

The essential efforts to combat terrorism must be firm, effective and carried out with the cooperation and solidarity of all democrats. They must not, however, ignore or undermine the guarantees provided by the rule of law.

It is of concern, therefore, that a number of states are enacting legislative changes reflecting a more restrictive vision of civil liberties, notably with respect to certain groups, such as foreigners and asylum seekers. Such legislative developments should not contravene the provisions of the instruments of the Council Europe currently in force, and notably those of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which express the common values we must continually reaffirm.

It is also alarming to note, in several regions of the world, mounting justifications of torture and the creation of special courts stripped of procedural guarantees as legitimate means of combating terrorism as well as appeals for the retention or reintroduction of the death penalty.

It is, once again, necessary to insist that we do not reduce the level of our democratic guarantees but stand firm, instead, in the defence of human rights, for they represent the vital core of the model of society we believe in and aspire to. We must, furthermore, constantly stress the importance of combating intolerance, fanaticism, racism, xenophobia, violence and terrorist actions of all kinds.

In this context, much satisfaction can be drawn from the entry into force of the Treaty of Rome creating the International Criminal Court, a symbol of the universal commitment to addressing the most extreme human rights violations in accordance with the rule of law rather than the rule of might.

For all these reasons, the aim of this report has been to provide not just a factual summary of the Office's activity, but also, though yet more should be expected in the future, an evaluation of the situations examined, taking into account the improvements made, or, as the case may be, any subsequent inaction or deterioration of the situation regarding the respect for human rights.

I have sought in my reports of the countries visited to provide an independent, overall analysis with the aim of furthering the promotion and respect for human rights.

To be truly effective, a follow-up to these reports, and the recommendations and opinions of the Commissioner for Human Rights is necessary. It is particularly encouraging, therefore, to note the first signs of cooperation in this direction and I hope to see this reinforced in the future.

I would like to emphasise that, since the very outset, I have attached the greatest importance to constructive ties with non-governmental organisations, whose cooperation has proved essential for the identification and evaluation of the different human rights problems in member States. I hope to be able to reinforce this cooperation not only in the context of country visits but also through the preparation of and participation in seminars and conferences on subjects of particular concern.

Indeed, the seminar on the rights of arriving aliens, the focal point of this year's collaboration, greatly facilitated the drafting of my first Recommendation to member States.

In accordance with my mandate, I have also sought to strengthen the already excellent relations I am fortunate to enjoy with the European Ombudsmen, requesting their collaboration during my visits to member States, and their contributions to seminars on topics of common concern.

I would also like to express my gratitude to the all the directorates and services of the Council of Europe, as well as the Parliamentary Assembly and the European Court of Human Rights for their generous collaboration and invaluable assistance. I have at all times endeavoured to promote an effective cooperation, to avoid overlap and effectively integrate related activities.

Finally, I would like to thank all the personnel in the Office for the work accomplished. It is well known that the Office of the Commissioner has been in a precarious position since the very outset as regards its human and financial resources. For this reason, I have been obliged to seek recourse to the extraordinary assistance of member States.

This assistance took the form of both voluntary contributions, which allowed for the organisation of a number of important activities, such as the seminar on the respect for human rights in Chechnya, and the placement of highly qualified personnel in my Office by Switzerland, Finland and the United Kingdom. I would like to express my gratitude for this invaluable assistance, without which I could not have hoped to fulfil the requirements of my mandate. All the same, the urgent necessity of providing my Office with sufficient permanent staff and an adequate budget remains.

Strasbourg, 29th April 2002

ALVARO GIL-ROBLES
Commissioner for Human Rights

I. HUMAN RIGHTS IN TIMES OF CRISIS

1. In accordance with Article 3 paragraphs b) and e) of Resolution (99) 50, the Commissioner for Human Rights of the Council of Europe is to promote the effective observance and full enjoyment of human rights, identify possible shortcomings in the law and practice of member states and assist them, with their agreement, in their efforts to remedy such shortcomings.

2. Since taking office in October 1999, the Commissioner has paid special attention to the protection of human rights in times of crisis. This notion covers a number of different situations. Over and above social, economic or institutional crises, the consequences of which can seriously prejudice the fundamental rights of the populations concerned, it is clear that armed conflicts give rise to the greatest problems. In the face of such situations, it is not merely a matter of denouncing flagrant breaches of the most elementary human rights, such as the rights to life and not to be tortured or arbitrarily detained, but, above all, of doing everything possible to end these violations, or at least attempting to limit their most serious consequences, by making tangible recommendations to the governments concerned.

A. The situation in Chechnya

3. On assuming his functions, the Commissioner was immediately confronted by the renewed outbreak of armed violence in Chechnya, resulting in large-scale human rights violations. During the period prior to that covered by this report, the Commissioner had already twice visited Chechnya and Ingushetia with a view to contributing to the return of peace in the region through promotion of the effective respect for human rights. The most recent visit, in February 2001, and the recommendations then made, focused especially on the necessary social, economic and institutional reconstruction and the restoration of the rule of law in this Republic of the Russian Federation.

4. The continuing impunity of the perpetrators of crimes committed both by certain apparently uncontrolled elements of the Russian army and by Chechen combatants, led to the Commissioner to concentrate, during the period covered by this report, on the necessary reestablishment of the rule of law. To this end, the Commissioner travelled to Moscow three times, in July, September and October. The principal aim of these visits was the organisation of a seminar on the effective respect for human rights in Chechnya, which the Commissioner had originally proposed in February. These visits also enabled the Commissioner to keep abreast of the developments concerning the measures taken by the authorities to investigate and prosecute the crimes committed, in particular, by members of the Russian security forces.

i. The restoration of the rule of law and the fight against impunity

5. During the period covered by this report, there was no significant improvement in the situation on the ground, and violations committed by both the federal forces and the Chechen combatants continued to have serious repercussions for the civilian

population and Chechen refugees. Indeed, as long as this insecurity continues, it is unrealistic to hope for a mass return of refugees. These feelings of insecurity are exacerbated by the popular belief that violations of human rights by the Russian armed forces go unpunished, whilst complaints of disappearances, torture, arbitrary arrest, pillaging and extortion continue unabated.

6. Regardless of an eventual political or institutional solution to the Chechen conflict, which is not within the Commissioner's remit, there will be no peace without justice, and it is therefore absolutely essential to combat impunity.

7. The Office of President Putin's Special Representative for Human Rights in Chechnya ("Mr Kalamanov's office"), assisted by Council of Europe experts, has now been operational for over a year and has received an enormous number of complaints. At the same time, Russian and international NGOs working on the ground in Chechnya have decried the ineffectiveness of its handling of complaints. Mr Kalamanov and the members of his office insisted, though, that their work came to an end once a complaint was transmitted to the *Prokuratura*, which alone has investigatory authority.

8. This problem led the Commissioner, during his visit in February, to propose to the Russian authorities that a liaison committee be established, comprising representatives of both the *Prokuratura* and Mr Kalamanov's office, including its Council of Europe experts, to keep track of complaints communicated to the *Prokuratura* by the office.

9. This proposal resulted in the creation of a Consultative Commission, which meets on a periodic basis. Though this represents a considerable step forward, its work has, at best, brought mixed results, as the statistics provided by the *Prokuratura* and Mr Kalamanov's office remain somewhat vague, despite the vital need expressed by various Council of Europe bodies for reliable, up-to-date figures.

10. The Commissioner has closely followed the work of this Commission in his discussions with the Russian authorities, in particular with Mr Kalamanov, Mr Ustinov, the Prosecutor-General of the Russian Federation, and Mr Chaika, the Minister for Justice. Indeed, on the occasion of his visit to Moscow on 13 and 14 September 2001 the Commissioner held a long meeting with the Prosecutor-General and his entire senior staff to discuss their efforts to counter impunity and the difficulties they confronted.

11. The Russian authorities made some progress during the course of this year. Among the more significant elements, one might mention, in particular, decree Nº 46 of the Prosecutor-General imposing the presence of his representatives during the identity and residence checks more commonly referred to as "cleansing and purification operations".

12. Nonetheless, reports from Chechnya, whether originating from NGOs, individuals or the press, continued, throughout to year, to bring worrying facts to light; human

rights violations continued undiminished, and their perpetrators went, as before, unpunished. The interest in organising a seminar uniting all those concerned with the defence of human rights in Chechnya consequently appeared all the greater.

13. The main idea was to bring together representatives of the federal authorities, the local Chechen administration, non-governmental organisations and all sectors of Chechen civil society so as to initiate a dialogue among all parties concerned with bringing peace to Chechnya.

14. The organisation of this seminar proved no small matter, given the considerable differences between some of the prospective participants. Furthermore, the initial idea of holding the seminar in Chechnya had to be abandoned in the light of the ongoing tensions on the ground. It appeared also, that holding the seminar in Strasbourg, on Council of Europe premises, was the sole means of guaranteeing security and an impartial debate, given that some of the participants were opponents of the Federation's current policy in Chechnya.

15. This seminar, entitled, **"The protection of and respect for human rights as the basis for the democratic reconstruction of the Republic of Chechnya"** accordingly took place in Strasbourg on 26 and 27 November 2001. Senior representatives of the Presidential administration, the *Prokuratura* of the Russian Federation and the local Chechen administration, including Mr Akhmad Kadirov, representatives of NGOs present in Chechnya, such as "Memorial", members of Mr Kalamanov's office, and Chechen civil society representatives of different tendencies attended. Despite the significant differences of opinion, which were, at times, vocally expressed, the participants were able, through an open and constructive dialogue, to discuss the problems involved and different ways in which they could be resolved. A number of NGOs roundly denounced the continuation of an unacceptable aggression against the civilian population and a manifest absence of any will to stop it. Admitting the gravity of the situation, the federal and local authorities drew attention to the difficulties they encountered in their attempts to sanction crimes; the judicial representatives were low in number and short on resources and were exposed, as with other members of the local authorities, to significant risks for their safety.

16. At the close of the seminar, an agreement was reached on the establishment of closer, more active co-operation between NGOs and the federal authorities in the Chechen Republic. The NGOs considered that the possibility of their having direct, regular contacts with the *Prokuratura* could make for a more effective protection of human rights in Chechnya. For their part, the members of the *Prokuratura* declared their interest in obtaining any information that might help them fulfil their difficult functions.

17. Representatives of Memorial have since informed the Commissioner that the first such contacts with the authorities in Chechnya have taken place.

18. At the same time, however, reports received from NGOs on the ground, attest to the continuation of large-scale violations, which occur, above all, during the so-called "purification and cleansing operations" referred to above. Indeed, Mr. Kalamanov was obliged to admit, in an interview with Rossiskaya Gazeta on 7th February 2002,

that a very large number of violations had taken place during the three operations in Tsotsin-Yurt, Bachi-Yurt and Argoun between January and February 2002. More than ever, therefore, it is essential that every effort be made to put an end to the

uncontrolled actions of certain elements of the Russian security forces. It is clear, however, that an improvement in the situation can only be achieved if all the protagonists cease their violent actions. In this context, the recurring violence of Chechen combatants, often aimed at members of the local authorities, continue to seriously affect the civilian population and contribute to the prevailing insecurity.

19. This insecurity is unquestionably aggravated by the enduring impunity of human rights violators. Investigations into complaints against members of the federal armed forces, which fall within the sole jurisdiction of the military *Prokuratura* and the courts martial, continue to be delayed, suspended or even abandoned. The same applies to proceedings pending before courts martial. There have so far been very few convictions of military personnel for the offences committed against Chechen civilians, and it would seem that these few convictions, of which the public are largely ignorant, mainly concern members of the lower ranks and not those in command who gave the relevant orders or deliberately failed to supervise the conduct of their subordinates. It is consequently vital that the Russian authorities increase their efforts to bring all breaches of human rights in Chechnya before the courts, regardless of their perpetrators.

20. The Federal authorities and the Chechen administration, indeed, the entire population, must do their utmost to end this bloody conflict and commit themselves to the restoration of peace and the respect for human rights.

ii. Institutional reconstruction

21. It is not, however, the role of the Commissioner for human rights to opine on possible political solutions to the conflict, the search for such solutions falling rather, within the Council of Europe, to the Mixed Working Group on Chechnya of the Parliamentary Assembly and the Russian State Duma[1]. It is necessary to emphasise, though, that a lasting political solution can be achieved only through an open dialogue between the parties to this conflict and in accordance with the will of the Chechen people.

22. A climate favourable to such dialogue will depend, in turn, on the respect, by all the protagonists, of fundamental rights. It was for this reason that the Commissioner organised the above mentioned seminar and why it was held in close co-operation with the Joint Working Group on Chechnya, immediately prior to one of its meetings and with a number participants in common.

iii. Social and economic reconstruction.

23. With regard to the physical reconstruction of Chechnya's infrastructure, there has been some improvement in the situation over the past nine months. Water, gas and

[1] The Mixed Working Group on Chechnya has been created in March 2001 following the restoration of its voting rights to the Russian Delegation to the Parliamentary Assembly. It has three priorities : contributing to the search for a political solution to the conflict in the region, promoting the respect for human rights and improving the humanitarian situation.

electricity supplies and part of the transport network have been restored. Schools, hospitals and accommodation have been built or repaired. A number of factories are once more operational. Old-age pensions and unemployment benefits are beginning to be paid. However, the situation of displaced persons, living in camps either in Chechnya itself or the neighbouring republics, remains a cause for concern. A large number of people will have just spent their third winter under canvas and are in dire need of the humanitarian aid essential to their survival.

24. Economic and social regeneration is essential for the return of the refugees desired by the Russian authorities. In addition to the budgetary appropriations earmarked by the federal authorities, international humanitarian aid could facilitate and speed up the economic and social reconstruction of Chechnya. At the same time, NGOs, the press and even the federal authorities are highly critical of the misuse, misappropriation even, of funds destined for the reconstruction effort. It might be appropriate, therefore, to reiterate the recommendation made in the report of the visit to Chechnya in February 2001, that an effective mechanism be introduced to guarantee donors that their aid will reach those for whom it is intended. This could take the form of a body, including international experts, responsible for the financial coordination and supervision of aid distribution.

B. The situation in Georgia

25. On the occasion of his first visit to Georgia in July 2000, the Commissioner's discussions with the Georgian authorities focused in particular on the consequences of the conflict in Abkhazia. Owing to efforts of Ambassador Dieter Boden, Special Representative of the UN Secretary General in Georgia, the Commissioner was also able to visit Sukhumi for a meeting with the Abkhazian authorities. During a meeting with Mr Ardzinba, the "President" of this republic, which unilaterally declared its independence in 1994, the possibility of holding a seminar in Sukhumi bringing together the main protagonists in the conflict and foreign experts to discuss the future status of Abkhazia was raised following the prior support for the idea shown by Ambassador Boden and the Georgian authorities.

26. This seminar, entitled "State legal aspects of the settlement of the conflict", organised by Ambassador Boden, the Commissioner and the Venice Commission, took place in Pitsunda, Abkhazia, on 12 and 13 February 2001. The aim of the seminar was to make progress towards a solution allowing notably for the return of displaced persons, of particular concern to the Commissioner, in the light of a presentation by Venice Commission experts on the features of the Swiss, Belgian, Spanish and German systems. This objective conspicuously failed to be realised, with both parties standing their ground and blaming the other for having caused the conflict. The Commissioner consequently planned a second event, still in close co-operation with Ambassador Boden and the Venice Commission, which was scheduled to take place in Tbilissi in July 2001. Unfortunately, this seminar had to be postponed because of violent incidents in Georgia. It is to be hoped that this initiative can be resuscitated as soon as the situation allows.

II. THE EFFECTIVE OBSERVANCE OF HUMAN RIGHTS IN COUNCIL OF EUROPE MEMBER STATES

A. The Commissioner's modes of action

27. As indicated above, Article 3 of the Commissioner's mandate instructs him to identify shortcomings in the law and practice of member States and to assist them, with their agreement, in their efforts to remedy them. To this end the Commissioner is authorised, if necessary, to contact the governments of member States directly. Up till now, the Commissioner has primarily made use of these provisions through visits to member States, giving priority to concrete action on the ground.

28. The Commissioner is aware, however, that his mandate allows for other types of action, which have not yet been fully exploited during this period of institution building, primarily owing to a lack of resources. The Commissioner might also, therefore, seek to intervene in respect of a particular human rights problem specific to a single member State or make recommendations on a problem common to several or all of them.

29. The visits effected by the Commissioner to date have not aimed primarily at monitoring of the honouring of those states' commitments. The purpose of the majority has rather been to evaluate the situation regarding the respect for human rights in a given country, at a given time, through an open and constructive dialogue both with its authorities and representatives of its civil society, with a view to making practical suggestions and recommendations on how to improve compliance with the standards and values of the Council of Europe

B. The preparation and content of country visits

30. The Commissioner undertakes these visits either on the invitation of the authorities concerned or on his own initiative. During the nine-month period covered by this report the Commissioner visited Norway, Slovakia, Finland and Bulgaria. In preparation for these visits, the Commissioner's office consulted, studied and summarised reports and documents issued by the Council of Europe, other intergovernmental organisations, NGOs and national ombudsmen, where the institution exists. The information thus provided and the assistance offered both before and during these visits is essential to the their success.

31. The Commissioner is grateful also to the national authorities of the countries he visited for their co-operation, the frankness with which they discussed their difficulties and their readiness to arrange not only official meetings with ministers, members of parliament or members of the judiciary, but also visits to hospitals and schools and other sites where human rights risk being violated, such as prisons and institutions for the mentally ill.

32. In order to form a clear idea of the problems encountered by those in particularly vulnerable positions, the Commissioner visited, while in Norway, a women's prison at Bredtveit and the Oslo prison, and, while in Finland, the prison in Turku. In Slovakia he visited a centre for mentally ill children in Bratislava and, in Kosice, a school and a hospital located in a Roma neighbourhood as well as a centre for battered women. In Bulgaria the Commissioner met with representatives of the Roma/Gypsy community in a school in a district of Sofia and visited a reception centre for refugees and an institution for the mentally ill.

33. In effect, during all these visits, the Commissioner sought to take into account the concerns of all sectors of society. To which end the Commissioner met, in addition to the NGO representatives and Ombudsmen, prisoners, mentally ill persons, refugees, journalists, trade unionists, members of the business community, elderly people, young people and representatives of religious communities and national minorities.

34. A press conference was organised at the end of each visit and the Commissioner readily gave radio and television interviews to keep the media informed of his visit and to present his activities and those of the Council of Europe.

C. Visit Reports

35. On returning from a visit, the Commissioner usually draws up a detailed report, setting out his suggestions and recommendations, which is submitted to the Committee of Ministers and forwarded to the Parliamentary Assembly. All these reports are public and can be consulted on the Commissioner's web site[2].

36. It should be noted, however, that a detailed report is only written if the aim of the visit has been to undertake a general evaluation of the situation regarding the respect for human rights in the country concerned. This was not the case, for instance, with the Commissioner's visit to Turkey, which aimed rather at establishing preliminary contacts with its authorities with a view to future co-operation. Two seminars, therefore, proposed on this occasion should take place next year; the first, on the contribution of civil society to the reinforcement of democracy and the second, in the run up to the adoption of legislation on the matter, on the institution of the Ombudsman.

37. The resume of this visit, as well as the full-length reports, are appended hereto, and will not, therefore, be further elaborated on here. It suffices to say that all the reports reveal that, in respect of the protection of human rights, perfection does not exist and that even in states with high levels of protection, there is always room for improvement.

38. It is equally important to underline that human rights cannot be protected on paper alone and that the good intentions of governments are, in themselves, insufficient to guarantee their observance in day-to-day practice. In a number of member states

[2] http://www.commissioner.coe.int

there are considerable discrepancies between the law and practice, and the Commissioner has often had occasion to recall that over and above the legislative provisions, it is the effective enjoyment of rights that matters.

III. THEMATIC SEMINARS

39. In view of the scant resources at his disposal, the Commissioner has had to make certain choices as regards his activities to promote education in and awareness of human rights in the member states, in accordance with his mandate. It was decided, therefore, to organise seminars with a view to thematically investigating specific topics relating to the protection of human rights. Here too, as with the Commissioner's visits, emphasis was placed on the protection of the rights of vulnerable members of society through the identification of problems common to all member States.

40. In choosing the themes for this year's seminars, the Commissioner consulted NGOs and Ombudsmen, who revealed their concerns regarding illegal immigration, the treatment of foreigners arriving at state borders and the enforcement of expulsion orders. The Commissioner consequently organised a seminar on the theme "Human rights standards applying to the holding of aliens wishing to enter a Council of Europe member state and to the enforcement of expulsion orders" held from 20 to 22 June (see below).

41. From 20 to 23 of October, a further seminar was held in Neuchâtel, Switzerland, in co-operation with the Institute for Health Law of Neuchâtel University on "The protection of human rights and the special situation of elderly people in retirement homes or institutions". This issue, which has not yet, within the Council of Europe at least, been the subject of in-depth consideration, is one of increasing social concern and which affects all its member States (see below).

42. These seminars are neither meetings of governmental experts, nor academic colloquies reserved for specialists in given areas. Rather, an attempt is made to bring together all those engaged on a daily basis in the defence of human rights, so as to benefit from their experience on the ground. Those invited to attend these seminars, therefore, include NGOs, government representatives, specialists and representatives of other IGOs, the aim being to identify, through an open discussion, the relevant problems and to make recommendations based directly on the participant's experience.

A. The human rights of aliens arriving at member states' borders : the Commissioner's first Recommendation to all member States

43. The starting point for this seminar was the fact that aliens arriving at the borders of member states enjoy, as with all other citizens, a number of fundamental rights.

44. The European Convention on Human Rights does not guarantee a right to enter and remain in any given country and national authorities must remain free to adopt the immigration policy they deem appropriate. Nonetheless, all arriving aliens, whether fleeing political persecution or migrating for economic reasons, must be treated in a humane manner and with respect for their dignity, without, on seeking entry to a country, automatically being considered criminals or frauds. Certainly, not all foreigners are necessarily genuine refugees, within the meaning of the Geneva Convention, but they must at least be allowed the possibility of applying for asylum, as is their right, and the procedures in force must afford minimum guarantees that such requests will be given due consideration. Similarly, all procedures affecting aliens, and notably their detention pending a decision, must, in a state governed by the rule of law, be consistent with a number of fundamental principles.

45. In recent years many states have tended to hold foreigners in waiting areas in the international zones of airports, keep them on board ship on their arrival in ports, refuse them entry "at the arrival gate" or to prevent them from boarding flights at the airports of origin. The treatment of aliens in waiting areas or holding centres, even in prisons, causes serious concern among the NGOs active on the ground, who cited many concrete examples of ill treatment during the course of the seminar[3]. Similarly, the press has in recent years given broad coverage to a series of incidents during forced expulsions, often resulting in the loss of life, and to the frequently indecent, even dangerous, methods resorted to by the authorities on such occasions. Indeed, between 1993 and 2001 six deaths occurred in Europe as a result of the methods used by the authorities against people resisting expulsion.

46. The UNHCR, the CPT and the European Court of Human Rights actively participated in the proceedings, as did representatives of the Directorate General for Legal Affairs and the Parliamentary Assembly, including members of its Committee on Migration, Refugees and Demography, who were already working on the subject. The background paper prepared for this seminar is appended hereto, as are the conclusions of the proceedings and the Recommendation issued to member States following the seminar.

47. Recommendation CommDH/Rec(2001)1 on the rights of aliens wishing to enter a Council of Europe member state and the enforcement of expulsion orders, which was submitted to the Committee of Ministers on 19 September, is the first Recommendation the Commissioner has made to all member States pursuant to Article 3 e) of his terms of reference.

48. The Recommendation invites member States to harmonise, as far as possible, their national legislation in terms of the procedural guarantees available to foreigners being held and the maximum period of detention permitted at each stage in the proceedings.

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[3] The Commissioner would like to thank, in particular, the Belgian "Collectif de résistance aux centres fermés et aux expulsions", the ANAFE (Association nationale française d'assistance aux frontières pour les étrangers), the CIMADE, the AUGENAUF association, based in Zurich, EXODUS and ELISA, based in Geneva, the Joint Council for the Welfare of Immigrants in the UK, the Danish Refugee Council, the Spanish commission for refugee aid and the Swedish Red Cross.

49. It was stressed that member States should avoid holding unaccompanied minors, pregnant women, mothers with young children, the elderly and people with disabilities in waiting areas. Where appropriate, unaccompanied minors should be placed in specialised centres and the courts should immediately be informed of their situation. Members of the same family should not be separated.

50. Foreigners held for longer periods should be placed in specialised centres, and not, under any circumstances, in prisons. The national authorities must guarantee maximum transparency concerning the functioning of holding centres and at least grant independent national commissions, ombudsmen and NGOs, lawyers and relatives access to those retained. The important role of the judicial authorities as the guarantor of liberties was emphasised as was the need to ensure an effective remedy for foreigners wishing to challenge decisions affecting them.

51. Forced expulsion, where unavoidable, must be carried out with complete transparency to ensure that fundamental human rights are respected at all stages. The best means of avoiding the use of methods which might traumatise both those being expelled and those responsible for enforcing expulsion orders are voluntary return and the appropriate training of the staff in holding centres and public officials from immigration or security departments. It is crucial that the persons concerned are informed at every stage of what lies ahead so that they can prepare themselves psychologically for the idea of return. Lastly, the use of gags, cushions, helmets or incapacitating gas, involving a risk of asphyxia, must be prohibited outright. Similarly, there should be a complete ban on administering tranquillisers without prior medical examination and on restraint by handcuffs during take-off and landing[4].

52. This Recommendation calls on member States to take all the necessary steps to put an end to certain inhumane and dangerous practices. All information received concerning the developments of state practices will facilitate an assessment of the situation in the next annual report.

B. The human rights of the elderly

53. All individuals without distinction deserve respect for their human dignity throughout their lives. Like anyone else, elderly people have certain fundamental rights, and age cannot constitute a legal, social or economic criterion justifying any form of restriction on the enjoyment of these rights. The ageing of the population in many member States and the lessening solidarity between generations raises the questions of the place of elderly persons in our societies and how the exclusion they often suffer can best be combated.

54. The effects of old age often render elderly persons dependent on the assistance of others, their needs generally being provided for in retirement homes or semi-open, and even closed, institutions. It appeared timely, therefore, to study the specific situation of elderly people living in such institutions, whether by choice or by

[4] The Belgian association of airline pilots ("Belgian cockpit association") made much of this point during the seminar, arguing that pilots are responsible for passenger safety and that the risk of accident is greater during aircraft take-off and landing.

necessity, more closely and to take stock of application of the guiding principles laid down by the Committee of Ministers in its Recommendation (94) 9 of 10 October 1994.

55. The Commissioner organised a seminar on the human rights of elderly people placed in retirement homes or institutions. In addition to WHO experts and representatives of the competent national authorities, the participants included a number of NGOs[5] and specialist practitioners, doctors, psychiatrists and nurses. The following topics were examined: restrictions on the freedom of elderly people living in open institutions; the protection of the interests of elderly people in institutions through supervision or administration orders or through the appointment of a reference person ("accompagnant"); ill treatment of the elderly and the use of unwarranted coercive measures; the cost of care, its rationing and quality control; access to palliative care and support for the dying; the forced institutionalisation and treatment of the elderly.

56. The discussions revealed the essential need for elderly people to be able to declare how they wish to be treated should their physical or mental health deteriorate. It should also be possible for them to appoint someone to take action on their behalf and ensure their wishes are respected.

57. How the life of elderly people living in an institution is organised is a deciding factor for their quality of life, autonomy and general well being. This makes it absolutely essential that institutions for the elderly should be required to obtain an operating licence, subject to a quality control and the verification that the institution's in-house rules respect fundamental rights (contacts with the outside world, mealtimes, etc.). The competent public authorities should, furthermore, carry out regular, unannounced inspections, giving rise to full and public reports.

58. It was insisted on that all restrictions on the basic rights of elderly people must be prescribed by law and ordered by the courts. Elderly persons or their representatives must have the possibility of appealing, if need be, to an independent body. With regards to ill treatment, legislation should provide for an obligation on care staff to report any such acts and enable elderly persons to do so if they wish.

59. The drafting of a standard set of rules at a European level, defining in particular the minimum conditions for the respect for the human rights of elderly people living in institutions, would encourage and facilitate subsequent monitoring by intergovernmental organisations concerned, such as the Regional Office for Europe of the World Health Organization. The creation of a European observatory would also stimulate the evaluation of existing practices and the elaboration of new ones.

60. In conclusion, a radical shift in attitudes is required at all levels of society. Public information and awareness campaigns and advice services for elderly people should emphasise the fact that they are fully-fledged citizens and, as such, have the same

[5] Such as Pro Senectute, Caritas, the Red Cross or the International Federation on Ageing, representing organisations for the elderly

rights and obligations as anyone else. Elderly people have devoted the better part of their lives to the socio-economic development of their countries and deserve the solidarity of subsequent generations in return.

IV. DIALOGUE WITH RELIGIOUS COMMUNITIES

61. Religious communities have, in addition to their spiritual role, and in virtue of their strong moral voice and active social engagement, an important role to play in the promotion of democratic values and the respect for fundamental freedoms. In this context, the promotion of peace and mutual respect represent essential responsibilities.

62. The Commissioner has persistently sought, therefore, to promote improved relations both between religious communities themselves and between those communities and state authorities. These concerns have consequently featured prominently in his country visits, during which the Commissioner habitually meets with religious leaders. The Commissioner has also sought to organise annual meetings with religious leaders with a view to promoting dialogue and examining specific topics of concern to them in greater detail.

A. Inter-religious dialogue

63. The first such seminar, which was held at Syracuse (Italy) in December 2000, sought to promote an inter-religious dialogue on "The role of monotheist religions vis-à-vis armed conflict". The participants reaffirmed that religious fanaticism was a perversion of religion and that religious convictions should not be invoked to justify to armed conflicts, or the repression of the rights of other religious communities to freely practise their faiths.

64. This appeal for tolerance and mutual respect and the rejection of the exploitation of religious beliefs, has been thrown into sharp relief by the events of the 11 September last year. Indeed, inter-religious dialogue will have a central role to play in the prevention of terrorism.

B. Church-State relations

65. The second seminar was held in Strasbourg on the 10 and 11 September 2001 and focused on "Church-State relations in the light of the exercise of the right to freedom of religion". It brought together not only representatives of the main religions in Europe and respected specialists in the matter, but also representatives of the relevant national administrations. The seminar was also attended by two of the co-chairs of the Advisory Panel of Experts on Freedom of Religion or Belief established

under the auspices of the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and a member of the ODIHR monitoring unit. A representative of the United States Commission on International Religious Freedom[6] attended as an observer.

66. The wide variety of institutional models regulating Church-State relations in Europe (covering secular states, state religions, state recognition systems, the types and consequences of legal recognition of religious communities) was examined in the light of the rights to freedom of religion and association as guaranteed by articles 9 and 11 of the European Convention of Human Rights, with a view to establishing the essential principles and minimum standards to be respected by both states and Churches. The question of the different forms of funding for Churches and religious communities (direct financing through taxation, grants, direct or indirect tax exemptions) was also discussed in the light of the principle of non-discrimination.

67. It is important to stimulate concerted reflection throughout Europe, on the nature of the relations between state administrations and both traditionally established and newly arrived Churches, for religious communities represent privileged partners for state authorities

68. The participants agreed that all religious communities should be granted a minimum level of recognition allowing them to exist as legal entities. In this context, both official checking prior to registration and substantive control by the state must be carried out solely in accordance with the stipulations of Articles 9, §2, and 11 of the ECHR. As part of this minimum level of recognition, religious associations ought to be granted, where appropriate, the same financial benefits as any other non-profit-making association.

69. The participants further agreed that religious communities wishing to take part in activities that are in the public interest should, in addition to the rights recognised by Articles 9 and 11 of the ECHR, be granted the same advantages as other legal entities pursuing similar aims. They acknowledged that certain religious communities might be granted a special status. This did not constitute discrimination provided that the co-operation between these communities and the state was based on objective and reasonable criteria such as historical or cultural importance, representativeness or usefulness either to society as a whole or to a large or well-defined sector of the population.

70. The participants also encouraged religious communities to co-operate in a spirit of mutual understanding and respect in order to contribute to the study, discussion and resolution of the main problems currently facing democratic societies.

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[6] The *United States Commission on International Religious Freedom*, based in Washington DC, was established under the International Religious Freedom Act of 1998. It is a federal advisory body which submits a report each year to the US President, Congress and Department of State on freedom of religion and religious persecution all over the world.

V. RELATIONS WITH OMBUDSMEN

71. Article 3 c) of Resolution (99)50 states that the Commissioner, when dealing with the public, shall, wherever possible, make use of and co-operate with human rights structures in the member States and that, where such structures do not exist, he shall encourage their establishment. Article 3 d) provides that the Commissioner shall facilitate the activities of national Ombudsmen or similar institutions and Article 5 that he may act on any information relevant to his functions, including information addressed to him by national Ombudsmen or similar institutions.

A. Meetings with Ombudsmen

72. With a view to maintaining a close cooperation, the Commissioner organises periodic meetings with national Ombudsmen. These meetings enable the Commissioner to keep abreast of their experience on the ground and any difficulties they may face. Following on from meetings in Budapest, in June 2000, with the Ombudsmen of eastern and central Europe and in Paris, in December 2000, with the western European Ombudsmen, the Commissioner held three further meetings in the period covered by this report.

73. The first meeting, intended to examine problems specific to the Ombudsmen of central and estern Europe, was held in Warsaw on 28 and 29 May 2001, with the active co-operation of Mr Andrzej Zoll, the Polish Ombudsman. It allowed, firstly, for a general exchange of views, at the end of which the participants concluded that it was necessary to continue to promote the establishment and consolidation of the national Ombudsman institution in the Council of Europe member States, with all the requisite statutory and financial guarantees of independence. They also stressed that the appointment of specialist Ombudsmen tended to dilute the effort to protect human rights without offering any guarantee of efficacy.

74. This meeting also provided the opportunity to address two issues of common concern: problems related to illegal immigration and the protection of the rights of Roma/gypsies. The first of these two topics was later the subject of the seminar held in June on the treatment of aliens wishing to enter a Council of Europe member state and the enforcement of expulsion orders, the conclusions of which were forwarded to all the Ombudsmen. With regard to the second, the protection of the rights of Roma/gypsies, the Commissioner undertook to organise a meeting in Strasbourg between the Ombudsmen of central and eastern European countries and representatives of those countries' Roma/gypsy minorities.

75. This second meeting was held in Strasbourg on 19 and 20 November. It sought to stimulate a dialogue and rapprochement, which should prove useful in understanding the specific problems of Roma/gypsy minorities and in studying the action Ombudsmen could take to improve the protection of their rights, especially with respect to access to education. It was decided that this last matter should be examined in greater detail at during the Commissioner's Ombudsman meeting in Vilnius in April 2002.

76. A meeting with judges and case-law experts of the European Court of Human Rights and the European Social Charter was also organised, in response to a request made in Budapest, on this occasion, in order to familiarise the more recently established Ombudsmen with the general principles governing the interpretation and application of these two essential texts for human rights protection in Europe.

77. The third meeting organised this year, uniting all the national Ombudsmen, was held, to avoid any overlap, in Zurich on 21st November in the framework of the 7th Round Table with European Ombudsmen organised by the Council of Europe's Directorate General of Human Rights and the Swiss Association of Parliamentary Ombudsmen. The aim of this meeting was to examine the issues surrounding "immigration in Europe today" in the light of the conclusions of the above-mentioned seminar on the treatment of arriving aliens. The discussions revealed a lack of cooperation between national authorities and Ombudsmen, who frequently face difficulties in accessing holding centres. The importance of the role of Ombudsmen in ensuring the transparency of asylum and immigration procedures and the respect for the rights of arriving aliens was highlighted.

B. Contacts with national Ombudsmen

78. It should be noted that the relations between the Commissioner and national Ombudsmen operate to the advantage of both. In effect, the first-hand experience of national Ombudsmen of the situation regarding the respect for human rights in their countries makes them essential interlocutors for the effectiveness of the Commissioner's visits. The Commissioner is particularly grateful, therefore, for the information that they provide during the preparation of his visits and the advice they give when the Commissioner meets them during them.

79. The Commissioner also profits from his privileged relations with Ombudsmen to forward them individual complaints that he is not competent to address, but which he considers the latter might effectively be able to take up.

80. It might lastly be noted that the Commissioner has not yet established a regular cooperation with other national institutions for the promotion and protection of human rights. Their increasingly important role ought, however, to make them important partners in the Commissioner's work.

C. The promotion of the Ombudsman institution

81. In accordance with his mandate, the Commissioner seeks to promote the establishment of the institution in those countries where it does not yet exist. Indeed, of the countries visited during the period covered by this report, the Slovakian Parliament was just about to adopt a law establishing a national institution, the Bulgarian Parliament was debating the question and Turkish Parliament was just beginning to. The Slovakian law was ultimately adopted in December 2001. In Bulgaria, the situation was more complicated, with party political conflicts obstructing the passage of legislation. The Commissioner consequently insisted, both

during his visit and in his report, on the importance of overcoming these differences to allow for the creation of an effective and properly independent institution. Preliminary discussions on the creation of an Ombudsman institution in Turkey are well underway. In order to assist the Turkish legislators, the Commissioner proposed the organisation of a seminar in Turkey bringing together a number of experts and Ombudsmen from different European systems.

82. The promotion of the institution of the Ombudsman is not solely a matter, however, of encouraging its establishment where it does not yet exist. It includes also the reinforcing of the institution in countries where it has not yet realised its full potential. The Commissioner has, consequently, begun a preliminary investigation, in cooperation with the Russian authorities, on how the institution of the regional Ombudsman might be strengthened and expanded, particularly in the context of the judicial and institutional reforms.

VI. RELATIONS WITH INTERNATIONAL GOVERNMENTAL ORGANISATIONS AND NON-GOVERNMENTAL ORGANISATIONS

A. Relations with International Governmental Organisations

83. In conformity with article 3 i) of his mandate, the Commissioner sought to continue his cooperation with other international institutions for the promotion of human rights during the period covered by this report. Whilst this cooperation is not always easy to establish and a constant effort is required to keep abreast of the activities of so many and such diverse actors, meetings this year with Mr. Ruud Lubbers, the United Nations High Commissioner for Refugees, Mr. Rolf Ekeus, the new Commissioner for Minorities of the OSCE and Mrs. Helle Degn, the Commissioner of the Council of the Baltic Sea States (CBSS) have enabled the Commissioner to maintain personal relations with at least some of them. It is clear, though, that Commissioner's active collaboration with international organisations will depend to a large extent on the activity he undertakes and vary consequently from year to year.

84. The Commissioner's organisation in June of a seminar in Strasbourg on the rights of arriving aliens and his concern, during the visits he effected, to examine the situation of asylum-seekers and migrants, required a particularly close collaboration with the UNHCR. Its contribution to this seminar and the information regularly provided by the Council of Europe/UNHCR liaison office were, as a result, greatly appreciated.

85. The diverse activities of both the OSCE and the Commissioner inevitably result in overlapping concerns, which concentrated last year on the situation in Chechnya, inter-religious dialogue and the role of national ombudsmen. Thus, whilst the Commissioner had occasion to invite OSCE representatives to attend seminars he organised on the first two of these topics, the OSCE, in turn, invited a member of the Commissioner's office to present his activities with national ombudsmen to the annual human dimension implementation meeting held in Warsaw in September by the ODIHR.

86. Reciprocal invitations were also exchanged with the WHO; a member of the Commissioner's Office attending a conference in Geneva in April on health and human rights and two WHO experts attending the conference he organised on the rights of elderly persons in Neuchâtel in October.

B. Relations with the European Union

87. The Commissioner has also sought to maintain close ties with the European Union, which has, to date, been particularly supportive of his activities. The Commissioner is especially grateful for its active support for the seminar he organised on the protection of human rights in Chechnya in November.

88. With the protection of human rights at a pan-European level being of increasing concern, the Commissioner has sought to contribute, both through articles and at conferences, to the reflection on its possible improvement. The opportunity to address a conference organised by the European Parliament in Montelimar in June on the European Charter of Fundamental Rights was particularly useful in this respect. Regular contact with the European Ombudsman and the Rapporteurs on Human Rights of the European Parliament's Citizen's Liberties and Rights, Justice and Home Affairs Committee has, furthermore, enabled the Commissioner to follow closely its efforts in this area.

C. Relations with NGOs and other International Organisations

89. The Commissioner's mandate identifies NGOs as both essential partners in his promotional activities and important sources of information on which to base his intervention. The Commissioner has been keen, therefore, to establish the necessary relations with all those organisations, which, working on the ground, seek to improve the respect for human rights.

90. Ties with leading NGOs were consequently reinforced last year, notably with Amnesty International, Human Rights Watch, the International Federation for Human Rights and Memorial. With a view to keeping NGOs informed of his activities, the Commissioner has also always to sought to address the Grouping of Human Rights NGOs holding observer status with the Council of Europe at its meetings in Strasbourg during the Parliamentary Sessions. This is not to say, however, that the Commissioner seeks to work only with those organisations with an international reach or institutional affiliations. On the contrary, the Commissioner relies on the contributions of all representatives of civil society, his doors being open to all those wishing bring their concerns to his attention.

91. Indeed, the concerns raised by NGOs represent vital information for the Commissioner's action and for his country visits in particular. For this reason the Commissioner always seeks to meet with domestic NGOs early on his visits so as to profit from their first-hand experience.

92. As part of his efforts to promote the activity of NGOs, the Commissioner always seeks to emphasise, in his meetings with governmental authorities, the important contribution they can make towards the respect for human rights. The Commissioner has, indeed, made a number of recommendations in this line during his visits, covering the access of NGOs to detainees and asylum seekers and the contribution representatives of civil society can make to the improvement of living conditions in detention centres.

93. At a meeting in Paris in December 2000, it was suggested that the Commissioner investigate, in conjunction with NGOs, the protection of the rights of certain categories of vulnerable persons on a thematic basis.

94. This year, it was decided to focus on the human rights standards applying to the holding of aliens wishing to enter the territory of a member state and to the enforcement of expulsion orders; the treatment of aliens on their arrival at our borders, and particularly at airports, and the conditions governing their forced expulsion representing matters of particular concern to NGOs working in this field.

95. It was for this reason that the Commissioner decided to organise a seminar on this subject, held in Strasbourg on 20-22 June 2001, which brought together not only "generalist" and specialist NGOs, but also representatives of the relevant national administrations and professional associations, such as an association of airline pilots and associations of judges and lawyers specialising in the rights of refugees. In preparation for this seminar, the Commissioner asked the Grouping of Human Rights NGOs to put forward proposals, which were submitted in the form of a summary report.

96. The practical information provided during this seminar, and the consensus which emerged on the minimum rules to be observed, proved particularly useful in the drafting of the Commissioner's first Recommendation to all member States (see above).

97. NGO participation also contributed greatly to the seminar on the human rights of elderly people, held in Neuchâtel in Switzerland at the end of October, and at the seminar on the respect for human rights in Chechnya, held in Strasbourg at the end of November.

98. The Commissioner has been keen to participate in, and have his office represented at, conferences organised by NGOs. A member of his office attended the annual general meeting of the *International Helsinki Federation* in Zagreb in October, in order to present the Commissioner's activities to this NGO's 41 national committees. Lastly, the office was invited, both before and after the seminar in June, to colloquies and conferences organised by NGOs working more specifically in the area of legal or humanitarian assistance to aliens arriving at the borders of our member states.

99. Exchanges of information with the International Committee of the Red Cross continued on a regular basis, proving of particular importance for the Commissioner's activities in the Caucasus, and in Chechnya and Georgia in particular.

VII. RELATIONS WITH THE PARLIAMENTARY ASSEMBLY

100. Elected by the Council of Europe's Parliamentary Assembly, the Commissioner attaches the greatest importance to the maintenance of close ties. In addition to the annual report which he submits both to the Assembly and to the Committee of Ministers, in accordance with Article 3 h) of Resolution (99)50, the Commissioner endeavoured last year to establish more regular contacts with the Assembly on issues of common interest. He consequently invited Ms Vermot-Mangold, of the Committee on Migration, Refugees and Demography, to attend the seminar he held in Strasbourg on 20-22 June on "Human rights standards applying to the holding of aliens wishing to enter the territory of a Council of Europe member state and to the enforcement of expulsion orders".

101. Practical information on expulsion procedures provided during this seminar was taken up by Ms Vermot-Mangold in her report[7] on "expulsion procedures in conformity with human rights and enforced with respect for safety and dignity". The Commissioner was particularly gratified to note that the Assembly incorporated many of the recommendations made at the end of the seminar in its Recommendation 1547 (2002) adopted on 22 January 2002.

102. On 7 November 2001 the Commissioner was invited to an exchange of views with the Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe ("Monitoring Committee") to discuss his activities. On that occasion the Commissioner offered to present an oral report, whenever the Commission so wished, on his visits to the member states, and particularly those subject to its monitoring procedure.

103. Close ties were also maintained with the Political Affairs Committee and the Joint Working Group on Chechnya of the Parliamentary Assembly and the Russian State Duma, the Commissioner having worked particularly closely with the latter in respect of the seminar he organised on the respect for human rights in Chechnya. Lastly, the Commissioner accepted invitations to attend two colloquies, one organised by the Social, Health and Family Affairs Committee on the rights of the elderly, held in Budapest in October, the other by the Committee on Migration, Refugees and Demography on the situation of illegal migrants in Council of Europe member states, held in Paris in December.

[7] See report of the Committee on Migration, Refugees and Demography of 10 September 2001, Doc. 9196.

VIII. PARTICIPATION IN CONFERENCES, COLLOQUIES AND OTHER EVENTS

104. The promotion of education in and awareness of human rights as embodied in the relevant Council of Europe instruments (Articles 1.1 and 3 a) of Resolution (99)50) represent an important part of the Commissioner's work, which he also seeks to fulfil through participating in diverse events.

105. It is not necessary to detail here all the events, which the Commissioner or other members of his office have attended; a complete list is annexed to this report.

106. Owing to a shortage of time and resources, a large number of invitations had to be declined. It was decided, therefore, to give priority to events having a direct thematic link with the office's current or future activities and to invitations from other IGOs or sub-regional organisations, which would promote institutional co-operation. Similar criteria applied to the acceptance of certain invitations to attend seminars or conferences organised by NGOs, national Ombudsman or national human rights commissions.

IX. INDIVIDUAL COMMUNICATIONS

107. In 2001, 1,479 individual communications were received by post, about a further hundred being received by e-mail. This figure should be compared with the 125 communications registered in 2000. This increase can be explained by the fact that the institution of the Commissioner is becoming better known to the public at large. It is clear, though, that, even allowing for mass petitions, the processing of such communications is starting to create problems for the office.

108. It has not been possible this year to compile statistics concerning the kinds of complaints received. A database to be set up as from January 2002 should, however, allow for the provision of more detailed information in the next annual report.

109. In any case, as Article 1.2 of the Commissioner's mandate prevents him from taking up individual complaints, he is, in the vast majority of cases, obliged to declare his lack of jurisdiction. Such is the case, for example, for requests for assistance concerning human rights violations in non-member States of the Council of Europe, for complaints directed against a decision of the Court or the Committee of Ministers, and for reports of violations of any particular individual's rights.

110. It might happen, however, that an individual complaint corroborates information concerning the general human rights situation in a given country, in which case the Commissioner treats the communication as information within the meaning of Article 5 of his terms of reference. It should be mentioned also that, when the problem raised falls with the competence of a national Ombudsman to address, the Commissioner will advise the person, in accordance with Article 3 c) of his terms of reference, to apply to that institution.

X. STAFF AND BUDGET

111. The permanent staff provided by the Secretary General of the Council of Europe, in accordance with Article 12.2 of Resolution (99)50, now comprises three A-grade administrators (including the Director and Deputy Director) and two B-grade administrative assistants, i.e. a total staff of five.

112. This year, a Deputy Director and a documentalist, appointed in June and April respectively, were assigned to the office. It must be stressed, however, that the funds for additional temporary staff only just cover the costs of the assistant acting as secretary to the Director and that it would have been impossible to do all that has been done over the last nine months had it not been for the generosity of the Finnish, Swiss and the United Kingdom authorities, who placed two seconded administrators and a long-term trainee at the Commissioner's disposal.

113. With regard to operating expenses, not including staff salaries, problems were again encountered last year: the funds allocated to the office in 2001 for meeting expenses and interpretation, for example, proved far from sufficient, and the Commissioner was once more obliged to appeal to the generosity of the member states to be able to organise certain seminars. The Commissioner would like to thank in particular the Belgian and United Kingdom authorities for their voluntary contributions to the financing of last November's seminar on the respect for human rights in Chechnya, as well as the Swiss, Luxembourg and Finnish authorities for their significant contributions.

114. Though conscious of the constraints entailed by a fair distribution of limited resources, the Commissioner nonetheless regrets that it was not possible to increase the appropriations for staff (especially administrative support staff, the lack of which is manifest) or the office's operating expenses in 2002. As already insisted on in the Commissioner's previous report, voluntary contributions from member states can be a means of coping with emergency situations, but the institution's future stability and credibility depend on the consolidation of its resources.

XI. APPENDICES

APPENDICES

I. CHECHNYA

REPORT BY MR ALVARO GIL-ROBLES, COMMISSIONER FOR HUMAN RIGHTS, ON HIS VISIT TO MOSCOW

13 – 14 September 2001

President of the Committee of Ministers, Permanent Representatives, I will give you a brief summary of my most recent visit to Moscow, towards the end of last week (13th and 14th September 2001).

The aim of this visit (following a preparatory visit in late July) was both A) to gather information on the progress of investigations into human rights violations committed in the Chechen Republic of the Russian Federation (hereafter shortened to "Chechnya") and B) to secure the cooperation of the Russian Federal authorities in the preparation and organisation of a seminar on the cessation of violence and the restoration of the rule of law as essential preconditions for the effective enjoyment of human rights in Chechnya.

A.

1. Regarding the first of these objectives, I am sure that everyone here agrees on the cardinal importance of reliable and up to date statistics. At issue are not just statistics relating to the number and nature of complaints filed (including those recorded by the various offices headed by Mr. Kalamanov) and the number and nature of investigations opened, as a result of these complaints, by the Public Prosecutor's Department, to which the military Procuratura belongs. It is a matter above all of establishing the number and nature of cases which, following an indictment, the Public Prosecutor's Department have referred to the courts for trial. Lastly, and evidently of the greatest interest, are the results of these trials, to wit, the number of acquittals and convictions and, in the event of convictions, the length of the sentences imposed.

2. Given that the Parliamentary Assembly will discuss these matters next week, it will come as no surprise that several members of the mixed working group concerned comprising members of the Parliamentary Assembly and the Duma (amongst them the co-chairmen, Lord Judd and Mr. Rogozin) were also in Moscow at this time to shed light on these questions. We therefore jointly attended a meeting with the Chief Public Prosecutor, Mr. Ustinov, and six of his assistants, which the Parliamentary Representatives and myself will inevitably have evaluated in our different ways and according to our own criteria.

3. For my part, I consider it to be very positive that the Chief Public Prosecutor of the Russian Federation, with the top officials of his staff, was willing to receive us for three hours and to reply without reservation (such as "defence secret" or "investigation secret") to our questions concerning the progress of investigations launched by his services in Chechnya, including those being conducted against members of the armed forces. Furthermore, I take the fact that, at the end of the

meeting, in the name of the "principle of transparency", he even invited us to come to Chechnya to examine, to check even, all the files currently under investigation, to be an undeniable proof of the prevailing atmosphere of cooperation.

4. That said, the crucial question remains whether there has been any tangible progress in the investigations into and punishment of persons found guilty of serious and massive violations of human rights in Chechnya. Such is evidently the opinion of Mr. Ustinov, who assured us that the situation there had altered significantly, to such

an extent indeed that it was now possible to effectively guarantee the respect for human rights, at least in so far as the prosecution and judiciary were concerned : 100% of the judges and 80% of the staff of the Procuratora were of Chechen origin, these last now being sufficiently strong in numbers following the recent transfer of a further 45 specially qualified prosecutors (*sledovateli*) ; since the Chief Public Prosecutor's decree of the 25th July[1], no such operation as the act foresees had been conducted without the presence of a military prosecutor – the intention being both to discourage military abuses and to stem the flood of baseless complaints from alleged civilian victims – and this decree had been respected in "dozens of operations" conducted since its adoption, in such a way that none of them had given rise to complaints ; furthermore, criminal investigations had been opened in respect of 393 cases, 100 of them by the military Procuratura, which had already transmitted 52 cases concerning 42 persons to the military courts ; the military courts had already convicted 15 military personnel, 2 of them officers, some of them to very long prison sentences ; 11 police officers were currently standing trial and a further 13 were subject to preliminary investigations by the prosecutor's department. The Duma had received, for the attention of its delegates to the Parliamentary Assembly, all the relevant information, including reports on the follow up of the Procuratura to the numerous complaints concerning several "cleansing operations" (before the decree of the 25th July 2001), about which the Council of Europe had also asked for information (the interventions of the federal forces in the villages of Sernovodsk, Kourchaloï and Assinovskaya).

5. These official statistics as well as the official reports were later kindly handed to me by the spokesman of the President of the Federation of Russia on Chechnya, Mr. S. Iastrjembsky, (but have remained under embargo in Russia until this present meeting of the Committee of Ministers). The original Russian text, which is currently being translated, is appended to the written report.

My initial appraisal of these "definitive" official statistics (effected on the basis of a cursory translation by my Office) can be summed up in two short and clear phrases :

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[1] Decree No. 46, of the 25th July 2001, "on the reinforcement of the control of the respect for the human rights of citizens during operations for the verification of their registered domicile compared to their current location within the Republic of Chechnya" [unofficial translation]. This decree requires the presence during such operations of representatives of the Procuratura and representatives of the local administration concerned (or, failing that, religious authorities or local chiefs), who must be informed of such operations beforehand. The decree also imposes a series of formalities to be respected in the event of arrests, such as the informing of relatives and the recording of the time of arrest and the place of transfer.

(i) we now have before us the proof of some concrete progress in the Russian Federation with regard to the prosecution and sentencing of persons found guilty of serious human rights violations in Chechnya even when the offenders belong to the federal armed forces ; (ii) Much remains to be achieved, however, by the Procuratura and by the courts for the fight against impunity, in particular of military personnel, to be noticed, indeed, to become a reality.

6. I reached this summary conclusion taking into account as well my conversation with Mrs. T. Kasatkina, the director of MEMORIAL, an NGO particularly active in Chechnya. In the light of a report written by Mrs. N. Esternirova (Human Rights Centre) and given to me by Mrs. Kasatkina, entitled "Cleansing Operation in the Village of Alleroy, 16th –27th August 2001", Mrs. Kasatkina raised a number of complaints, which, if accurate, would significantly undermine any claim that the situation in Chechnya and in particular the impunity of members of the armed forces had changed in actual fact :

(i) "cleansing or purifying operations", such as the one at Alleroy, continued to take place without the presence of military prosecutors and without prior information (to prevent leaks) and without consultation on the spot with the local administration. These operations resulted in massive and gratuitous brutality and destruction on the part of soldiers or policemen acting with the agreement, indeed, on the instructions, of their superiors, and regularly added to the lists of arrested and missing persons, which were increasingly made up of adolescents. This was the main reason why refugees were scared to return and why the number of those fleeing Chechnya was increasing.

ii) regarding the criminal investigations opened in respect of complaints and the functioning of the courts :

(a) With regard to complaints concerning serious offences committed "amongst Chechens" and/or by "bandits" against the civilian population, the ordinary Chechen courts, which have exclusive jurisdiction in this matter, were legally unable to deal with such cases. This was because these courts did not yet have at their disposal the two additional assistant judges required to hear cases in which the ultimate sentence might exceed 5 years' incarceration. Furthermore, instead of transferring such cases to courts outside Chechnya, which might hear such cases under certain formal conditions, the courts simply kept them on their roll;

(b) The preliminary investigations resulting from the complaints against members of the federal armed forces which fell within the exclusive competence of the military Procuratura and courts were allowed to drag on, were suspended, or even stopped – as, indeed, were the majority of criminal investigations already instituted by the Procuratura and of the cases pending before the military courts. Up till now, in any case, there had been but very few final convictions of military personnel who had committed crimes against the Chechen civilian population. The public did not know about these convictions and they had anyway primarily concerned subordinate soldiers rather than the commanders who had given them their orders, or who had deliberately failed to control their conduct with regard to the local population.

(iii) Owing to the powerlessness of the local administration to prevent the abuses committed by the military and the police, and the inefficiency of the judicial system regarding complaints alleging such abuses, the local population felt deprived of effective legal protection and, in the prevailing climate of impunity, braced itself for the worst. In this regard, the hopes initially raised by the setting up of the "Kalamanov office", with its Council of Europe observers, had been rapidly undermined by its notable lack of authority to initiate criminal investigations or to hasten proceedings concerning persons accused before the military courts. For this reason, the office had failed to have the preventive effect on the attitudes of the armed forces originally hoped for, even if its existence and the presence of an IGO in Chechnya had been a positive development from the point of view of the local population.

In response to these comments and questions, I informed Mrs. Kasatkina of my intention to organise a seminar in Strasbourg on the cessation of violence and the restoration of the rule of law as an indispensable condition for the effective enjoyment of human rights in Chechnya and that I attach great value to the cooperation in this venture of Russian NGO's active in Chechnya.

B.

Concerning this, the second, objective of my visit to Moscow, I had, at first, the impression that some of my interlocutors were hesitant, reluctant even, with regard to my project, fearing, apparently, the discussions would not be limited to the strictly legal framework of a human rights subject, with the risk, therefore, that the debates would be politicised and encroach on the authority of those who were alone competent to decide the future, and status, of Chechnya within the Russian Federation. It is because I am perfectly conscious of this risk and wish precisely to avoid it, that I went to Moscow to seek the support of the Russian authorities so as to properly prepare and organise this seminar. Ultimately, my Russian interlocutors seem to have understood and approved my proposal. Indeed, the Minister for Foreign Affairs of the Russian Federation, Mr. Igor Ivanov, formally confirmed to me yesterday (the 18th September) that the Russian side is ready to take part in the Seminar I had proposed (cf. the appended draft), and that all the organisational aspects of the seminar could be considered later on. I am evidently very satisfied by this and would like to take this opportunity to ask the Permanent Representative of the Russian Federation to transmit to his authorities my gratitude for their cooperation.

I will naturally keep the Committee of Ministers and the Parliamentary Assembly (to whom I will transmit a copy of this report) informed as to all subsequent developments concerning this seminar.

Seminar organised by
the Commissioner for Human Rights of the Council of Europe

THE RESPECT FOR AND PROTECTION OF HUMAN RIGHTS IN THE REPUBLIC OF CHECHNYA AS THE FOUNDATION OF ITS DEMOCRATIC RECONSTRUCTION
« No peace without justice »

Strasbourg 26-27 November 2001

PROGRAMME

26 November 2001

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The abuse and the protection of human rights by the federal and local authorities (the executive power). The active involvement of Chechen civil society in the promotion of the respect for human rights.

- respect for the law during military and police operations and during the retention and detention of persons resulting from controls of the freedom of movement ;

- the protection of the civilian population from acts of extremists, such as assassinations and kidnapping.

- **Afternoon**

The respect for human rights in the Republic of Chechnya and the role of the judicial system.

- the role and action of, and the difficulties faced by, the *procuratura* and the courts : the needs for efficiency (financial and human resources), objectivity (the fight against impunity) and the need for protection in the exercise of their functions ;

- the role and difficulties of lawyers ;

- the execution of judgements and the problem of compensation ;

- the recording of complaints by the Kalamanov office and the action taken by Prosecution services on transferred files ;

27 November 2001

- **Morning**

The participation of civil society in the protection of human rights in the Republic of Chechnya and, especially, the constructive and critical roles of NGO's.

- activities in the social domain, the evaluation of the necessary conditions for the return of refugees, the monitoring of police activity and the functioning of the judiciary, the enjoyment of the rights to freedom of expression and information).

- **Afternoon**

The protection of human rights and the economic and social reconstruction of the Republic of Chechnya.

- the guaranteeing of the rights to property, education and professional training, to health, and to family benefits ; the reestablishment of the banking sector ; guaranteeing the necessary safety for returning refugees ; respecting the freedom of movement and the freedom of establishment.

CONCLUSIONS

Having welcomed the participants, the Commissioner recalled that the seminar formed no part of the political negotiations already taking place elsewhere, but sought solely to contribute to the effective respect of human rights in the Republic of Chechnya of the Russian Federation, the reconstruction of which was already underway and was assuming its own dynamic. The discussions directed by Mr. Gil-Robles were both frank and constructive and followed, *grosso modo*, the proposed programme.

In the opinion of the Commissioner, the following points emerged:

1. Serious human rights violations giving rise to serious concern are still being committed in Chechnya by all parties. It is consequently of the utmost importance that everything possible is done to limit, indeed to prevent, these violations, regardless of their perpetrators, and to protect the innocent civilian population against them. It is acknowledged that the competent authorities of the Russian Federation have committed themselves to this approach, have already achieved concrete results and are at present trying hard to suppress such violations. It appears, however, that terrorist attacks resulting in serious human rights violations continue to be carried out.

2. It emerged during the course of the discussions that the Procuratura is genuinely committed to prosecuting the perpetrators of such violations, even if it is frequently faced with numerous material difficulties. The representatives of the Procuratura declared themselves willing to cooperate with civil society and, especially, with those humanitarian NGOs in possession of useful information, on condition that these NGO's provide the information required for subsequent legal action (by indicating, for example, the location of "pits" used for the illegal detention of persons for release in return for ransom.)

3. It emerged, however, on this point, that a part of Chechen society lacked confidence in, indeed distrusted, the local and federal authorities. The question evidently arises as to whether this could be rectified through (i) the greater participation of NGOs in the decision making process of the executive powers as well as NGO consultation in certain parliamentary hearings and ii) by a more scrupulous respect for the law, that is, of the Russian legislation (such as, for instance, the full application, possibly in the presence of NGOs concerned, of decree n° 46 of 25/07/01, which prescribes the presence of a prosecutor during identity and residence controls, and the respect of the rights of arrested and detained persons to legal assistance).

4. The reestablishment of the judiciary in Chechnya represents considerable progress, especially as it constitutes the basis of democratic reconstruction. Nonetheless, there exist numerous difficulties as regards its effective functioning :

(i) the procuratura lacks sufficient means and, notably, certain infrastructure (scientific laboratories). Moreover, witnesses and plaintiffs lacking protection frequently withdraw their statements for fear of reprisals and alleged perpetrators have left Chechnya etc.

(ii) there are not enough courts and, notably, no assessors required for the functioning of the courts with jurisdiction to hear the most serious cases; the trial of "Chechen cases" by the courts of other subjects of the Russian Federation – even in neighbouring regions – raises serious doubts regarding the protection of human rights (see article 6 of the ECHR)

(iii) there are significant physical risks to both buildings and magistrates, especially when magistrates travel or investigate outside their offices (the need for physical protection)

(iv) lawyers face difficulties when the mechanisms for filing complaints and requesting appeals do not operate properly.

(v) The execution of judgements is frequently obstructed by the bankruptcy or absence of the parties concerned.

5. Opinions regarding the results of the office headed by Mr. Kalamanov, differed considerably: certain NGOs were critical, others favourable, even if its creation and existence were unanimously considered to be positive; as far as the federal authorities were concerned, the work of the office was both useful and in conformity with the terms of reference, which preclude its functioning as an independent prosecution agency. The offer of cooperation with NGOs in the framework of the collaboration of the federal authorities and the Kalamanov office was greatly appreciated but will need to be elaborated in detail.

6. The issue of the "the participation of civil society in the protection of human rights in the Republic of Chechnya and, especially, the constructive and critical role of NGO's" was very positively approached by the participants and clearly reflected the views expressed already during the "Citizens' Forum" held in Moscow. Concrete proposals were made for cooperation between certain NGOs and both the federal and local authorities, regarding for example, projects related to persons displaced both within and outside Chechnya and the compiling of objective information and statistics on them, as well as programmes for the training of, and exchanging of information between, media specialists, projects for some 25,000 orphans, the evaluation of the exact needs for, and the distribution of, humanitarian assistance, etc. An appeal was made for a common effort to be made to guarantee the right to education for all in Chechnya. Lastly, a representative of the federal authorities offered NGOs the possibility of informing the public of their activities on a page to be specially designated for this purpose in a local newspaper.

7. The modalities of this cooperation will need to be determined with greater precision in respect of each individual project, whether this is a matter of determining the precise contribution of the parties, financial and otherwise, the division of competences, for example between the federal authorities and the NGOs and IGOs concerned, or the framework or administrative structures within which this cooperation should be effected. In this respect, it is clear

   that, just as the work of reconstruction will need to be carried out in Chechnya, discussions on joint ventures, should also, in so far as possible, take place in Chechnya itself, with due regard to local characteristics.

   The representatives of the local administration requested that existing structures, such as the Consultative Council of the Chechen Administration, be used for these purposes. Mr. Kadyrov pleaded especially for the return to Chechnya of all Chechens of good faith, who had fled for whatever reason from their region of origin over the last few years, to participate in the reconstruction work already underway. For their part, the federal authorities frankly explained the exceptional difficulties they were confronted with in Chechnya, such as high unemployment, an inadequate administrative infrastructure, the lack of banking and industrial sectors as well as the lack of federal civil servants remaining long enough in Chechnya and sufficiently acquainted with its local characteristics. Be that as it may, the opinion of certain NGOs was that everything really depends on the return of those Chechens and, as the case may be, Russians, who had left in the preceding years. This in turn, it was maintained, was conditional on there being sufficient security, which was the not yet the case, and which it was primarily the responsibility of the Russian authorities to secure.

8. This last issue is just as important to the reconstruction of Chechnya as the modalities of the cooperation between NGOs and the federal authorities. The solution to these two issues will, in any case, require considerable patience and common sense as well as a spirit of compromise and openness in a new climate. The discussions in Strasbourg gave rise to the impression that all its participants recognised the importance of proceeding from now on through constructive dialogue. It appears that this dialogue will be resumed shortly (in December already), and thereafter regularly, in both Moscow and in Chechnya.

II. VISIT REPORTS

REPORT BY MR ALVARO GIL-ROBLES, COMMISSIONER FOR HUMAN RIGHTS, ON HIS VISIT TO NORWAY

2 - 4 April 2001

INTRODUCTION

On the invitation of the Norwegian government, I visited Norway from the 2nd to the 4th April 2001. The main aims of this visit were to establish contacts with the Norwegian authorities, including the Ombudsman, and with representatives of its civil society via NGO's and other institutions, so as to conduct an initial appraisal of the human rights situation in Norway both in terms of its legislation and the application of this legislation in practice.

I wish to thank the Norwegian authorities for their warm welcome and their assistance during this trip. Thanks to their efforts, I was able to meet everyone I wished to see and, furthermore, visit the Bredtveit and Oslo prisons. I also thank Mr. Arne Fliflet, the Norwegian Ombudsman, for the valuable information he was able to give me in the course of our discussions.

I would like, lastly, to express my gratitude to Ambassador Torbjørn Aalbu for his close co-operation while accompanying me and thank Mr Mika Boedeker for his assistance throughout the visit.

1. CONSIDERATIONS OF A GENERAL NATURE

As a founder member of the Council of Europe, Norway ratified the ECHR in 1952 and it has subsequently ratified all the additional protocols. Nonetheless, up till 1999, Norwegian law prevailed over international law. It was only with the adoption, on the 21st May 1999, of a law on the reinforcement of human rights protection that three international conventions were incorporated into Norwegian legislation. The conventions concerned were the ECHR, the International Covenant on Economic Social and Cultural Rights (of the 16th December 1966) and the International Covenant on Civil and Political Rights (of the same date), both of the United Nations.

The Government presented a Plan of Action for Human Rights to the Norwegian Parliament on the 17th December 1999. This program contains more than 300 measures intended to improve the protection of human rights in Norway. It includes various legislative initiatives on human rights, most notably the incorporation of four additional conventions into national legislation. These conventions concern the rights of children, the rights of women, the prevention of racial discrimination and the prevention of torture.

2. SPECIFIC ISSUES

Despite this plan, the persistence of a number of problems was confirmed to me by those I met with during my visit. In particular, the Ombudsman and the representatives of the NGOs emphasised the difficulties involving aliens. The representatives of NGO's also adverted to problems concerning the rights of persons deprived of their liberty and of national minorities. These problems will be considered amongst the specific issues below.

2.1 Rights of detained persons

Both during my visit and in its preparation, I took into account the recommendations made by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), of which a delegation visited Norway from the 13th to the 23rd September 1999. In its report (CPT/Inf (2000) 15), the CPT adverted to the need to respect the right of detained persons to legal assistance from the outset of their police custody and the need to lift some of the restrictions on their rights to correspond and receive visitors.

The problems regarding the rights of detainees to legal assistance during police custody seem to have been resolved; the Minister of Justice informed me that detained persons already enjoy the right to see a lawyer as soon as possible after their arrest or within a maximum delay of two hours thereafter.

However, as a result of my visits to the Bredtveit prison (for women) and the Oslo Prison, I was able to confirm that, despite the progress made since the visits of the CPT in 1997 and 1999, the restrictions on the rights of persons detained on remand to correspond and receive visitors remain problematic and that the difficulties raised by the CPT in this area have still not been fully resolved.

Those arrested usually come before a court within 24 hours of their arrest (the period may be extended in the event of public holidays), so that the court can decide on whether to allow a pre-trial detention of, usually, four weeks. This period can be prolonged, but each renewal can only be for a maximum duration of four weeks. The court also has the power to order, on the request of the police, visiting restrictions and limitations to the rights to correspond and maintain contacts.

Persons detained on remand may, in accordance with the law, have their rights to receive visitors and maintain contacts, even with other detained persons, significantly restricted. The same is also true of access to newspapers, radio and television programmes and books. According to article 186 of the Penal Code, the court can order such restrictions for periods stretching from 2 to 4 weeks depending on the necessities of the investigation.

It is to be noted that domestic legislation does not fix a maximum duration for these restrictions, such that there exists a risk of a *de facto* isolation, which, with the exception of contact with one's lawyer, can in certain instances continue for quite some time. I was led to believe, as a result of my discussions with the Minister of

Justice, that there were plans to limit the maximum duration of these restrictions or to take their imposition and length into account when considering the imputation of the pre-trial detention period to the sentence itself.

The potentially harmful psychological consequences of such isolation were confirmed to me during my visit to the Bredtveit prison, where I spoke with a woman who had suffered such restrictions for the last six weeks. During this period she had been denied the right to see her husband and her young children; her sole human contact being with her guards. It is, indeed, usual, when mental deterioration results, for the prison authorities to contact the police and to encourage them to speed up the

processing of the case or, sometimes, to demand of the judicial authorities that the restrictions be relaxed. Nonetheless, it seems to me preferable, rather than reach this stage, to ensure that in each individual case the restrictions in questions are imposed only for so long as they are strictly necessary for an adequate investigation.

I also have a number of reservations regarding the prevailing penitentiary policy for young offenders in Norway. In the majority of European countries juveniles in pre-trial detention (currently 90% of all detained juveniles in the Oslo prison are detained on remand) are separated from adults on pre-trial detention as well as all other convicted detainees. This practise not only avoids any bad influences they may be subjected to by professional criminals, but recognizes also the need for a penitentiary policy specifically tailored to their reintegration. For this reason they are usually detained in separate centres or, at least, in separate sections within more general penitentiary establishments.

Norway has not adopted such a practise across the board (and has, for this reason, limited the application of article 10 of the International Covenant on Civil and Political Rights of 16th December 1966). Indeed, given the small number of juvenile detainees and the generally short sentences they serve, the Norwegian penitentiary authorities have maintained that such a separation would amount to a de facto isolation. Indeed, according to the statistics of 1999, of the 17,155 convicted detainees in Norway only 1067 were minors (between 15 and 17 years old) and 2,317 youths aged between 18 and 20.

Nonetheless, the experiences of the Larvik prison (in the South East of Norway) demonstrate that the separation of young and old offenders can protect the young from the negative influences of established criminal circles. The plans to create a special section for young detainees at the Oslo prison are consequently a positive development and must be implemented.

2.2 Refugees and Immigration

Despite being a nation that offers considerable support to international refugee organisations, Norway admits relatively few refugees, even if the figures indicated, at one time, a certain increase. In 1998 Norway granted the right to asylum in 108 cases out of 3919 applications, in 1999 it granted asylum to 181 persons from 6060 applicants, and, in 2000, 108 from 7852. These figures should be supplemented by the 250 to 500 asylum requests granted each year on appeal.

I was informed during my meeting with NGO's that the duration of the processing of applications is very long and that applicants are frequently deprived of their liberty, especially in cases where there is some doubt as to their identity. The treatment of minors, currently representing some 30% of all asylum applicants, is also of concern. Whether accompanied or not, they are treated in the same way as adults an may, equally, spend long periods in reception centres.

Norway also accepts 1500 refugees at the request of the HCR. These last are refugees who, previously residing in camps, are distributed amongst participating states and whom Norway accepts on "humanitarian grounds".

Furthermore, in the last three years Norway has granted more "residence permits on humanitarian grounds" (1564 in 1998 to 2609 in 1999 and 2856 in 2000). Norway also adopted, in 1998 and 1999, guidelines on the application of the Convention on the status of refugees, which broadened the field of admissible applications to include persons persecuted by authorities other than those of their country of origin and those persecuted on the grounds of their sex, religion and ethnic origin. The reuniting of families has also been facilitated by these guidelines.

3. NATIONAL MINORITIES AND RACISM

a) Although national minorities are well protected by the existing legislation in Norway, a number of points were raised in my discussions with the representatives of NGO's during my visit. The groups considered to be national minorities in Norway are the Sami, the Kven (a people of Finnish origin living in the north of Norway), the Skogfinn (a people of Finnish origin living in south of Norway), the Roma/Gypsies, Travellers, and Jews.

The legal status of Samis has been considerably improved by the 1988 changes to the Norwegian Constitution, which places an obligation on the state to create conditions enabling the Sami to preserve their language, culture and way of life, and by the adoption of a law establishing the general framework of a Sami parliament. The representative of the Kven organisation I met with insisted that the 'Norwegianisation' of the Kven in the middle of the last century had left the knowledge of their language and culture in peril, despite the *recent* efforts of the Norwegian state. Whilst maintaining that these efforts were inadequate, he did not allege any human rights violations.

b) With a view to improving the situation of immigrants, Norway adopted a Plan of action to counter racism and discrimination. The NGO's I met with, however, maintained that immigrants and refugees were, according to several studies, discriminated against in various domains, most notably, in access to employment and in regard to housing. It was also pointed out to me that during local elections, the Progress Party made use of anti-immigrant and refugee arguments. Considering it is the second largest party in the country, I must say that I find this of some concern.

Following the Government's proposal in its 1999 Plan of action for human rights of a new law on the prohibition of ethnic discrimination, a working group was established in March 2000 and it is expected that they will complete their work by June 2001. It is to be hoped that the protection against discrimination will be effectively reinforced.

CONCLUSIONS

It is clear that the degree of human rights protection in Norway is high. Nonetheless, certain remaining problems need to be addressed by the authorities, in particular regarding the human rights of persons detained on remand, juvenile detainees and, especially, the protection of aliens and asylum seekers. The full implementation of the 1999 Plan of action on human rights would allow for the resolution of many of these problems. The final stages of its application should, therefore, be entered into as soon possible.

REPORT BY MR ALVARO GIL-ROBLES, COMMISSIONER FOR HUMAN RIGHTS,

ON HIS VISIT TO THE SLOVAK REPUBLIC

14 – 16 May 2001

I. Introduction

Czechoslovakia, which became a member of the Council of Europe in 1992, subsequently ratified a number of Council of Europe conventions, including the European Convention on Human Rights (hereafter referred to as the ECHR) on 18 March 1992. Less than a year later the Czechs and the Slovaks peaceably agreed to separate on friendly terms, and on 1 January 1993 two new sovereign states, the Czech Republic and the Slovak Republic, were established. This is the only example in XXth century European history of a state breaking up in a non-violent manner with two new international law entities being set up as a result.

As a sovereign state, the Slovak Republic became a member of the Council of Europe on 30 June 1993. During the period of transition, the two new republics informed the Secretary General of the Council of Europe that they considered themselves bound by a number of European treaties, including the ECHR[1], which Czechoslovakia had ratified. As of 29 May 2001 the Slovak Republic had signed or ratified 70 Council of Europe conventions and benefited from a number of co-operation programmes such as Demosthenes, Themis or LODE.

Since 1998 the coalition government of the Slovak Republic has made considerable efforts to rapidly reform its political and social system. From the international standpoint, it has succeeded in bringing its country out of isolation and has made sustained efforts to join the European Union[2] and the North Atlantic Treaty Organisation[3]. During this period the Slovak Republic has had better relations with its neighbours than at any time since it came into existence.

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[1] The first two judgments handed down by the European Court of Human Rights against Slovakia date back to September 1998. Since the entry into force of Protocol No. 11 on 1 November 1998, however, the Court has ruled on a much larger number of cases against the Slovak Republic: over the past two years there have been 15 judgments, 8 leading to a finding of violation and 7 to a friendly settlement. The great majority of the judgments concern the excessive length of proceedings. The number of cases awaiting the Court's decision has also risen: there are currently 400.

[2] Slovakia submitted its application for membership on 27 June 1995.

[3] Since 1993 the Slovak Republic has pursued its policy of NATO membership.

It was in the context of this "political, economic and legal revolution"[4] that the Slovak government invited me to visit the Slovak Republic from 10 to 16 May 2001. I accepted this invitation and visited Bratislava and Kosice accompanied by Mr Fernando Mora, a member of my office.

I would first like to thank the President of the Slovak Republic, Mr Rudolf Schuster, and his government for their assistance in connection with my visit to Slovakia, and especially for the helicopter in which I was able to travel from Bratislava to Kosice. I would also like to thank the Permanent Delegation of the Slovak Republic to the Council of Europe and the Slovak authorities for their readiness to help and for their co-operation throughout the preparation and conduct of this visit. Finally, I would like to express my gratitude to the non-governmental organisations I met in Bratislava and Kosice.

First of all, I would like to briefly describe the general human rights situation (II); then I would like to talk in greater detail about a number of subjects specific to the present situation in the country (III). Finally, I will comment on issues that have not been addressed in this report (IV) and, last but not least, I will present my conclusions and recommendations (V).

II. General human rights situation

I would like to begin by congratulating the Slovak government on the efforts it has made over the past three years to improve the institutional human rights framework. The National Council (Parliament) has set up a committee responsible for addressing human rights issues, minorities and regional development (hereafter referred to as the Human Rights Committee). Within the government, a deputy prime minister is responsible for the same questions and there is a Council of National Minorities and Ethnic Groups. The Roma/Gypsy community is represented at all these levels[5]. Finally, there is also a Human Rights Centre in Bratislava.

As regards legislation, Parliament amended the Constitution in February 2001 to bring it into line with the international standards which Slovakia had undertaken to respect. The new Constitution will come into force on 1 July 2001. Moreover, a series of draft laws, in particular the draft law on combating discrimination and the law on setting up the Ombudsman's Office, will be tabled in Parliament before the end of the year.

Despite these efforts there are still difficulties, particularly as regards the situation of ethnic minorities and the Roma/Gypsy community. The situation of women, children, prisoners and asylum-seekers is also a source of concern. Finally, there is much disagreement in civil society about the functioning of justice and the police.

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[4] This is how Slovak politicians and diplomats in post in Slovakia describe the current situation.

[5] Four days before our visit, the member of the Deputy Prime Minister's Cabinet who had been responsible for Roma/Gypsy questions for the past three years or so was removed from office by the Deputy Prime Minister himself. On 21 June 2001, Parliament appointed Ms Klara Orgovanova, a Roma/Gypsy, to this post.

III. Specific problems relating to the present situation

In this section, I would like to take a close look at the situation of ethnic minorities, especially that of the Roma/Gypsy community (1), the situation of other vulnerable groups (women, children, asylum-seekers, etc) (2) and the attitude of the police, public prosecutors and judges (3), not forgetting the important issue of the effective application of laws (4) and the functioning of the Human Rights Centre (5). Finally, I will draw your attention to the Ombudsman institution (6).

1. National minorities and ethnic groups

The Slovak Republic has 11 national minorities[6], spread throughout the country. Geographically speaking, none of them occupies a whole region. This figure clearly shows that the co-existence of minorities is of vital importance for the development of Slovak society from both the social and economic standpoints. The Slovak government took a big step in the right direction when it ratified the European Charter on Regional and Minority Languages on 19 June 2001[7].

Although the situation of Roma/Gypsies is of great importance, it is also necessary to pay careful attention to the development of other national minorities and ethnic minorities and to take action as early as possible to prevent any discrimination, *de facto* or *de jure*, favouring one minority or race to the detriment of the others. It therefore seems to me that the opinion issued by the Advisory Committee on the Framework Convention for the Protection of National Minorities takes on its full significance in this context, since a better legal framework must be rapidly introduced in order for the constitutional rights granted to national minorities and ethnic groups to be implemented and subsequently incorporated into existing legislation[8].

a. The Roma/Gypsy community

The Roma/Gypsy community[9] is the one hardest hit within Slovakian society. A few figures will give an idea of the situation, but these are only estimates and there are significant differences between the figures supplied by the National Statistics Office of the Slovak Republic and those provided by the Roma/Gypsy community and national or international organisations.

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[6] Slovaks, 85.7%, Hungarians, 10.6%, Roma/Gypsies, 1.6%, Bohemians, 1%, Ruthenians, 0.3%, Ukrainians, 0.3%, Germans, 0.1%, Moravians and Silesians 0.1%, Croatians, 0.07%, Jews, 0.06%, Polish, 0.05% and Bulgarians, 0.05%; (National Statistics Office of the Slovak Republic, 1991; The Slovak Helsinki committee, Report on the implementation of the Framework Convention of the Council of Europe on the Protection of Minorities in the Slovak Republic, September 1999).

[7] The government recognises 9 minority languages. The Jewish and Moravian communities have not asked for official recognition of their languages.

[8] Advisory Committee on the Framework Convention for the Protection of National Minorities, Opinion on Slovakia, adopted on 22 September 2000.

[9] Appendix I

At the 1991 census, only 80 000 people said they belonged to the Roma/Gypsy community, whereas it actually comprises between 400 000 and 500 000 persons. It is the poorest community and the one with the highest rate of unemployment: whereas the national rate of unemployment is approximately 20%, it can be as high as 100% in the Roma/Gypsy community in some regions. The Roma/Gypsy community is also the least educated: in some regions 80% of the children are placed in specialised institutions; only 3% get as far as secondary school and 8% as far as secondary technical school. It is also the community which has the highest birth and death rates - the latter caused mainly by very poor living conditions (no running water, electricity or hygiene in some regions). This community accounts for the highest rate of dependency (80%) on the welfare services and accounts for the largest number of detainees.

In both Bratislava and Kosice (in East Slovakia), talks with the authorities and the Roma/Gypsy population showed me that the distrust between the Roma/Gypsy community and the authorities on the one hand and between this community and the rest of civil society is very long-standing. There are prejudices on all sides, making it impossible to pursue a policy of integration and participation. While the authorities claim that the Roma/Gypsies are very nonchalant about working, taking care of their homes and sending their children to school, to give but a few examples, the Roma/Gypsy community protests at the policy of discrimination from which it suffers at all levels of society. There is only one alternative to these two opposing positions: to work together to improve the socio-economic situation of this national minority[10]. In this connection, it is essential that the authorities and civil society do their utmost to facilitate the integration of the Roma/Gypsy community and that the latter commit itself fully to this process.

To take one example: the school in the Roma/Gypsy neighbourhood in Kosice, Lunik IX, is being extended. Although I am neither a building contractor nor an architect, I could see that there was work to be done on a large scale. The mayor of Lunik IX told me that out of the 120 Roma/Gypsies who had applied for work on the site, only about 4 would actually be given a job. The Kosice authorities present at the meeting said that the number was bigger but still not more than 20. This was confirmed by Mr Toth, a member of the parliamentary Human Rights Committee, who, during our interview, stressed the need for a neighbourhood policy and for greater efforts at local level. Mr Toth is himself a Roma/Gypsy and Mayor of Kolarovo in South-East Slovakia, a town with a Hungarian, Slovak and Roma/Gypsy population. The Slovak authorities should perhaps be encouraged to set up concrete projects, even if only on a small scale, and submit them to the Council of Europe's Development Bank for funding.

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[10] Interviews with Mr Ladislav Fizik, President of the Roma/Gypsy Parliament, which represents 132 associations and 16 political parties, the Roma/Gypsy Mayor of Lunik IX and members of its Council, as well as with representatives of the government in Kosice and Bratislava.

b. The 1991 and 2001 censuses

While on the subject of Roma/Gypsy participation in society, let me say a few words about the population census which took place in 1991 and link it to the one which took place this year (the results of which may be available in the course of the year). According to the results of the 1991 census, the Roma/Gypsy community made up 1.6% of the population. Everyone in Slovakia agrees that this figure is wrong and that if, in 1991, only a very small number of Roma/Gypsies said they belonged to this community, it was because most of them were afraid of being discriminated against and therefore falsely claimed to be Hungarian or Slovak. There is however an important issue here, because grants are made to the minorities according to the percentage of the population they represent.

The present government has, however, become aware of this problem and has made funding available for an awareness-raising campaign[11]. It has also trained Roma/Gypsy census officers and printed forms in their language. The Roma/Gypsy community for its part told me that this policy was inadequate as the money earmarked for the campaign was only 50 000 crowns (€ 1162.79) and that the involvement of this community as census officers had been minimal, not to say ridiculous. It is true that the authorities seem to have made insufficient effort to employ Roma/Gypsies as census officers or commissioners[12].

In this connection, the Slovak government explained to me that the National Statistics Office had organised the census and local mayors had selected the "census commissioners" from among the local population. The government as such had therefore not been responsible for organising the census. I took note of this, but I remain sceptical nevertheless. It is central government's duty to ensure that its policy in favour of national minorities and ethnic groups is applied at all levels of the administration. The method and manner in which is this done is admittedly the responsibility[13] of its officials, but central government must ensure that they comply with the relevant legislation.

2. Other vulnerable groups

It very quickly became clear to me during my visit that women, children, asylum-seekers and the homosexual community, to give only some examples, are subject to discrimination by the state. From my conversation with the NGOs and the representatives of national and international organisations concerned with these issues, it was obvious that insufficient resources were being made available to protect these vulnerable groups.

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[11] The Roma/Gypsy newspaper Romano l'il Nevo produced a special issue to explain the importance of the census to the Roma/Gypsy community. Posters and other information were published in their language (Cislo 468 – 485/2001)

[12] Mr Fizik, President of the Roma/Gypsy Parliament, said that scarcely 100 of the 22 000 census commissioners had been Roma/Gypsies, whereas the Roma/Gypsy community had trained 1 500 of its members to carry out monitoring in 612 towns.

[13] Letter from Mr Csaky to mayors asking them to take account of national minorities and ethnic groups when selecting census commissioners.

a. Children, women and domestic violence

I was struck by the unanimity of the views expressed by associations and national and international NGOs active in the protection and promotion of human rights in general and of the rights of women and children in particular[14]. One woman out of five is said to be beaten by her husband. Children are abused both physically and sexually[15] and the institutions in which some of them are placed cannot help them because they are dilapidated and incapable of educating and socially rehabilitating children owing to the lack of trained staff.

a.a. Causes of domestic violence

The organisations dealing with domestic violence do not consider alcoholism to be the cause of this phenomenon. They consider it more likely that society's indifference to the problem and the authorities' reluctance to change things give some men the feeling that they can do whatever they like in the home. Women and children also feel isolated and are ashamed to report ill-treatment. As a result, women seek help from NGOs and not from the authorities. Indeed there is deep distrust of the authorities, as illustrated by the attitude of the police, public prosecutors and judges when confronted with this problem.

Mr Carnogursky, the Minister of Justice, and Mr Pipta, Director General of the Police, explained to me, for example, that the police do not act to deal with violence between spouses because the problem is one of individuals' privacy. The police can therefore only take action if the woman lodges a complaint. According to the representatives of civil society, however, if the police do intervene only the man's arguments carry any weight and the woman's point of view is completely ignored. When the custody or upbringing of children is at stake, the woman has to prove that she is capable of bringing them up whereas the man does not need to do so. The situation is also very worrying as regards child abuse. A child who reports an adult on grounds of physical or sexual abuse must confirm the allegations in the presence of the person concerned, and the authorities take no account of the child's age. The situation is the same as regards women. In both cases, 90% of women and children withdraw their complaints and the legal proceedings go no further.

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[14] Slovak Helsinki Committee, Fenestra, UNICEF, Amnesty International, Smile as a gift, Romany Found, Aspekt, Representatives of the Roma/Gypsy Parliament and Council and the Women's Union in Bratislava and Kosice.

[15] Smile as a gift, UNICEF, and confirmed by other associations and NGOs which took part in interviews and conversations in Bratislava and Kosice. See The Slovak Foundation for Civil Society on this subject. In 1999 UNICEF was contacted by 131 children claiming that they had been subjected to psychological abuse, 332 to physical abuse, 427 to sexual abuse and 113 claiming they had been intimidated. In 2000, 115 cases of psychological abuse, 410 or physical abuse, 633 of sexual abuse and 184 cases of intimidation were reported to UNICEF.

a.b. The role of the NGOs in dealing with the problem of violence

In view of the situation, NGOs are endeavouring to bring about legislative and institutional improvements, both by proposing draft laws and taking part in working groups and by setting up refuges for battered wives and children in distress. Their work is crucial in the present circumstances, which I saw for myself when I visited the FENESTRA emergency centre for battered women and children in Kosice. At least 2000 women have sought the support of NGOs in instituting proceedings against violent husbands. In February 2001, 14 women died as a result of this type of violence.

a.c. Position of the authorities

Mr Lauko, Deputy to the Principal State Prosecutor, Mr Carnogursky, the Minister of Justice, and Mr Pipta, Director General of the Police, explained to me that when they were informed of this type of violence they intervened within their own legal framework. They also said that the government services were always there to help children and women in distress when they were brought face to face with their tormentors.

Mr Csaky, Deputy Prime Minister for Human Rights, Mr Nagy, Chair of the parliamentary Human Rights Committee, and Mr Migas, Speaker of Parliament, admitted that the situation of women and children had to be improved. It was necessary to amend the laws concerning them in order to transform or at least modify the institutions responsible for helping them. Mr Nagy stressed the determination of the Human Rights Committee to take action whenever a complaint or an application came to its notice.

b. Asylum-seekers

The situation of asylum-seekers arriving in the Slovak Republic is also worrying. I would like to highlight two fundamental aspects of this situation. The first concerns the procedure for acquiring refugee status, and the second the acquisition of nationality.

My conversations with NGOs and associations that work to promote and protect the rights of asylum-seekers revealed that the procedure for acquiring refugee status lacks transparency and is very long. At each new stage of the procedure, the application is considered solely in the light of the initial evidence provided by the applicant. Therefore, if a person is refused refugee status, he or she is entitled to appeal to the Minister of the Interior but cannot submit additional information. If the Minister rejects the appeal, new court proceedings can be instituted, but once again there is little transparency in the proceedings, which means that the asylum-seeker cannot provide further details. The whole procedure takes at least 3 years.

As regards acquisition of nationality, no one with refugee status was granted Slovakian nationality either last year or this year. The same criticism applies to this procedure: it lacks transparency and is too long - at least 5 years. Mr Fogas, Deputy Prime Minister for Legislation, says that he is aware of the difficulties encountered by refugees in obtaining nationality. He therefore thinks that the law on the acquisition

of nationality should be amended. He pointed out that, following the entry into force on 1 March 2000 of the European Convention on Nationality, which had been ratified by the Slovak Republic on 27 May 1998, it was in Slovakia's interest to undertake a reform in keeping with its commitments as soon as possible.

3. The attitude of the police, public prosecutors and judges

The attitude of the police, public prosecutors and judges was often mentioned during my conversations with representatives of civil society working in the human rights field. I was very surprised by accounts of the authorities' alleged indifference to domestic violence, their attitude to Roma/Gypsies and also their role in political affairs. In short, the whole of Slovakian society is eagerly awaiting reforms on these points. Quite specific criticism was made of Mr Ladislav Pittner, the Minister of the Interior, who, during my visit, resigned from his post and was replaced, *ad interim*, by the Minister of Justice, with whom I had the opportunity to discuss these issues. I will come back to this later.

a. The behaviour of the police

There are many reports and statements condemning the behaviour of the police - on the street, in police stations or in other circumstances in which they come into contact with the population. In most cases the action they take is considered to be inappropriate and excessive, whether it concerns the Roma/Gypsy community (it appears that police violence against Roma/Gypsies has not decreased and is one of the main reasons for which the Minister of Justice and the Director General of the Police are criticised) or other vulnerable groups[16]. Although most complaints concern the police's misuse of force, their failure to understand the need to ensure that citizens can effectively exercise their rights is also mentioned.

b. The behaviour of public prosecutors

Their role is recognised as being *vital* throughout the criminal proceedings, but there are many complaints about their failure to act. The strongest criticism is that the population expects to be protected, to some degree, by the prosecutors, not only from police action but also during proceedings, so that they are given a hearing and can submit their evidence or give their version of the facts. The NGOs believe it is essential that central government oblige public prosecutors to change their attitude to citizens' rights.

c. The behaviour of judges

The strongest criticism comes from associations and NGOs, which condemn judges' complacent attitudes to court cases involving politicians and the failure of these judges to rule on certain cases and to enforce their decisions.

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[16] Interviews with the Good Fairy Kesaj Foundation in Kosice, Amnesty International, Slovak Helsinki Committee, UNICEF, the Roma/Gypsy Parliament, the Women's Union, FENESTRA, Forum Institute, Aid to Refugees, Smile as a gift and ASPEKT. See also **Appendix I.**

The Minister of Justice pointed out that both the law on judges and lay judges and the Constitution had been amended over the past two years. This ought to make judges more independent and improve the application of the law. The new laws will also give new generations of legal experts the opportunity to take up such posts and thus breathe fresh life into the administration of justice.

Lastly, the Minister of Justice and the Director General of the Police pointed out that, when they were informed of abuse of authority by the police, public prosecutors or judges, an enquiry was instigated and if the person was found guilty, he or she was removed from office. By way of example, the Minister of Justice said that 163 indictable offences had been committed by the police in 1999 and 177 in 2000, of which 69 and 70 respectively were cases of abuse of authority[17].

d. Other points of view

I had talks with the Deputy Prime Minister for Human Rights, the Deputy Prime Minister for Legislation, the Speaker of Parliament and the members of the parliamentary Human Rights Committee. Their reaction reassured me: they all recognised the need to "pinpoint problems and try to find solutions". Difficulties have to be recognised before solutions can be sought, said Mr Nagy, Chair of the Human Rights Committee. These senior officials and elected representatives consider the laws being drafted or those already in force to be a step in the right direction, but that is not enough, which takes me straight on to my next point: the effective application of laws in the Republic of Slovakia.

4. Effective application of laws

Since 1998, there has been a veritable law-making marathon. When I raised various subjects with the Slovak authorities concerning the full exercise of human rights, in a large number of cases the reply was that the situation would be improved after the entry into force of such-and-such a new law or the amendment of another law. This was true of reform of the police, the role of public prosecutors and judges, the institutions dealing with women and children, the rights of asylum-seekers, the fight against racism, etc.

I am aware of these efforts and appreciate them, but it is essential that the machinery for implementing the laws that have come into force be set in place as soon as possible and that adequate, accessible and applicable protection machinery be set up in those areas where legislation is still at the preparatory stage. This legislative frenzy, which is of course laudable in itself, should not be detrimental to the full exercise of human rights, nor should it serve as an alibi solely in the country's diplomatic interests: the Slovak Republic is quite familiar with the machinery for the protection of human rights, and it is high time it was made fully available to civil society.

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[17] The NGOs pointed out that there was no machinery for the independent monitoring of the police.

5. Human Rights Centre

The Human Rights Centre was set up, on the initiative of the UN Human Rights Commission, the Netherlands and the Slovak Republic, under the 1993 Paris Agreement. This centre is one of the main links in the strategy for promoting and ensuring respect for human rights devised by the government, but its current status, the composition of the executive council, the number of members, etc, are currently the subject of lively debate[18].

Although the discussion is currently in the political arena in the Slovak Republic, I insist that it is essential to promote, study, discuss and exchange ideas for improving the human rights situation in the Slovak Republic. The Human Rights Centre can provide the necessary framework, and I encourage all those involved in this debate to co-ordinate their efforts to enable it to continue its work and develop human rights promotion activities.

6. The ombudsman institution

By getting Parliament to amend Article 151 (a) of the Constitution, the Slovak government has established the legal basis for drafting the law which will enable it to set up an ombudsman. During my talks, I had the opportunity to talk about the setting up of this institution with the Slovak authorities, the representatives of civil society and NGOs.

I was told that the Slovakians did not fully approve of instituting an ombudsman, which they thought would be just one more institution that could be used either for sidelining political figures in disgrace, or by the different political parties for their own ends. Moreover, the existing institutions and new ones distrust each other. For example, in the present case, the ombudsman would be given powers which are currently exercised by public prosecutors and this might give rise to discontent.

To alleviate these difficulties, the government has consulted members of the administration and in particular the Principal State Prosecutor's office. The latter has been asked to submit proposals during discussion of the project. These comments and the draft legislation will subsequently be submitted to Parliament. Mr Migas, Speaker of the Slovak Parliament, said he was convinced that it was important to set up this institution. The NGOs appear to be optimistic and stressed their commitment to establishing such an institution.

According to aforementioned Article 151 (a), concerning the ombudsman, it is clear that his or her main duty will be to protect the rights and freedoms of the entire population and of all persons residing on its territory. The ombudsman will be elected by Parliament for a 5-year term of office and should not belong to any political party or movement. According to the Slovak government, the draft legislation on this institution will be ready by mid-July of this year, so we must wait and see.

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[18] Documents submitted by Ms Tothova; The Slovak Helsinki Committee/Commissioner for Human Rights, 25th May 2001.

IV. Subjects not dealt with in depth during my visit

You may be wondering why I wish to mention matters that I have not dealt with in this report. The answer is simple: I believe it is important to tell people who gave me some of their time or opened their doors to me that I am not indifferent to the difficulties they encounter and that I have not forgotten our conversations. Not in the least.

The situation of the mentally ill and the homosexual and lesbian community, the situation in prisons[19], that of Slovakian refugees returning to the Slovak Republic[20] and the problem of the right of ownership would undoubtedly have been worth examining in greater detail.

For example, I visited a centre for mentally ill children in Bratislava run by the Slovakian Red Cross, which is making a major financial and human effort to keep it open and give the inmates the care they need. I was given to understand that the financial resources for this sort of institution come from private rather than public funds. It is essential that the government assist these institutions.

Although I was able to gather some information, I was unfortunately unable to discuss it in sufficient detail either during my visit or during my talks with the representatives of civil society, so that it was impossible for me to present detailed arguments or information during my conversations with the Slovak authorities. I nevertheless ask them to also take account of the concerns of the above-mentioned categories of persons.

V. Conclusions and recommendations

The Slovak Republic has made considerable efforts over the past ten years, and clearly tribute should be paid to its work. All the reforms undertaken show the government's willingness to meet its political and international commitments.

From the political and social standpoint, both the government and civil society are clearly very concerned by all of these changes. Non-governmental organisations appear to be the best partners to help the government carry out its reforms.

As far as respecting and promoting human rights is concerned, I think it is extremely important to carry out more regular work so that society as a whole shares a sense of responsibility and has a better understanding of its rights and duties.

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[19] Reports by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on the situation in Slovakia in 1995 and 2000.

[20] Programme for Return and Counselling Assistance to Asylum Seekers from the Czech Republic, Romania and Slovakia, currently living in Belgium, Finland and The Netherlands (International Organization for Migration, report and evaluation report 2000 and 2001).

From the talks which I had, I have reached the conclusion that everyone agrees that improving the situation of the Roma/Gypsy community deserves special attention.

Recommendations

It is essential that the Slovak Republic complete its institutional and legislative reforms as soon as possible, and take the necessary steps to give effect to human rights at all levels of society.

While Roma/Gypsies must put a great deal of effort into training and educating the members of their community to play an active part in the relevant institutions, the government must take all necessary measures to ensure their integration into Slovak society.

The Slovak authorities ought to devise practical projects, even if only on a small scale, and submit them to the Council of Europe's Development Bank for funding and so help the Roma/Gypsy community.

The political and law-making authorities are invited to amend the legislation and support institutions which look after women and children in distress so that they can meet the needs of these vulnerable groups.

The authorities should, as soon as possible, also take all necessary steps to ensure that the procedure for acquiring Slovak nationality is in keeping with its international commitments under the European Convention on Nationality.

The Minister of Justice and the Minister of the Interior should set in motion the necessary reforms for guaranteeing the sound administration of justice and effective respect of citizens' rights by the police.

The Slovak authorities are encouraged to do their utmost to ensure that the office of ombudsman is set up in the Slovak Republic in the very near future.

APPENDIX I

Sources documentaires sur la minorité Rom/Tsigane

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REPORT BY MR ALVARO GIL-ROBLES, COMMISSIONER FOR HUMAN RIGHTS,

ON HIS VISIT TO FINLAND

4 - 7 June 2001

INTRODUCTION

1. My visit to Finland from 4 to 7 June 2001, at the invitation of the Finnish Government was principally intended to establish contacts with the Finnish authorities including the Ombudsman, as well as with representatives of civil society (NGOs and other institutions), and to make an assessment of the human rights situation as regards both the relevant legislation and its practical application.

2. I would firstly thank the Finnish authorities for their warm welcome and for the help which they gave me in making this journey. Thanks to their co-operation, I was able to meet all those with whom I wished to confer, besides which I had the opportunity to visit the Kakola prison and detention centre in Turku. My very sincere thanks are also due to Mr Lauri LEHTIMAJA, the Finnish Parliamentary Ombudsman, and to Mr Paavo NIKULA, Chancellor of Justice[1], who provided me with valuable information during our discussions.

Lastly, I also wish to express my deep gratitude to Ambassador Erkki KOURULA, who accompanied me on the visit, and to thank Mr Mika BOEDEKER for his assistance during this mission.

1. National minorities

The national minorities in Finland are the Sami (about 10 000), the Roma (about 10 000), the Jews, the Tatars and the Russians (about 20 000 including 5 000 "Russians of old stock"). Although they actually form a minority, Swedish-speaking Finns are designated, according to the terminology used in Finland, as a second national group owing to the requirement in the Constitution that the State provide for the cultural and societal needs of the Finnish-speaking and Swedish-speaking populations of the country on an equal basis. The Constitution further prohibits different treatment of any person on the ground of sex, age, origin, language, religion, conviction, opinion,

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[1] The Chancellor of Justice is a senior official responsible for overseeing the lawfulness of the official acts of the Government and the President of the Republic, and the lawfulness of the proceedings of the public authorities. These functions and powers resemble those of the Parliamentary Ombudsman. See Sections 38 and 69 and Chapter X of the Constitution of Finland.

health, disability or other reason that concerns his or her person. This prohibition reappears in other statutes, particularly the Penal Code and the new Act regulating employment contracts.

During my talks with the representatives of the above groups, the Swedish-speaking Finns assured me that they had no claims vis-à-vis the State authorities. The other representatives, however, disclosed a number of problems, particularly in connection with articles published by certain important media which perpetuate negative stereotypes regarding minorities, notably Roma, Russians and also Somalis and other minority groups who arrived more recently. The Government's efforts to educate journalists concerning minorities are useful in my view and should be continued.

1.1. Sami

Finland has made major efforts in various areas to improve the protection enjoyed by the Sami, an indigenous people inhabiting Northern Finland, particularly through the passage and implementation of the Act instituting the Sami Parliament. During my discussions I was told that delay had occurred in the settlement of land rights issues and in the definition of the term "Sami", generating tensions in the Sami territory. Considering the importance of land rights for the traditional Sami occupations – reindeer breeding, fishing and hunting – I deem it expedient to arrive at the earliest possible solution, one which should take due account of the Sami culture and of all the interests at stake. In this context, it is important that Finland take steps to ratify International Labour Organisation Convention No. 169 (concerning Indigenous and Tribal Peoples in Independent Countries); consequently, this question should be dealt with beforehand.

1.2. Roma

The Roma, one of the large minorities with some 10 000 members, have had an Advisory Board on Gipsy Affairs since 1956, which since 1989 has enjoyed permanent status as the Advisory Board on Romani Affairs. Despite the efforts of the State authorities in outlawing discrimination, improving access to housing and having the Roma language taught, the Roma seem to face *de facto* discrimination on the part of society, as was also confirmed in a report of the Ministry of Social Affairs and Health ("Strategies of the policy on Roma in 2000") which mentions in particular the low educational standard of Roma and identifies prejudice and discrimination on the part of the majority population as the reasons for their inferior socio-economic position.

On that score, the Roma representative asserted that Roma were subject to discrimination particularly as regards access to the private housing market and to employment (56% of the Roma population were unemployed in 1998).

By way of an example, I heard an account of the case of a qualified nurse to whom the prospective employer had reacted favourably on the telephone. But when she turned up in person, she was informed of some reluctance to employ a Romni who was likely to arrive at work in traditional costume before donning a nurse's uniform.

There is also reported discrimination regarding access to public premises (shops, bars, restaurants etc.). Although legislation against discrimination is adequate, by all accounts its enforcement is not; according to the Roma representative, the penalties imposed, usually fines, have little deterrent effect and indeed their very small amount makes the owners of these premises more inclined to pay the fines than to admit Roma.

A study on the conditions of detention of Roma in prisons reveals that they are sometimes assaulted by the other inmates and the prison authorities, by their own admission, have trouble controlling these assaults. As a result, ostensibly for their own safety, Roma are often segregated from other prisoners and thus isolated.

Although there is statutory provision for teaching of the Roma language in primary and secondary schools, few local authorities have availed themselves of this possibility. Out of a total of 1 500 - 1 700 Roma pupils, only 220 are estimated to benefit from this teaching. A more serious problem is that quite large numbers of children are reportedly placed in specialised education units. The reason adduced is the cultural and linguistic difference between Roma and the population at large, but in my opinion thought should be given to other measures enabling Roma pupils to attend normal classes.

1.3. Russians

According to the Government, Russians in Finland belong to two different groups, viz. "Russians of old stock" to whom the Finnish authorities grant protection under the Framework Convention for the Protection of National Minorities, and recent immigrants whom the Government excludes from the scope of the Framework Convention. As this theoretical distinction seems difficult to apply in practice, its relevance should be re-assessed by the authorities.

According to the Russian representative, one of the problems affecting recent immigrants is the common misconception in the press and hence in public opinion that associates them with members of the Russian mafia and creates a negative image of all Russians.

Furthermore, the vast majority of pupils in Finnish-Russian schools are ethnic Finns learning Russian as a foreign language. Because of this, the representative of the Russian community has complained that schools do not cater for the needs of Russian mother tongue pupils.

2. Situation of foreigners and asylum seekers

2.1. Amendment of the Act concerning foreigners

The number of foreigners in Finland is still low (21 000 in 1990 and 90 000 in 2000 out of a population of 5.2 million), and Finland seldom grants asylum (see Appendix 1 below), although the number of applicants has increased considerably in the last few years. It would seem that Finland amended the legislation on foreigners in July 2000 in order to apply a more restrictive asylum policy. The amendments prescribe a faster

procedure for processing manifestly ill-founded asylum requests and requests by foreigners coming from "safe" countries. In these cases, the Directorate of Immigration is required under the new procedure to issue its decision within seven days following transcription of the requester's interview with the Directorate. Although the requester has 30 days to appeal to an administrative court, the decision takes effect after 8 days have elapsed.

The NGOs have criticised these amendments on four main grounds: i) the accelerated procedure does not secure the right to an appeal with suspensive effect; ii) the amendments introduce a vague notion of "safe country of origin"; iii) legal protection of asylum seekers is limited, given that four out of five procedures are accelerated ones; iv) the more complicated procedures and the shorter time limits would result in a higher demand for legal aid and interpretation.

Indeed, they consider that the concept of a safe country remains obscure and gives rise to fear of the authorities drawing up unofficial lists of countries designated as safe, although according to the letter of the law the question whether or not a country is safe should be determined as each individual case requires. In addition, asylum seekers refused entry to the country under the accelerated procedure will have difficulties in appealing to an administrative court, since the challenged decision is liable to be enforced before the appellant can actually lodge his appeal.

According to the principles of international law, there is no "right" to enter and remain in another country than one's own, and States retain freedom to allow or refuse a foreigner's entry to and residence in their territory. However, regard should be had to the need for effective (and not just legally prescribed) availability of the right to a judicial remedy, within the meaning of Article 13 ECHR, when it is claimed that the competent authorities have infringed or are likely to infringe one of the rights secured by the ECHR. This right to an effective remedy must be granted to all those who wish to challenge a decision on refusal of entry or removal from the territory. Such an appeal should have the effect of suspending the execution of a deportation order at least where a possible violation of Articles 2 and 3 ECHR is alleged.

2.2. Discrimination and xenophobia

Though unable to furnish conclusive proof in this regard, the NGOs claimed that the amendments to the Act concerning foreigners had been prompted by an influx of Roma asylum seekers originating from the countries of Central and Eastern Europe. There were in fact 1 883 applicants in 1999 and 1 973 in 2000, most of whom were supposed to be Roma.

Having to contend with a certain increase in acts of violence of a racist character (in 1997 there were 194 acts of violence against persons born abroad, 319 in 1998 and 281 in 1999), the Government adopted in March 2001 an action plan against ethnic discrimination and racism ("Towards ethnic equality and diversity – proposal for a Government programme of action against ethnic discrimination and racism"). This plan, covering the years 2001-2003, takes in new immigrants, immigrants who have resided for some years in Finland and second generation migrants, and Roma. It

comprises national, regional and local measures and its main aim is to promote ethnic equality and diversity. The plan will be the subject of an evaluation report to be presented by the Government to Parliament in 2002. Likewise, the institution of an anti-discrimination Ombudsman is planned for 1 September 2001.

3. Conscientious objectors

The conscientious objectors' NGO called my attention to problems regarding armed national service and civilian service. Inter alia, it complained that the duration of alternative civilian service and the term of imprisonment for those refusing to perform it remained excessive. There is also alleged discrimination in the conditions of execution of sentences for conscientious objectors, owing to the different treatment which they receive. Indeed, according to the statistics issued on 1 June 2001, 18 conscientious objectors were serving their sentence under semi-custodial conditions while another was confined to a closed prison.

Following a 1997 reform, the periods of armed national service are respectively 180, 270 or 362 days, compared to 330 days for non-combatant national service. The duration of alternative civilian service, however, is 395 days. According to the statistics, the term of national service actually performed averages 8.5 months.

Assuming that the duration of alternative civilian service is still 395 days, this makes it 1.5 times longer than the average of the various periods of national service. It can nevertheless last up to 2.5 times longer compared to the shortest duration of a period of national service (180 days). This difference is probably due to the official desire not to make alternative civilian service more attractive than national service.

The NGOs felt that the duration of civilian service and of national service should be in reasonable proportion. Amnesty International considers that civilian service should not be more than 1.5 times the duration of national service.

In my opinion, regarding civilian service and its duration, the Government of Finland should take into consideration the Macciocchi resolution approved on 7 February 1983 by the European Parliament, according to which the duration of alternative civilian service ought not to exceed that of military service, and especially the recommendation of the Committee of Ministers of the Council of Europe of 9 April 1987 and Resolution 1998/77 of the United Nations Commission on Human Rights of 22 April 1998 as it relates to civilian service. According to these texts, the duration of civilian service, in order to be deemed "reasonable", should not be "punitive" by comparison with that of military service.

Otherwise, "absolute" objectors receive a 197 day prison sentence, amounting to half the duration of the alternative civilian service (395 days). I consider it important to seek other methods than the strict application of the Penal Code to "absolute" objectors, which in my opinion is not the appropriate way to deal with this question.

4. Children's rights

Certain NGOs together with Ms Riitta-Lena PAUNIO, Deputy Ombudsman responsible for protection of children's rights, drew my attention to a number of questions concerning children.

While highlighting the priority which the child's best interests should receive in any action by society, the Deputy Ombudsman emphasised, firstly, the importance of the family as the chief guardian of the rights of the child and, secondly, the subsidiary character of State intervention. Although in most cases (44 000 cases in 1999) the authorities provide families in difficulty with support, in 1999 there were nevertheless 1 300 orders giving the authorities custody of children (almost 200 of these being made against the child's will)[2]. The Deputy Ombudsman therefore adverted to the problem of the balance to be struck between cases where the authorities do not act promptly enough to protect a child and those where they act too hastily. However, the competent authorities also informed us that the child's welfare is not adequately considered in practice, particularly by comparison with parents' rights. At all events, the fact that several cases in this connection are pending before the European Court of Human Rights against Finland seems to indicate that this balance is occasionally disturbed by the actions of the welfare services.

In the case of placement with the public assistance service, in a home or with a foster family, the primary question is often preservation of parent-child links. The authorities do not appear to consistently provide the requisite support for this purpose, according to the Deputy Ombudsman. She has already impressed upon the Government the need to amend the relevant legislation in order to ensure better protection of the right to respect for family life. The Government informed me at the time that it was preparing legislative amendments on maintenance of relations between child and parents.

The Deputy Ombudsman also mentioned to me the necessary psychiatric treatment for children suffering from mental illnesses. She said she had repeatedly asked the authorities to take the requisite measures to ensure that dangerous subjects or those in need of special treatment receive care in keeping with their condition.

The Government should bear in mind the concerns expressed by the Deputy Ombudsman, and adopt the necessary measures for ensuring as far as possible the proper balance between public intervention and the right to private and family life, also having regard to the judgment of the European Court of Human Rights in the case of K. and T. v. Finland (Application No. 25702/94) on 12 July 2001.

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[2] In 1999 a total of 12 370 children were placed with the public assistance service, 1 183 of them in the custody of the authorities against their will.

CONCLUDING REMARKS AND RECOMMENDATIONS

The standard of human rights protection in Finland is clearly high. However, a number of problems remain, and certain issues have yet to be resolved by the authorities, especially as regards the protection of foreigner's rights (most of all asylum seekers), protection of national minorities and conscientious objectors, and safeguarding of children's rights.

Speedy implementation of Action Plan 2001 will no doubt make it possible to solve many problems affecting foreigners and national minorities, particularly as regards furtherance of equality and ethnic diversity. It would nevertheless be expedient for the Government to take steps to ratify International Labour Organisation Convention No. 169 (concerning Indigenous and Tribal Peoples in Independent Countries).

The Government should also reconsider its treatment of conscientious objectors with reference to the duration of civilian service, in order to ensure that it is "reasonable" and not "punitive" by comparison with the duration of military service. In the case of "absolute" objectors, a more suitable solution than strict application of the Penal Code should be found.

It appears necessary that the competent authorities re-assess their criteria regarding placement of children, in the light of the problems raised in this report and the case-law of the European Court of Human Rights. They should therefore, as a matter of importance, take measures to preserve as far as possible the proper balance between public intervention and the right to private and family life, and to encourage the maintenance of relations between a placed child and its parents.

APPENDIX I

Asylum-seekers and refugees

	1992	1993	1994	1995	1996	1997	1998	1999
Asylum-seekers	3634	2023	839	854	711	973	1272	3106
Decisions on asylum 1)								
– Asylum granted	12	9	15	4	11	4	7	29
– Residence permit granted	564	2073	301	219	334	277	372	467
– No asylum or residence permit granted	1344	1435	492	276	248	278	240	1330
Family reunification								
– Opinions in favour	–	1208	323	250	226	509	240	*185
– Adverse opinions	–	838	765	880	513	299	769	*362
Quota	500+	500+	500	500+	500+	500	600	650
– Additional quota	200	200	–	500	500	–	–	–
Refugees received by municipalities 2)	2349	3689	1412	1415	1193	1406	958	1189
Immigrating as refugees, from 1973–	6361	10050	11462	12877	14070	15476	16434	17623

(1) Decisions of the Directorate of Immigration. (2) Refugees by quota, asylum-seekers having received a favourable decision, persons admitted under the family reunification scheme.

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Last Modified: 8.5.2000
Statistics Finland/Reference books

REPORT BY MR ALVARO GIL-ROBLES, COMMISSIONER FOR HUMAN RIGHTS,

ON HIS VISIT TO TURKEY

3-6 December 2001

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1. Ladies and gentlemen, I am taking advantage of this opportunity to give you a brief account of my visit to Turkey last week (from 3 to 6 December 2001), on which I was accompanied by Mr Bülent Gökay, Head of the Council of Europe Department in the Turkish Foreign Ministry, and two colleagues from my Office, MM. Müller-Rappard and Mora. As I told the Turkish authorities beforehand, I had no intention of making an in-depth assessment of the general situation regarding respect for human rights in Turkey, since that had already been done very recently, on several occasions and on several levels. You are familiar with the results – the findings of the experts appointed to assess Turkey's compliance with the European Social Charter, the comments of the CPT, our Assembly's decision to pursue the monitoring procedure in close co-operation with the Turkish Delegation (following its adoption, on 28 June 2001, of Recommendation 1529 (2001) on "the honouring of obligations and commitments by Turkey" and Resolution 1256 (2001) on the same question) and also, of course, your own decision, i.e. the Committee of Ministers' reply (of 18 November 2001, Doc. 9206, to written question No. 390, Doc. 8964, by Mr Jurgens and others) concerning application by Turkey of the judgments of the European Court of Human Rights. To this should be added certain information published by the Office of the United Nations High Commissioner for Refugees and, above all, the voluminous regular report for 2001 on Turkey's progress towards membership of the EU (doc. SEC(2001)1756), published by the EU Commission on 13 November 2001, which details the latest developments.

2. The purpose of my visit, the programme of which is appended, was to initiate contacts with the Turkish authorities, and also with representatives of Turkish civil society, so that I could form a personal idea of the scope of the 34 or so amendments made very recently, on 3 October 2001, to the 1982 Turkish Constitution, and particularly the arrangements and timetable envisaged for passing of the necessary implementing legislation, which is now being drafted. The vital thing, of course, is the date from which, and the spirit in which, these constitutional amendments - mostly designed to strengthen the protection and improve the exercise of human rights in Turkey (e.g. reduction in the length of detention on remand, the public use of languages other than Turkish) – will become effective and be implemented in practice.

3. The officials I talked to spoke, in this connection, of a "definite and steadfast" political determination to improve human rights protection in Turkey, but they also, I felt, tempered their optimism with pragmatism, if not actual caution. As they see it,

improving the situation – which includes adopting the national legislation needed for that purpose – will chiefly depend on there being no return to the earlier climate of internal violence (this affects certain restrictions on civil and political rights), but also on the national political situation (since government bills have to negotiate a path through shaky parliamentary coalitions), the support and co-operation of civil society, economic recovery (this affects the guaranteed protection of certain economic and social rights), and even the settlement of certain conflicts in the region East of Turkey's borders (this affects, for example, resumption of a large part of Turkey's exports to Iraq).

4. I had the impression that this official reading of the situation was shared by Mr Paker, President of the Turkish Economic and Social Studies Foundation (speaking for employers), and largely accepted, too, by Mr S. Çelebi, President of the Confederation of Progressive Trade Unions – DISK (speaking for most of the trade unions). It was essentially criticised and questioned, however, by the NGO representatives whom I met the day before my official talks began. The latter were deeply concerned at the maintenance of various restrictions on civil, political and cultural rights (such as freedom of assembly and expression) in practice. They felt that these restrictions were disproportionate to the security risks faced at present by the "secular and indivisible" Turkish state, and were not justified by any pressing economic and social needs rooted in the current economic crisis.

5. The representatives of the non-Muslim minorities (i.e. Jewish, Armenian and Greek Orthodox, under the 1923 Treaty of Lausanne) did not raise these particular problems, but they did speak of the complications, and indeed difficulties, caused by the fact that their religious communities do not, as such, possess legal personality – which means, for example, that they are not allowed to have bank accounts, own property or accept gifts of land or buildings.

6. In response to this information, and to these explanations and arguments, many of them interesting and cogent, I obviously referred to some of my Office's recent activities, such as the seminars on the role of Ombudsmen in times of crisis, the rights of old people in institutions, or the arrival of foreigners on our member states' frontiers and, in some cases, their forced return. All of these activities reflect my own deeply-held conviction that a lack of material resources may not be used to justify sundry violations of fundamental rights, including human dignity, and that all restrictions on such rights must be provided for in law, proportional to the aims pursued, and subject to regular monitoring by the authorities concerned, and particularly the courts. I also insisted strongly on the exploratory nature of my first official visit to Turkey, on the need for a rapid transition from a period of violence to one of normalcy, with all the guarantees which that implies, and thus on the need to lose no time in implementing the recent constitutional amendments, and on my own wish to do everything in my power to support the efforts which the Turkish authorities are already officially committed to make in order to promote effective respect for human rights in the country.

7. For this purpose, I proposed that a select seminar be held in Turkey, before summer 2002, on the role and working methods of Ombudsmen in several western countries, the aim being to contribute to public discussion and adoption by Parliament of the bill on this question which it is currently examining. I am counting very much on the active presence of Turkish parliamentarians at this seminar, although I have not yet had an opportunity to discuss this with the Turkish parliamentarians in our Assembly. I also suggested that a second, later seminar in Turkey should look at ways of improving co-operation between the authorities and civil society, for the purpose of protecting human rights in practice. The government and civil society representatives, with whom I raised the matter, all confirmed their willingness to explore this question, and their interest in doing so at a joint meeting – practical details of which have still, however, to be agreed. The fact that these two projects have, in principle, been accepted seems to me to augur well for my commitment to promoting and protecting human rights in Turkey. It simply remains for me to ask the Permanent Representative of Turkey to convey my thanks to his authorities for their help and support in organising my recent visit to their country so efficiently.

REPORT BY MR ALVARO GIL-ROBLES, COMMISSIONER FOR HUMAN RIGHTS,

ON HIS VISIT TO BULGARIA

17 – 20 December 2001

I. Introduction

Bulgaria became a member state of the Council of Europe on 7 May 1992, on which date it ratified the European Convention on Human Rights and recognised the right of individual petition and the compulsory jurisdiction of the Court. On 7 May 1999 it ratified Protocol No. 6 to the Convention, abolishing the death penalty.

As a candidate for European Union membership, Bulgaria has in recent years undertaken far-reaching institutional reforms so as to adopt the EU *acquis*. It has also pursued a very active policy of cooperation with Council of Europe bodies and directorates, with the aim of strengthening democracy and the rule of law. Bulgaria's Minister for Foreign Affairs invited me to visit the country from 17 to 20 December 2001 to take stock of this process of complex institutional reform and economic transition. I was accompanied on my visit to Sofia by Mr Fernando Mora, a member of my office.

I first wish to thank the Minister for Foreign Affairs, Mr Solomon Passy, for the resources he made available throughout my visit, arranging for me to be accompanied by Mr Valeri Yotov of the foreign ministry's Directorate of Human Rights and by an interpreter, Ms Roumiana Stantcheva. I would also like to thank the Permanent Delegation of Bulgaria to the Council of Europe and the authorities within the country for their availability and cooperation throughout preparations for the visit and the visit itself. Lastly, I have to express my regret that adverse weather conditions prevented me from making a planned visit to Kardjali in the South-East of the country on 18 December.

During my stay I had meetings with members of the government, representatives of civil society and religious leaders. I also visited an institution for the mentally ill, a reception centre for refugees and a Roma/Gypsy neighbourhood of Sofia[1].

During discussions with my Bulgarian correspondents concerning the specific problems raised by the current situation with regard to protection of human rights (section II of this report), I based my position on work done by Council of Europe bodies and directorates, reports by international non-governmental organisations (NGOs) and the European Union report of November 2001 on Bulgaria's progress

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[1] The programme of the visit to the Republic of Bulgaria from 17 to 20 December 2001 is appended.

towards accession[2]. I also wish to comment here on the Ombudsman institution (III), before pointing out other matters of national interest (IV). Lastly, I will inform you of my recommendations (V).

II. Current situation with regard to protection of human rights

Bulgaria has unquestionably implemented in-depth reforms to guarantee respect for and full enjoyment of human rights. However, on the basis of both the talks I had locally and my own impressions, I have to say that an additional effort is necessary in the specific areas mentioned here. There is a need to continue reform of the justice system (1) and reorganisation of the police (2), so as to combat the abuses the latter are charged with. Minorities must be afforded greater protection, in particular the Roma/Gypsy community (3). I also wish to raise the issues of freedom of religion (4) and of guarantees concerning the rights of the mentally ill (5). Lastly, I will address the situation of refugees (6).

During my discussions on all these subjects with the Bulgarian authorities, in particular Mr Passy, the Minister for Foreign Affairs, I was greatly impressed by the determination of the government and members of parliament to find solutions and to work in an open manner. Following our conversations, the report requested by the Monitoring Committee of the Parliamentary Assembly was immediately sent to him. The government has also decided to make public the reports by the European Committee for the Prevention of Torture (CPT) on the situation in Bulgaria and has contacted the CPT to that end[3].

1. Reform of the justice system

This question, already dealt with by the Parliamentary Assembly when it examined Bulgaria's honouring of its obligations and commitments[4], remains a subject of controversy and considerable concern. I discussed it with the Minister for Justice on his visit to the Council of Europe in Strasbourg a few weeks before I left for Bulgaria, and raised it again in Sofia with Mr Solomon Passy, Minister for Foreign Affairs, Mr Boyko Kotzev, Deputy Minister of the Interior, Mr Ognyan Guerdjkov, the Speaker of the Bulgarian National Assembly, and Mr Hristo Danov, the President of the Constitutional Court, as well as with representatives of civil society.

It must be said forthwith that Bulgaria has made considerable efforts in the legislative sphere, notably by deciding to implement a strategy to reform the judicial system and adopt the EU *acquis* in connection with the accession process. It has also taken measures to change the system of appointment of members of the judiciary, introducing competitions, whereby applicants will be selected on the basis of their skills and experience, which should prevent some unorthodox practices. This reform is all the more necessary in that, as can be seen from certain reports and my

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[2] Regular report on Bulgaria's progress towards accession, Brussels, 13.11.2001, SEC (2001) 1744

[3] With the green light from the authorities, on 28 January 2002 the CPT published its report on Bulgaria, following the visit it had made to that country from 25 April to 7 May 1999.

[4] Doc. 8616 of 17 January 2000 and Recommendation 1442 (2000)

discussions with civil society representatives, the judicial system is apparently prey to problems of corruption. The Bulgarian government has therefore adopted a nationwide Anti-Corruption Strategy, also with the aim of avoiding suspicions and possible groundless accusations of misconduct against members of the judiciary. A coordinating committee responsible for implementing this strategy has been established within the Ministry of Justice. The objective is to reach all parts of the administration.

According to my correspondents in Sofia, it is also important to amend certain laws. Firstly, the decision to place someone in an institution for the mentally ill, even for a period not exceeding three months, should not be taken by a prosecutor alone, without seeking expert advice. Secondly, to end police violence, it is essential that court-appointed counsel be present during police custody and throughout criminal proceedings. This would moreover make it possible to know the places of detention of people who have been arrested or imprisoned. Although the Code of Criminal Procedure stipulates that counsel shall be present at the various stages in proceedings, it is important to note that, according to human rights organisations, they are currently absent in many cases.

2. Reorganisation of the police

The police, who are severely criticised by the NGOs, are charged with exceeding their powers. They are accused of making disproportionate use of force - misuse of official weapons, use of torture[5] (during police custody) - and of victimising vulnerable groups such as the Roma/Gypsy community and homosexuals, to mention but those two. All these problems are said to be due to disrespect for human rights within a police force that still adheres to a military model. It is further argued that Article 80 of the Criminal Code on use of official weapons allows the police excess freedom of action and encourages abuse. Article 162, which punishes discrimination on grounds of nationality or race, is considered ineffective in combating ethnic violence, since it is not sufficiently clear and leaves too much room for interpretation.

The Deputy Minister of the Interior, Mr Boyko Kotzev, with whom I primarily discussed these issues, assured me of the government's determination to end these abuses. He stressed that far-reaching reforms were in progress, mainly through the government's framework programme to guarantee protection of human rights[6]. A Human Rights Committee had been set up within the police force and was responsible for making recommendations, dealing with complaints against the police, devising training schemes in human rights matters (in particular in connection with arrest and custody procedures) and sanctioning abuses. It had also been decided that the entire police force would be reorganised and police responsibilities and powers, ranks and careers would no longer be modelled on the armed forces. The deputy minister also pointed out the importance of having law enforcement officers from different ethnic

[5] See the CPT's report published on 28 January 2002

[6] The programme is entitled "Guarantees for the Protection of Human Rights by Law Enforcement Authorities in the Republic of Bulgaria".

backgrounds, citing the example of the Roma/Gypsy community. 92 members of this community already numbered among the police. It goes without saying that this figure should be increased.

3. Protection of minorities and the specific case of the Roma/Gypsy community

3.1 Protection of minorities

The Republic of Bulgaria has often been cited for the exemplary cohabitation of its ethnic communities, above all in comparison with recent events in the Balkans. However, my own observations in the field and my discussions with civil society representatives and members of parliament show that much remains to be done regarding protection of minorities. From a purely legal standpoint, Bulgaria has signed and ratified a significant number of international instruments on protection of minority rights, but, when it comes to applying these at national level, a genuine government strategy is lacking. Some non-governmental organisations talk of "aggressive nationalism and xenophobia". All consider that the treatment of the Roma/Gypsy community is again becoming a prime concern.

I discussed these matters with the Speaker of the National Assembly and subsequently with eight members of the parliamentary Committee on Human Rights of different political persuasions. One committee member pointed out that parliament had not yet been able to focus on certain themes of national importance and had put to one side the examination and passing of important pieces of legislation, such as the laws on equal opportunities, on combating discrimination and on the Ombudsman institution. Another committee member said that certain problems must be debated and solved at national level, while acknowledging that the Roma/Gypsy minority issue was still not dealt with in an appropriate manner, since the police did not treat this minority as it should.

Another committee member considered that progress had been made on the minorities question in recent years. He thought the current situation differed considerably from that of five years ago. He also mentioned the fact that, although they were better integrated into society, Bulgarians of Turkish origin were under-represented in the civil service. He would like to see events highlighting cultural diversity held more often. Another member said that the country's difficulties were delaying certain reforms, but these were nonetheless in the pipeline and, with a modern legal framework, implementation would be easier.

Lastly, all the members concurred that it was important to do everything possible to improve living conditions and legislation to combat racial discrimination.

3.2 The specific case of the Roma/Gypsy community

In any study of the situation of minorities in Bulgaria, respect for the rights of the Roma/Gypsy minority is unquestionably a prime consideration[7]. I had a meeting with representatives of this community at the primary and secondary (vocational and technical) school "Todor Kablechkov", which is located in the "Faculteta" neighbourhood, part of the "Krasna polian" district of Sofia.

a. The material situation of the Roma/Gypsy community

I thank the Roma/Gypsy community for the time they spent showing me round this neighbourhood, which is apparently one of the least badly off in Bulgaria, and introducing me to its inhabitants. I also thank them for organising a meeting with municipal and NGO representatives and the head of the school. What did I see on my visit of Faculteta? This neighbourhood, which has a population of about 12,700, is utterly deprived. It has no drinking-water nor electricity supply, no sewer system and no health services. Living conditions are very harsh. Most of the dwellings are built of sheets of cardboard, pieces of wood and plastic sheeting, whereas on the day of my visit the temperature was -3 centigrade. Unemployment stands at 80%, a rate which the Bulgarian authorities ascribe to the fact that members of the Roma/Gypsy community lack qualifications, a situation which has lasted for generations. There is hence a need for schemes to assist this community to gain access to the labour market and to combat all possible forms of discrimination in employment matters.

The school, which has 1,200 pupils, stands in the centre of the neighbourhood and provides an education from primary to technical/vocational secondary level. The school is naturally no exception and also encounters serious economic and structural difficulties. It is not self-administering from a financial standpoint. For example, it cannot manage its own budget for lack of a bank account. The municipality currently takes charge of financial management, which poses problems since the community's needs and municipal policy do not always coincide. On the day of my visit, the school had received 700 snacks (for 1,200 pupils) from a foundation which has since ceased to exist due to shortage of funds. It must not be forgotten that, in the vast majority of cases, this is the child's only meal of the day. With regard to material conditions, the headmaster informed me of the difficulties he had encountered in having work done on eight classrooms, which were in a very poor state of repair, and on the 25 other classrooms to prevent their condition from deteriorating.

On the issue of access to education, it has been noted that the schooling available for Roma/Gypsy children is of poorer quality, primarily because the government apparently spends less on the schools concerned. This means that young Roma/Gypsies have problems in finding places in higher education on leaving technical school. For this reason it is necessary to combat the tendency to set up segregated schools for children from minority, immigrant or refugee backgrounds,

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[7] See, in particular, the Open Society Institute, "Monitoring the EU accession process: minority protection 2001", EU Accession Monitoring Programme, p. 76 onwards, and "On the Margins, Roma and Public Services in Romania, Bulgaria and Macedonia".

since that leads to exclusion, as in the case of the young Roma. This situation facilitates the emergence of *de facto* educational ghettoes, resulting in unacceptable discrimination. It is therefore absolutely essential to pursue an integrationist educational policy, where all children receive the same education and are entitled to attend the same schools, whether they are Bulgarian, of Bulgarian origin or of foreign origin. This should be the case even where it proves necessary to provide extra remedial teachers for children with special schooling needs, so as to ensure equality of opportunity. The government has drawn attention to the initiatives taken by the Ministry of Education with certain NGOs to end segregation in Bulgaria's schools.

I met a number of Roma/Gypsy representatives who were very energetic and committed to reform despite the unfavourable circumstances. They do everything they can to keep children in school, which is no easy task as the level of parental unemployment means that many children, some of whom are very intelligent, have to leave school in order to earn their daily bread. Attempts are also made to motivate parents to assume their responsibilities and to encourage teachers originating from the community to remain there, despite the poor quality of life, and use their skills for the general good.

Lastly, following my visit the headmaster sent me copies of letters he had written to the authorities, requesting assistance in carrying out urgent repair work in the school. I was also informed of the government's reply, in which it stated that it was ready to come to the school's assistance depending on its possibilities. It might be advisable to apply for a loan from the Council of Europe Development Bank for this purpose, as a way of solving the problem of building and maintaining schools throughout Bulgaria.

b. Framework programme for integrating Roma/Gypsies into Bulgarian society

I mention this framework programme[8] because in the course of my many discussions on the situation of the Roma/Gypsy community in Bulgaria I realised that everyone agreed that what was lacking was a "legal framework", "a real project", "a true strategy", "genuine will", "consultation", and so on, and yet I had been informed that on 7 April 1999 the representatives of the Roma/Gypsy community and the Bulgarian government had signed the "Bulgarian Framework Programme for Equal Integration of Roma: participation in the policy-making process", an agreement which had been approved by over seventy Roma/Gypsy organisations throughout Bulgaria, the then Chair of the Governmental National Council for Ethnic and Demographic Issues and the Deputy Prime Minister. The Council of Ministers (cabinet) adopted this framework programme on 22 April 2001. It constitutes one of the greatest achievements of the Bulgarian Roma/Gypsy community and could serve as an example for other countries in Europe.

[8] See "The Bulgarian framework programme for equal integration of Roma: participation in the policy-making process", Rumyan Russinov, in "Roma rights", nos. 2 and 3, 2001, p. 50 onwards, European Roma Rights Center, Budapest, Hungary

The truth of the matter is that, although the framework programme is the result of a formal agreement with the government and answers the expectations of both the Roma/Gypsy community and the authorities, it has so far come to nothing. The authorities, including the Deputy Prime Minister, Ms Lydia Shouleva, have pleaded a lack of resources and of support from donor countries and international organisations. I nonetheless think that what is really lacking is the political will, and this was confirmed by the members of the Committee on Human Rights of the National Assembly. Parliament should begin by passing laws on combating racial discrimination, on equal opportunities and on the Ombudsman institution, so as to create a situation conducive to the implementation of this framework programme.

4. Religious freedom

The Bulgarian Constitution guarantees freedom of religion, but describes "Eastern Orthodox Christianity" as the country's "traditional religion". The government consequently gives financial support to the Eastern Orthodox Church and also to a number of other religious communities regarded as having a historically important place in society - the Muslim community, the Roman Catholic community and the Jewish community. The Chief Mufti of Bulgaria, Mr Selim Mumum Mehmed, informed me that there were 1,200,000 Muslims in the country, who practised their religion in a normal way.

Representatives of civil society and of minority religions have stated that the government in practice restricts the exercise of religious freedom by refusing to register certain religious groups and banning non-registered groups from holding public religious services[9]. The question of the restitution of church property has also been raised[10]. It must not be forgotten that during the Communist era the state confiscated a large part of such property and only about 20% has been returned so far. In July 2001 some forty religious leaders called on the government to find a solution to this problem as quickly as possible.

All these problems were confirmed at the meeting which the Directorate of Religious Denominations organised for me with about twenty religious leaders in Sofia. At the same time, it was apparent that relations between the state and the different religious communities have been improving for some time now. For instance, during the debate on the new Denominations Act, some majority religious groups, which had initially been refused the right to participate, were in the end allowed to give their opinion on the draft text before the bill was passed. The government therefore revised its position and broadened the debate, and the religious communities see this as a sign of significant progress in their relationship with the state. In general, the various communities concerned have noted an improvement but are waiting for answers to tangible problems, such as allowing Islamic education in schools for those pupils who

[9] Report by the United States Department of State, October 2001
[10] "Religious freedom and Church-State relations", report by the Bulgarian Helsinki Committee, October 1999

so wish, the restitution of church property and licensing of religious broadcasts on radio and television. My correspondents unanimously agreed that the Directorate of Religious Denominations had in recent months succeeded in establishing a basis for discussion and that the Denominations Act would further improve matters.

5. The rights of the mentally ill

This issue[11], which the CPT already addressed when it visited Bulgaria in 1999, was raised anew during my discussions with civil society representatives. I therefore decided forthwith to visit an institution for mentally ill male adults (aged 18 or over) in Podgumer near Sofia, where 129 people are confined[12].

I thank Dr Lulchev, the Director of this institution, and his team for the time they spent explaining the general situation to me, arranging for me to meet patients and showing me round the facilities. Although my visit had been announced only the day before, I noted that the premises were very clean and meals for the day were ready in the kitchen. However, despite all the efforts by staff and patients to show the institution in its best light, there is no denying that living conditions there are dreadful. The state of the installations is more than run-down, the rooms are overcrowded, and there is a glaring shortage of sanitary facilities, medication, staff, treatment possibilities, leisure activities and, increasingly, food. In brief, they lack for everything. After such a short visit, I am unable to say whether these people are suffering "inhuman treatment" within the meaning of Article 3 of the Convention. Nor can I assert that they are not. However, it is clear that their living conditions and sufferings are unimaginable. It should not be forgotten that these people have nowhere elsewhere to go, that they have no other alternative than this institution.

At a short distance from these dilapidated facilities stands another building, which, according to the Director, was constructed two years ago by the government in order to transfer all the patients there. I also visited this building. However, the transfer has not been possible so far because of a lack of equipment and supplies for the patients' rooms, the kitchens, the sanitary facilities, and so on.A further investment of about € 300,000 is needed to make this new building operational. I had an opportunity to discuss this situation, among others, with Mr Gueorgui Parvanov, President of the Republic. I hope that the necessary funding has been found in the meantime. If not, I appeal to the authorities and foreign donors to seek a solution, as part of the scheduled investments in improving Bulgaria's health and welfare system, so that these people can be transferred as soon as possible. I am thinking, in particular, of the Council of Europe Development Bank, from which the government might seek a loan in order to find a global solution for all the institutions where people with mental problems are living under similar conditions.

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[11] See report CPT/Inf (2002) 1 and the report by the Bulgarian Helsinki Committee (www.bghelsinki.org).

[12] I thank the Bulgarian Helsinki Committee for the reports it sent me concerning the situation in Podgumer following the visits it made in November 2001 and on 25 January 2002 (report of 31 January).

I also know that Bulgaria recently launched a drive to improve the living conditions of the mentally ill and enforce respect for their rights[13]. From what I saw in Podgumer alone the situation is calamitous and, in my opinion, requires urgent action. I am aware of the great economic difficulties confronting the entire country, but I hope that the spirit of solidarity - national and international - will nonetheless prevail, so that the mentally ill in Bulgaria can be given decent living conditions.

6. The situation of refugees

I discussed this subject with members of the government and NGO representatives, and I visited a hostel for refugees in the vicinity of Sofia. This gave me a better idea of the current situation and of the work being done by the National Agency for Refugees and the office of the United Nations High Commissioner for Refugees (HCR)[14].

The main problems raised concerned the procedures at refugees' disposal, in particular the alleged bias of the judicial authorities, who are said to give files only cursory examination; accommodation[15]; and access to registration points. There also appears to be a lack of coordination between the National Agency for Refugees and the national headquarters of the border police. On the other hand, cooperation between the agency, the HCR and NGOs has brought results which all my correspondents hailed. Moreover, thanks to this cooperation, refugees' living conditions are constantly improving.

I thank Mr Boyko Antonov, the head of the National Agency for Refugees, and his team for all the information provided, which enabled me to understand the current situation in Bulgaria in this field. I noted, first and foremost, that the agency has a real idea of what it wants to achieve and of how to attain its objectives. The staff are also highly competent and dynamic. It merely remains for me to voice the hope that solutions will be found in the near future so that: the expedited procedure introduced can be brought more into line with generally recognised standards and with respect for refugees' rights; hostels are built where they are needed (primarily in border areas); the right to a fair hearing (with the assistance of an interpreter for those who do not speak Bulgarian) is guaranteed throughout the procedure, and it is ensured that asylum seekers understand what is happening; the state does not make do with legislating but focuses on tangible, effective application of the legislation passed. Above all - and this is very important - I trust that, in adopting the EU *acquis*, Bulgaria will not take up the practice of expulsion "at the arrival gate" (adopted by a growing number of states in the Schengen area). On this subject, I wish to refer to my recommendation of 19 September 2001, in which I called on member states to respect the fundamental rights of all persons arriving at their borders. Lastly, the National Agency for

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[13] Bulgarian Helsinki Committee

[14] Summary brief on UNHCR in Bulgaria, 2001. Also see Luise Druke, UNHCR representative in Bulgaria: www.unhcr.bg

[15] See the report "Internal expert meeting on housing for refugees in Bulgaria" (Sofia, 8-9 May 2001), on the seminar organised by the Council of Europe and the Bulgarian Agency for Refugees.

Refugees should have representatives in the airports and be involved in the procedure applicable to persons (with or without papers) claiming refugee status on entering Bulgaria.

III. The Ombudsman institution

The existing mechanisms to protect individuals against malfunctioning of the administration do not always work fast enough or in an effective, appropriate manner to counter abuses of power, instances of corruption and breaches of fundamental rights. It was in 1998 that the Center for the Study of Democracy (CSD) launched an initiative to introduce the Ombudsman institution in Bulgaria. To that end, it appointed a group of experts to investigate and study the functioning of this institution in other countries, in particular the new democracies, with a view to preparing a draft law.

In 1999 and 2000 a significant number of meetings were held with members of the parliamentary Committee on Human Rights, Ombudsmen from Sweden, Spain and Greece and Canadian experts, who issued observations and recommendations concerning the draft law. In November 2000 this draft was brought before parliament by members of the Union of Democratic Forces group. In December 2000 another bill was tabled, this time by two MPs from the Democratic Left alliance. Unfortunately, parliament was unable to pass the legislation before the elections of June 2001. In the meantime the CSD continued its work and amended its initial draft, which it submitted to the new parliament on 20 August 2001. This latest version is more specifically based on the Scandinavian model, and also those of other European countries, while taking account of Bulgarian particularities. The draft text has been presented to Mr Jacob Soederman, the European Mediator. The two bills are again before the new parliament and have been discussed in committee, but neither has been passed. Lastly, the members of the Bulgarian delegation to the Parliamentary Assembly of the Council of Europe sought an opinion from the Venice Commission. The comments made by the Commission's two rapporteurs[16] have been forwarded to the Bulgarian authorities.

The NGOs and the members of the parliamentary Committee on Human Rights are highly critical of the turn taken by the legislative process in the case of the Ombudsman bills. They believe that there is no real political will to pass the legislation (or, moreover, other laws, such as that against discrimination). While preparing this report, I learned that in the course of the parliamentary debate a third bill on the Ombudsman institution had been tabled by members of the Simeon II National Movement[17], and would be discussed for the first time on 1 and 2 February 2002 by the parliamentary committee dealing with civil society issues.

[16] Ms Serra Lopes and Mr Christopoulos
[17] Dr Maria Yordanova, Head of the Law Program, Center for the Study of Democracy, Sofia, Bulgaria

After nearly four years of discussions and to and for, I think the competent authorities must now finalise the preliminary studies and move on to the stage of actually passing legislation introducing the Ombudsman institution in Bulgaria. I call on parliament to surmount the obstacle of the political origin of the texts and to adopt, at long last, a law consistent with the standards of the Ombudsman institution.

IV. Other matters of national interest

In the course of the visit civil society representatives, trade unionists or mere members of the public drew my attention to many other very interesting issues. Unfortunately, I did not have sufficient time to broach these matters with the relevant authorities.

Trafficking in human beings is one such subject, and Bulgaria is apparently a country both of origin and of transit. I was told that corruption is still widespread in public affairs and affects a wide variety of fields such as politics, the media, the justice system and business circles. Racial and sex discrimination and discrimination against homosexuals are very much live issues and cause considerable public concern. The difficulties of providing decent retirement pensions and combating unemployment are frequently raised. There would appear to be serious problems of freedom of the press, as regards appointments to state supervisory bodies. Lastly, the situation of Bulgarians of Macedonian origin should be more closely examined.

V. Recommendations

Despite a very difficult economic situation, the Republic of Bulgaria must make additional efforts to:

1. Continue reform of the justice system and the police so as to, firstly, enhance the rule of law and certainty in legal matters and, secondly, ensure the presence of counsel throughout criminal proceedings and during police custody.

2.. Implement the Framework Programme for Equal Integration of Roma and introduce a coordinated policy in respect of all minorities.

3. Pass the law on the Ombudsman institution, the law combating racial discrimination and the law on equal opportunities.

4. Improve living conditions in institutions for the mentally ill, in general, and that in Podgumer, in particular. The same applies to the building and rehabilitation of schools, especially the Roma/Gypsy school in the Faculteta neighbourhood. Should financial resources be inadequate, an approach could be made to the Council of Europe Development Bank to obtain loans with a view to solving these problems. It must not be overlooked that social rights, including the rights to health and to an education, are also human rights.

5. Reform criminal law as soon as possible so that prosecutors cannot decide alone to confine persons suffering from mental problems to an institution, even as a provisional measure lasting only three months. Similarly, trafficking in human beings must be made an offence under the Criminal Code.

6. Award media licences to national and religious minorities fulfilling the relevant conditions.

7. Ensure the presence in airports of representatives of the National Agency for Refugees, as a body competent to assess the legitimacy of requests for asylum lodged by refugees.

III. FIRST RECOMMENDATION BY THE COMMISSIONER TO MEMBER STATES

RECOMMENDATION
OF THE COMMISSIONER FOR HUMAN RIGHTS

concerning

the rights of aliens wishing to enter a Council of Europe member State and the enforcement of expulsion orders

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The Commissioner for Human Rights, acting in accordance with Resolution (99) 50 of the Committee of Ministers on the Council of Europe Commissioner for Human Rights adopted on 7 May 1999 ("the Resolution"),

Having noted during his various trips and visits to Council of Europe member States that a problem common to most of them is the precarious legal and humanitarian situation of aliens wishing the enter their territory;

Recalling that this problem has already been the subject of many studies at the Council of Europe and, in particular, several recommendations of the Committee of Ministers;

Noting, however, that there has been no significant improvement in the situation since the adoption by the Committee of Ministers of Recommendation R(94)5 on "guidelines to inspire practices of the member States of the Council of Europe concerning the arrival of asylum-seekers at European airports";

Recalling that the conditions in which asylum-seekers and other people are held in airport waiting areas have been the subject of a number of surveys carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ("the CPT");

Bearing in mind the work currently being carried out by the Parliamentary Assembly's Committee on Migration, Refugees and Demography to produce a report on "Rendering more humane the procedures for expelling illegal immigrants and rejected asylum seekers";

Recalling the seminar organised by the Commissioner for Human Rights on "Human rights standards applying to the holding of aliens wishing to enter a Council of Europe member State and to the enforcement of expulsion orders", which took place from 20 to 22 June 2001 in Strasbourg;

Recalling that the seminar was attended by representatives of national and international NGOs, government experts, representatives of professional trade unions, including the *Association belge des pilotes de lignes* (Belgian association of airline pilots), representatives of the United Nations High Commission for Refugees, as well as members of the Council of Europe's Parliamentary Assembly, the Registry of the European Court of Human Rights, and the Secretariat of the CPT;

Recalling that during the seminar the participants studied the legal framework and practice with respect to foreigners arriving at the border of a member State, particularly in relation to the European Convention for the Protection of Human Rights ("the ECHR"), the 1951 Convention relating to the Status of Refugees, and the relevant provisions of the Charter of Fundamental Rights of the European Union;

Considering that Article 3e of the Resolution states that the Commissioner for Human Rights shall "identify possible shortcomings in the law and practice of member States concerning the compliance with human rights as embodied in the instruments of the Council of Europe, promote the effective implementation of these standards by member States and assist them, with their agreement, in their efforts to remedy such shortcomings";

Bearing in mind Article 8-1 of the Resolution,

Would like to issue the following recommendations:

I. *Rights of aliens on their arrival at the border of a member State*

1. Everyone has the right, on arrival at the border of a member State, to be treated with respect for his or her human dignity rather than automatically considered to be a criminal or guilty of fraud.

2. On arrival, everyone whose right of entry is disputed must be given a hearing, where necessary with the help of an interpreter whose fees must be met by the country of arrival, in order to be able, where appropriate, to lodge a request for asylum. This must entail the right to open a file after having being duly informed, in a language which he or she understands, about the procedure to be followed. The practice of *refoulement* "at the arrival gate" thus becomes unacceptable.

3. As a rule there should be n restrictions on freedom of movement. Wherever possible, detention must be replaced by other supervisory measures, such as the provision of guarantees or surety or other similar measures. Should detention remain the only way of guaranteeing an alien's physical presence, it must not take place, systematically, at a police station or in a prison, unless there is no practical alternative, and in such case must last no longer than is strictly necessary for organising a transfer to a specialised centre.

4. Detained foreigners must be given the right to contact anyone of their choice in order to notify that person of their situation.

II. *Detention conditions*

5. As far as possible, member States should bring their national legislation into line in terms of the procedural guarantees available to foreigners being held and the maximum period of detention permitted at each stage of the proceedings.

6. Member States should avoid holding unaccompanied minors, pregnant women, mothers with young children, the elderly, and people with disabilities in waiting areas. Where appropriate, unaccompanied minors must be placed in specialised centres, and the courts immediately informed of their situation. Members of the same family should not be separated.

7. Aliens held pending authorisation of entry must be placed in a specialised centre, and under no circumstances during their detention must they be placed with ordinary prisoners. The same applies to aliens awaiting enforcement of an expulsion order except, of course, in the case of persons expelled on having served their sentence and persons detained at the border with a view to being extradited.

8. All detainees, however long they are held, must have the right to emergency medical care as required by their state of health.

9. On no account must holding centres be viewed as prisons.

10. Governments must guarantee maximum transparency in respect of how holding centres operate, by ensuring at least that independent national commissions, ombudsmen and NGOs, lawyers and close relatives of detainees have access to them. In particular, their operation must be regularly monitored through the courts.

11. It is essential that the right of judicial remedy within the meaning of Article 13 of the ECHR be not only guaranteed in law but also granted in practice when a person alleges that the competent authorities have contravened or are likely to contravene a right guaranteed by the ECHR. The right of effective remedy must be guaranteed to anyone wishing to challenge a *refoulement* or expulsion order. It must be capable of suspending enforcement of an expulsion order, at least where contravention of Articles 2 or 3 of the ECHR is alleged.

III. Implementation of explusion measures

12. Where forced expulsion is unavoidable, it must be carried out with complete transparency in order to ensure that fundamental human rights have been respected at all stages.

13. The best way to avoid using methods which might traumatise both those being expelled and those responsible for enforcing expulsion orders is to have the person concerned agree to return voluntarily.

14. When expulsion orders are to be enforced, it is crucial at every stage of the procedure to inform the persons concerned of what lies ahead so that they can prepare themselves psychologically for their return. In accordance with Article 4 of Protocol No 4 to the ECHR, collective expulsion is prohibited.

15. Threats must not be used to persuade persons subject to an expulsion order to board any form of transport. The wearing of masks making it impossible to identify staff executing forced expulsion orders must be banned outright.

16. Holding centre staff and immigration and expulsion officers must receive proper training so as to minimise the risk of violence.

17. The following must be prohibited outright:

- use of any means which may cause asphyxia or suffocation (adhesive tape, gags, helmets, cushions etc) and use of incapacitating or irritant gas; use of restraints which may induce postural asphyxia must also be avoided;

- use of tranquillisers or injections without prior medical examination or a doctor's prescription;

18. For safety reasons, the use during aircraft take-off and landing of handcuffs on persons resistant to expulsion should be prohibited.

The Commissioner for Human Rights invites the authorities of the member States of the Council of Europe to take account of these recommendations when drawing up and applying their legislation and practices in this field.

IV. THEMATIC SEMINARS

Seminar organised by the Office of the Council of Europe's Human Rights Commissioner

HUMAN RIGHTS STANDARDS APPLYING TO THE HOLDING OF ALIENS WISHING TO ENTER A COUNCIL OF EUROPE MEMBER STATE AND TO THE ENFORCEMENT OF ANY EXPULSION ORDERS

Strasbourg, 20 – 22 June 2001

Background Paper

1. Background

Following the meeting at Paris in mid-December 2000 of the Council of Europe's Human Rights Commissioner with NGOs particularly committed to promoting respect for human rights it was agreed to examine jointly, at a further meeting, a subject of considerable common concern, namely (i) the legal situation of aliens retained at the borders, ports and airports of a member State and awaiting either the latter's authorisation to enter and stay on its territory or the enforcement of its refusal of such an authorisation as well as (ii) the concrete conditions of their consequent deportation in this case (of refusal of an entry permit). This category of people consists not only of asylum seekers, illegal immigrants and many others considered "inadmissible" for lack of valid identification papers, including any required visas, but also of those whose authorisation to stay in the country concerned has either expired or been cancelled (e.g. following their conviction for serious and/or repeated criminal offences) as well as of those who are subject to extradition. Although the "rights" of these people to enter or stay in the foreign State concerned may vary considerably according to their personal circumstances – generally speaking there is no "right" to enter and stay in a country other than one's own – anyone of them might become subject to forced deportation if he or she physically resists the order to leave the country. The question of what kind of legitimate means may be used to that effect as well as the question of the specific rights of aliens pending their admission procedure, surely deserve further consideration and study in the light of the fact that these people are under the effective control and, hence, within the jurisdiction, of the State examining their admission. Furthermore, since the latter is a member State Party to the European Convention on Human Rights (ECHR), it is committed *ipso facto* and *de iure* to the respect of certain human rights standards as regards all persons within its jurisdiction.

Even though these general questions are not, it would seem, finally settled yet within the Council of Europe framework, several specific issues relating thereto have been or continue to be examined there. Thus, the European Court of Human Rights has already dealt with many cases of asylum seekers, refugees or other persons as concerns the compatibility of national admission and expulsion procedures with certain provisions of the ECHR (intra). The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has published several reports about its visits to places of detention, including its investigations concerning the conditions of administrative detention of asylum-seekers and others at some airports (cf. CPT/Inf(99)10, May 1999). The Ad hoc Committee of Experts on Legal Aspects of Territorial Asylum, Refugees and Stateless Persons (CAHAR) has prepared several Recommendations, adopted by the Committee of Ministers of the Council of Europe (R(97)22 on the "safe third country" concept and R(99)12 on the return of rejected asylum-seekers, R(98)13 on the right to an effective remedy against expulsion in certain cases, R(99)23 on family reunion and R(2000)9 on temporary protection), and is working on the detention of asylum-seekers under Article 5 (1)f of the ECHR. The Parliamentary Assembly's Committee on Migration, Refugees and Demography is preparing a report entitled "Rendering more humane the procedures for expelling illegal immigrants and rejected asylum-seekers" (AS/Mig(2001)06).

Last, but not least, the Council of Europe's Human Rights Directorate took the lead in organizing jointly with the Office of the United Nations High Commissioner for Refugees (UNHCR), a second colloquy on "the European Convention on Human Rights and the protection of refugees, asylum-seekers and displaced persons". This colloquy, which took place in May last year, touched upon and clarified quite a few of the questions indicated above and its (appended) Proceedings may, therefore, usefully serve as a point of departure for the present Seminar. Indeed, there is an obvious need to both avoid unnecessary repetition and duplication of work and secure optimal coordination of any ongoing Council of Europe activities relating to the specific subject of this Seminar.

2. Rights of aliens retained at the border of a member State and awaiting either the authorisation to enter and stay on its territory or the enforcement of the refusal of such an authorisation.

A. Aliens seeking to enter the territory of a member State, Party to the ECHR, and/or claiming that their *refoulement* would amount to a breach of the ECHR

1. As confirmed repeatedly in the Proceedings referred to above (e.g. p.23 ff., p.47 ff), the ECHR does not guarantee a right for foreigners to enter the territory of a Contracting State (Party), to remain there or to be granted political asylum. Yet, according to the elaborate jurisprudence of the (European) Court (of Human Rights), the ECHR implies the legal obligation for the Parties concerned to ensure that measures to extradite or expel non-nationals do not interfere with individual rights recognised in the ECHR, particularly under Articles 3 (prohibition of torture and inhuman or degrading treatment or punishment) and 8 (respect of private and family life). In this regard, it should be recalled, the protection of the ECHR is not limited to refugees or asylum-seekers, but applies (contrary to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol) to "everyone, even illegal entrants, whatever their activities or personal conduct, including if they had been engaged in serious crimes" (Proceedings, p. 29). However, it is not the purpose of this Seminar either to discuss the merits of decisions whereby member States refuse admission of certain non-nationals to their territory, or to review again the Court's jurisprudence on cases where a Party's refusal to admit a non-national and his subsequent removal from its territory was alleged to constitute, as such, a breach of either Article 3 or Article 8 of the ECHR. Indeed, on this matter, it should suffice to refer to the comprehensive reports and discussions at last year's Colloquy, while recalling, where necessary, any relevant subsequent developments.

2. The main purpose of the present Seminar is thus to examine the rights of aliens awaiting, usually at the frontier, a member State's decision either authorising or refusing their admission to its territory. In this respect, the discussions might usefully focus on the specific human rights issues arising in successive stages, i.e. (i) when a foreigner arrives at the border and, for whatever reasons, is not admitted; (ii) the informal or formal character of any measures and decisions taken at that time, including immediate *refoulement*, and the question of access to any specific procedures when the person considered is either seeking asylum or claims that if he were to be returned, such *refoulement* would amount to a breach of the ECHR, in particular its Articles 3 and 8; (iii) the nature of any subsequent procedures relating to

this question and, insofar as they are usually administrative procedures outside the scope of Article 6 of the ECHR, the question whether there is any judicial appeal and, in that case, any suspensive effect of such an appeal, taking into account Article 13 of the ECHR (right to an effective remedy); (iv) the rights of the person concerned during the different stages preceding the enforcement of the final decision on his removal from the territory of the member State exercising jurisdiction.

A comprehensive answer to these questions from the Seminar's participants will not be easy, in part because the legally binding or merely recommended European standards applicable to the matter are not yet established with sufficient clarity and also in part because of the gaps in domestic law and the rather divergent practice of member States when confronted with such issues. There remains the fact that an increasing number of people in search of asylum arrive at the frontiers of Council of Europe member States and, as pointed out for instance by the UNHCR representative at last year's Colloquy, "this is imposing a logistic, financial and social burden that many states feel unable to sustain" (Proceedings, p. 14). This, in addition to "the proliferation of people-trafficking and the hardening resolve of governments to put an end to it" (ibid.), might then explain why some States "may be tempted to employ accelerated, truncated and perhaps arbitrary procedures which fail to identify all those in need of protection", an approach which, in turn, will increase the numbers forced to resort to the ECHR rather than to seek protection under the potentially more favourable provisions of the 1951 Refugee Convention (ibid., p. 16, and pp. 79-82). Be that as it may, the applicability of the ECHR as such is not an issue.

3. Taking into account the general applicability of the ECHR to aliens arriving at the border and being, therefore, within the jurisdiction of the Party concerned, the essential question to be discussed at this Seminar is what kind of restrictions to the rights granted by the ECHR this Party may take in respect of people not yet admitted to its territory. Pending the examination of their request for admission, they are likely to be held in a "transit zone" along the border, in a port or an airport, the question being if and when mere restrictions on their liberty of movement will become, because of their manner, conditions, effects and length, equivalent to a deprivation of liberty. This might be the case when they are retained in camps for refugees, but it might also occur when pending examination of their application for admission, they are held for an excessive period of time in a transit zone rather than be admitted provisionally and conditionally to the country concerned. Moreover, as far as derogations to the right to liberty and security are concerned, Article 5(1) f of the ECHR provides explicitly for "the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country…". Last year's Colloquy dealt already at great length with the Court's jurisprudence on the protection from arbitrary deprivations of liberty and in particular its restrictive interpretation of this specific provision of the ECHR.

Yet, there remains the question (which might hopefully be pursued at this Seminar) of what are the other rights of persons held or detained under such circumstances. The CPT considers in this respect "that immigration detainees (whether asylum seekers or not) should - in the same way as other categories of persons deprived of their liberty - be entitled, as from the outset of their detention, to inform a person of their choice of their situation and to have access to a lawyer and a doctor. Further, they should be expressly informed, without delay and in a language they understand, of all their

rights and the procedure applicable to them" (Report on Frankfurt Airport visit in May 1998 – p. 21, para. 39). This view reflects indeed the Court's interpretation of Article 5(2) of the ECHR to the effect that "in keeping with the right to a fair hearing and the adversarial principle, aliens must be informed, in a language they understand, of the reasons for their arrest, even in non-criminal proceedings" and/or, while being examined, be assisted by an interpreter, whose costs should be met by the State (cf. Proceedings, p. 69). Moreover, when deprived of their liberty, they are entitled, according to Article 5(4) of the ECHR, to take Proceedings by which the "lawfulness" of their detention, including its length, shall be decided speedily by a court (Proceedings, p. 69).

4. What kind of proceedings are aliens entitled to when, upon arrival at the border of a Party, they allege that their *refoulement* would (not only be contrary to Article 33(1) of the 1951 Refugee Convention, but also) amount to a breach of the ECHR and in particular its Article3? According to the CPT, "in this connection, it is of paramount importance that the decision-making process as a whole offers suitable guarantees against persons being sent to countries where they run a risk of torture or ill-treatment. The applicable procedure should offer the persons concerned a real opportunity to present their cases, and the officials confronted with handling such cases should be provided with appropriate training and should have access to objective and independent information about the human rights situation in other countries. Further, in view of the potential gravity of the interests at stake, the (CPT) considers that a decision involving the removal of a person from a State's territory should be appealable before another body of an independent nature prior to its implementation" (Doc. cit., p.22, para 43-2; cf. also Proceedings, p.54). This clearly implies that there must be ready access for the persons concerned to such procedures and that any appeal – including one to the European Court of Human Rights? – should have a suspensive effect, irrespective of whether or not the original procedures were of an administrative or judicial character. However, the scope of "suitable guarantees" offered by the decision-making process and the modalities of "a real opportunity" to present one's case require further discussion and clarification – e.g. at what stage of the proceedings must (free?) access to a lawyer and, in case, to an interpreter be provided for, etc.?

5. Just as certain restrictions to freedom of movement may no longer be justified after a certain period (supra), restrictions to the enjoyment of other rights (granted either by the ECHR or other treaties such as the European Social Charter) may similarly depend, regarding their justification, on the specific circumstances in a given case, including for instance the total amount of time an alien is held back at the border while his application for entry and/or non-*refoulement* is being examined. In other words, the number and scope of the rights of aliens retained at the border may increase with the length of time it takes to examine their case and reach a final decision thereupon (and this, in turn, might prompt the Party concerned to either adopt summary procedures with the ensuing risks for the people concerned – supra – or admit them provisionally to their territory subject to specific conditions they have to comply with – Proceedings, p.67, p.71). Be that as it may, during their discussions on this point, the participants at this Seminar will surely take up the following comments by the UNHCR representative at last year's Colloquy: "… although Article 3 has been used as a 'safety net' to prevent *refoulement*, there is also potential for its use to

measure whether an asylum state's 'package' of reception arrangements meet an acceptable threshold of treatment (i.e. that the combined effect of different reception measures relating to housing, employment, social welfare, health care and education does not amount to inhuman or degrading treatment in violation of Article 3)" (Proceedings, p.17). What constitutes "an acceptable threshold of treatment" surely depends on the length of the treatment at issue, even if, according to the CPT's experience, people in such circumstances "were very much more preoccupied about whether they would be returned….and, if so about the manner in which they would be returned, than they were about the day to day living conditions they experienced in the detention centres…" (Proceedings, p.54-55). In practice, these people will be in "peculiarly severe need of assistance", requiring not only "skilled legal advice", but also support "to combat social isolation and despair" and "social support in being housed and fed and able (within the parameters of a pending decision on their status) to lead as normal a life as possible in the interim" (Proceedings, p.84, para.3.4). No doubt, this is particularly important where mothers and young children are concerned because "health and educational needs cannot wait until the possibly cumbersome procedures of the national determination process are completed" (ibid.). Furthermore, while the right to family reunion prior to the decision on admission might be disputed, "detention or dispersal provisions should not interfere with the right to respect for such family life in the absence of wholly compelling factors in a particular case" (Proceedings, p. 86). Also as regards this particular question, what matters most at present, it would seem, is to identify and reach some general consensus on which legally binding standards apply at a given stage of holding procedures, in the light of the member States' commitment to respect for human rights.

B. Aliens awaiting the enforcement of the order to leave the territory of a Party following the latter's refusal of their admission and/or stay

1. As already indicated above, these people include not only those who arrived at the border and were refused authorisation to enter the territory of the Party concerned, but also those who were brought back to the border after having been caught entering the country illegally, those whose authorisation to stay in the country concerned has either expired or been cancelled and has not been renewed as well as the special category of persons subject to extradition procedures. When these people are notified of the final character of the refusal of their admission and/or stay in the country concerned, they will usually be given a specific deadline for leaving it of their own accord, unless this decision is immediately enforceable. The period between the notification of the refusal of admission and/or stay and the enforcement of the order to leave a country (expulsion and/or deportation) often amounts to several weeks, if not months, and may be subject to all sorts of appeals, in particular when the person concerned claims at this stage for the first time that expulsion or deportation to the home country would amount to a breach of the ECHR. Unless the expulsion order is then suspended because of the new proceedings taken by the person concerned, he or she is likely to be arrested after the expiry of the deadline for voluntary departure, detained and deported to the country of origin. In this respect, Article 5 (1)f of the ECHR indeed provides that detention is compatible with the Convention where it is for the purpose of removing someone who has entered unlawfully, has been refused permission to enter or is facing deportation action or extradition. Even so "the

detention should be capable of regular review to ensure that it is still proportionate in all circumstances, and the qualifying conditions provided by the Convention continue to be met" (Proceedings, p. 84, cf. also p. 68).

2. Whether or not the period when someone is awaiting authorisation to enter the territory, is much longer than the period when he or she is awaiting the enforcement of the refusal of such an authorisation, is likely to depend on the specific circumstances of the case. This holds, too, as regards the various "rights" available to an alien during this period though, at first sight, it might be "easier to justify" the restrictions (particularly as regards the right to liberty) imposed on an alien held at the border after he was ordered to leave the country, than those taken in respect of an alien arriving at the border and applying for admission. Be that as it may, the shorter the period someone is held at the frontier or in an airport pending deportation procedures (e.g. when a person has been escorted there merely to be put on the next plane), the more likely it is that restrictions will be imposed on him or her (cf. Proceedings, pp 100-102), the question being what kind of restrictions may, or could not, be considered justified in certain circumstances (e.g. should the person ordered to leave be allowed certain contacts with NGOs, consulates of other States or even the International Organization for Migration with a view to obtaining advice and making arrangements for departing to a State other than his own?).

3. Conditions and modalities of forced return

(i) When aliens ordered to leave a Party's territory do not do so voluntarily within the prescribed time limits, they are likely to be expelled or deported to the country they came from (supra). When the latter is not their country of origin, which is supposedly "obliged" to readmit them, or when the country of origin cannot be ascertained or is "out of reach", this can give rise to serious problems, including chain *refoulement* and expulsion and deportation back and forth between several States. Just as serious is the question of what to do when people physically resist an expulsion or a deportation order: how can this be prevented from happening, for instance by better psychosocial support and advice at the pre-deportation stage, and what are the criteria, such as the principle of proportionality, for the permissible use of force in such a case? What kind of "restraint techniques to keep deportees calm" are being used or could be "authorised", subject to what kind of restrictions, taking into account the prohibition of inhuman or degrading treatment contained in Article 3 of the ECHR as well as the obligation to respect the "moral and physical integrity" of anyone entitled to respect for his or her private life (Art. 8, ECHR) (cf. Proceedings, pp. 28, 33-34)? What about the prosecutions, and sanctions when found guilty, of law enforcement officials denounced for having disregarded such restrictions and for having abused or ill-treated people while they were being deported? Assuming for once that governments may invoke or rely on national public opinion, hostile to an uncontrolled, if not to a restricted, immigration and asylum policy, in order to insist on the strict application of the prevailing domestic law, does this really justify a policy of frankly discouraging refugees, asylum-seekers and would-be immigrants from arriving at their borders by a harsh and demeaning reception and by denying them even the right to a minimum of decent treatment when they are then forcefully returned?

(ii) The Parliamentary Assembly's Committee on Migration, Refugees and Demography is preparing the abovementioned report on this matter (cf. Doc. cit., p. 8, par. 24 ff.) in the light of the concern – already expressed at last year's Colloquy – about the fact "that is increasingly occurring in western Europe and in central and eastern Europe, too, that is, the recourse to forced expulsion carried out with a shocking lack of respect for human dignity" (Proceedings, p. 45). This, it was stated at that Colloquy by the representative of the Centre for Advice on Individual Rights in Europe (AIRE), includes "that deportees are drugged, put into the kind of straight jacket that is used to restrain mentally ill patients, their mouths and noses are often covered with adhesive tape or cushions – sometimes with tragically fatal consequences. They are handcuffed to wheelchairs and to airline seats. Adults are even made to wear geriatric incontinence pads on long haul flights so that they do not have to be released from the handcuffs to use the toilets ….." (Proceedings, p. 45). In this respect the parliamentary report will surely refer, too, to the CPT's findings and opinion on the matter, e.g. "that physical assault was never an acceptable way of persuading someone to board an aircraft; that gagging was a highly dangerous measure; and that medication should only be used on the basis of a medical decision and subject to medical ethics…" (Proceedings, p. 53; cf. also CPT/Inf (99) 10, p. 14, par. 16, 17, 18).

(iii) Although there appears to be not yet any relevant and elaborate jurisprudence of the Court about the compatibility of certain modalities of forcible expulsion with the ECHR (cf. Proceedings, pp. 28, 33, 53), the Council of Europe's Commissioner for Human Rights feels very strongly that the modalities and devices used before and during deportation in certain cases are obviously contrary to Member States' commitment to respect human rights and, in particular, the human dignity of all persons within their jurisdiction. There is an urgent need both to clarify the human rights standards applicable in the matter and to agree on realistic and practical solutions with a view to putting an end to any blatantly illegal conduct in the context of forcible expulsion. The need to do so is all the more urgent as some member States, faced with an increasing number of aliens resisting expulsion as well as an increasing number of flight personnel refusing to carry persons who have been forced to board against their will, are "increasingly looking to alternatives to expulsion on scheduled flights" (AS/Mig(2001)06, p. 5, par. 34), such as joint flights to the same destination, transport by military aircraft and sea transport (ibid.) or the use of chartered aircraft to carry out the expulsions (Proceedings, p. 45). This then entails the risk of considerably reducing the possibilities of any adequate official control of what happens to the deportees during this kind of journey, in particular when their transport is handed over against remuneration to private companies.

(iv) The Commissioner's objectives in convening this Seminar are thus twofold: to pinpoint and sound the alarm regarding certain practices which constitute manifest human rights violations and to contribute to the search for appropriate solutions. To that effect, coordination of ongoing Council of Europe activities is as indispensible as is co-operation with the governmental side, other IGOs* as well as all NGOs

* As regards the European Union, the revised draft resolution of the European Parliament "on the situation as regards fundamental rights in the European Union (2000)" (doc. PE 302-216/rev. of 27

particularly involved in this field. Their specific aims and experiences will surely allow for frank and interesting exchanges of view, hopefully leading to generally acceptable proposals based on the commitment to improve and safeguard the respect for human rights also in this particularly sensitive matter in the "grey area" of transit lounges and holding places along borders.

April 2001) recommends that the Member States….with regard to detention centres for refugees (para. 26), "improve reception facilities for asylum seekers in airports and detention centres, particularly as regards assistance from lawyers and interpreters, the possibility of communicating with relevant NGOs and with their families, faster procedures for the consideration of asylum requests and respect for appeals procedures" (ibid., p. 8). Furthermore, with regard to the right to asylum and protection in the event of removal, expulsion or extradition, this draft resolution recommends *inter alia*, in paragraph 50, the prompt adoption of "a common asylum policy that strictly respects the rights of asylum-seekers, extends to include victims of trafficking in human beings and domestic slavery, and involves a fast-track administrative procedure guaranteeing the right of appeal, while providing asylum-seekers with decent living conditions…." (ibid., p. 12). These recommendations are justified in the explanatory text (ibid., pp. 28-29,35,37,51-55).

PROGRAMME

Wednesday 20 June 2001

Part 1

Rights of aliens held at border points whilst awaiting a member State's decision either authorising or refusing their admission to its territory;

Thursday 21 June 2001

Part 2

Rights of aliens awaiting the enforcement of an order to leave the territory of a member State following the latter's refusal of their admission and/or stay;

Part 3

Conditions and modalities of forced return;

Friday 22 June 2001

Part 4

Continuation of the previous session;

Part 5

Final discussion and the Commissioner' synthesis.

CONCLUSIONS

Following the meeting held in Paris in mid-December 2000 between the Council of Europe Commissioner for Human Rights and NGOs particularly committed to promoting respect for human rights, it was agreed to hold a further meeting in order to examine this theme of considerable common concern.

The Commissioner would like to thank the representatives of national and international NGOs for taking such an active part in the debate and making it possible to take account of the concerns expressed by those with a permanent presence in the field. Thanks also go to the government experts who agreed to contribute to the debate, thus ensuring a better understanding of the difficulties faced in this area by the governments of member states.

The Commissioner is especially pleased to observe that representatives of the United Nations High Commission for Refugees actively participated in the seminar. Lastly, the event benefited greatly from the support of all Council of Europe departments with a close interest in the subject. The Commissioner is particularly grateful to the rapporteur and the secretary of the Parliamentary Assembly Committee on Migration, Refugees and Demography, the Registry of the European Court of Human Rights and the secretariats of the Directorate General of Legal Affairs and the CPT.

1. The seminar started with a number of observations. To wit, there is no "right" in international law to enter and stay in a country other than one's own, it being at the discretion of states whether to authorise any foreigner to enter and stay on their territory.

Foreigners wishing to enter a Council of Europe member state may include asylum-seekers, whose situation is governed chiefly by the 1951 United Nations Convention relating to the Status of Refugees. However, they may also include illegal immigrants, so-called "economic" migrants or others considered "inadmissible" for lack of valid identification papers or visas.

While the 1951 Convention applies only to refugees, the European Convention for the Protection of Human Rights (ECHR) extends to everyone within the jurisdiction of member states. Consequently, by virtue of its Article 1, the rights and freedoms defined in Section I of the ECHR are also guaranteed to aliens presenting themselves at a national border. The Charter of Fundamental Rights of the European Union also secures to "everyone" a certain number of rights.

Some participants expressed concern at the practice, which is apparently on the increase, whereby officials (liaison officers) are seconded to airports from which immigration is common in order to prevent potential immigrants from taking flights to the seconding countries. Although this may permit airlines to escape penalties for allowing passengers without valid travel documents to board flights, it also carries the risk that states will be able to avoid having to apply fundamental guarantees in international law, especially those relating to the right of asylum.

2. Discussion showed that all the participants agreed in principle with the statement that everyone has the right, on arrival at the border of a member state, to be treated with respect for his or her human dignity rather than automatically considered to be a criminal or guilty of fraud.

On arrival, individuals whose right of entry is disputed must be informed in a language which they understand of the reasons for any decision taken by the authorities in their regard and the possibilities of challenging that decision. They must also be given the right to contact a person of their choice. Restrictions may be placed on this right when a person is sought by the police.

In some cases, for example when a person is refused entry without explanation despite having presented a valid visa, he or she must be entitled to effective remedy against the decision not to grant entry or to turn him or her back.

On arrival, everyone must be given a hearing, where necessary with the help of an interpreter whose fees are met by the country of arrival, in order if appropriate to lodge a request for asylum. This must entail the right to open a file after being duly informed, in a language which the person understands, about the procedure to be followed. The practice of *refoulement* "at the arrival gate" thus becomes unacceptable.

3. Pending the authorities' decision, it is desirable that the individuals concerned should be permitted to make telephone contact with a person of their choice. As a rule there should be no restrictions on freedom of movement. Wherever possible, detention should be replaced by other supervisory measures, such as the provision of guarantees or surety. Should detention remain the only way of guaranteeing an alien's physical presence, he or she may on no account be held at a police station or in prison unless there is no practical alternative, and in such a case detention must last no longer than a few hours.

4. Where the competent authorities decide to detain foreigners, the persons concerned must enjoy not only the rights guaranteed at Article 5 ECHR but also a number of other rights, namely the right to contact family members or any other person to inform them of the situation, the right to be apprised of their situation in a language which they understand and, where necessary, the right of access to a lawyer, legal assistance or an NGO. They must be held in a place where they are fed and lodged in accordance with the principles of human dignity. Moreover, it is essential to ensure that all detainees, however long they are held, have the right to emergency medical care as required by their state of health.

It is also important to strengthen the role played by NGOs at each stage of proceedings. Member states are strongly urged to conclude framework agreements with NGOs, with a view in particular to allowing them a permanent presence in all places where the authorities may detain foreigners (airport waiting and transit areas, holding centres, police and *gendarmerie* stations and prisons). Offering aliens free access to NGOs will encourage transparency and respect for human rights.

5. The participants agreed that, in cases where detention lasts longer than a few days, it is essential to house those concerned in a specialised centre. Under no circumstances must aliens held pending authorisation or refusal of entry or enforcement of an expulsion order be placed together with ordinary prisoners.

The participants were especially concerned about the use of waiting areas to hold unaccompanied minors and mothers with young children. It is vital to eliminate situations of this kind. More particularly, unaccompanied minors must be placed in specialised centres and the courts must immediately be informed of their situation.

6. On no account must holding centres be viewed as prisons, and governments must guarantee absolute administrative transparency, chiefly by ensuring that independent national commissions, ombudsmen and NGOs have access to these centres and by regularly monitoring their operation through the courts.

In the same spirit of transparency, the competent authorities must also keep a register of all those entering the country who are detained or expelled, as the case may be. The register must contain all information relevant in this regard so that the courts, whose role as guardians of personal freedoms needs to be strengthened, are able to take action where appropriate. Lastly, in order to prevent the fragmentation of responsibility, it would be advantageous to set up a monitoring system capable of following each applicant from the date of arrival to that of his or her return or expulsion.

7. The participants stressed the need for access in practice (rather than merely by law) to the right of judicial remedy within the meaning of Article 13 ECHR, when allegations are received that the competent authorities have contravened or are likely to contravene a right guaranteed by the ECHR. The right of effective remedy must be open to everyone wishing to challenge a *refoulement* or expulsion order. It must be capable of suspending enforcement of an expulsion order, at least where contravention of Articles 2 or 3 ECHR is alleged.

8. The participants agreed that countries should ascertain whether those expelled are genuinely readmitted into the receiving country and whether their fundamental rights, especially those set out in Articles 2 and 3 ECHR, are respected there. Grave doubts were expressed about the concept of safe countries of origin and the practice of returning aliens to third countries on the grounds that they could have sought asylum there. There is no basis for this practice in international law, still less refugee law. Other matters of considerable concern were the implementation of summary proceedings and the practice of automatic return.

9. In discussing the enforcement of expulsion orders, all the participants stressed that the best way in all cases to avoid using methods which might traumatise both those being expelled and those responsible for enforcing expulsion orders was to have the person concerned agree to return voluntarily.

It was emphasised that when expulsion orders are to be enforced it is crucial at every stage of proceedings to inform the persons concerned of what lies ahead so that they can prepare themselves psychologically for the idea of return. It is unacceptable to

use physical coercion or threats in order to persuade persons subject to an expulsion order to board any form of transport. Programmes providing assistance with return, which come in various forms, are to be encouraged.

It was also proposed that pressure be brought to bear on the competent authorities in member states to ensure that holding centre staff and immigration and expulsion officers receive proper training so as to minimise the risk of ill-treatment. The wearing of masks making it impossible to identify staff executing forced expulsion orders must be banned outright.

10. Where forced expulsion is unavoidable, it must be carried out with complete transparency in order to ensure that fundamental human rights are respected at all stages. The use of force must be limited to what is absolutely necessary given the circumstances.

The following should be prohibited outright:

- use of any means which may cause asphyxia or suffocation (such as adhesive tape, gags, helmets and cushions) and use of incapacitating or irritant gas; use of restraints which may induce postural asphyxia must also be avoided;

- use of tranquillisers or injections without prior medical examination or a doctor's prescription;

- for safety reasons, the use in aircraft of handcuffs or restraints on persons resistant to expulsion, at least during take-off and landing.

The use of geriatric incontinence pads for the sole purpose of preventing the person concerned from leaving his or her seat during the flight should be seen as an assault on human dignity. Deportees must have the same right as all other passengers to food and drink.

Persons returned to a holding centre following their resistance to forced expulsion should be subjected to no form of punishment, especially of a disciplinary nature. On readmission to the centre, such persons must be given a medical check-up if they so wish.

11. All the participants agreed that it was necessary, as far as possible, to bring national legislation into line in terms of the procedural guarantees on offer to foreigners being held and the determination of a maximum period of detention at each stage of proceedings.

Seminar organised by the Office of the Council of Europe's Human Rights Commissioner

HUMAN RIGHTS PROTECTION AND THE PARTICULAR SITUATION OF PERSONS PLACED IN RETIRMENT HOMES OR INSTITUTIONS

Neuchâtel, Switzerland, 21-23 October 2001

Background paper

1. Background

Elderly people, like all other individuals, have fundamental rights which are protected by law. They also enjoy these rights when they are sent to or choose to live in an institution. As far back as 1994 the Committee of Ministers, having been alerted to the problems facing elderly people, adopted guiding principles aimed at improving their quality of life (Appendix to Recommendation no. R (94) 9 of the Committee of Ministers). Particular emphasis was placed on the following points:

"Longer life should not mean diminished enjoyment of life: people should have the opportunity of maintaining enriching social and individual activities and occupations. Society should enable elderly people, including those who live in institutions, to lead lives which are as autonomous as possible, taking into account their handicaps. Elderly people have the same entitlement to human dignity as other members of society, and therefore to the same rights and duties: in particular, elderly people should retain their right to self-determination, and should exercise their choices appropriately, taking into account the different stages in their ageing".

The Council of Europe Commissioner for Human Rights, Mr Alvaro Gil-Robles, is concerned about the question of the rights of elderly people living in institutions or retirement homes and has decided to hold a seminar on the subject.

Discussion will focus on the following six themes in particular:

- restrictions on the freedom of elderly people living in an open institutional setting;

- protection of elderly people living in institutions – guardianship or appointment of a carer;

- ill-treatment and unwarranted restraints infringing human rights;

- access to palliative care in institutions vs. supportive measures in relation to the decision to end one's life;

- health care costs for elderly people in specialised institutions, rationing of treatment and quality control;

- compulsory placement and treatment of the elderly.

2. Restrictions on the freedom of elderly people living in open institutional settings

One of the key factors in the quality of life, autonomy and general well-being of elderly people is the organisation of life in institutions. For elderly people, the effect of entering an institution is to transfer the focus of their life from their former home to the institution. From the moment of admission on, the institution becomes the setting for all their social activities and for their more private and intimate moments. The institution has a major influence on the lives of elderly people which derives not only from the very nature of the legal relationship established between the parties but also from the state of physical or mental dependence of some residents. This makes it necessary to reiterate and clarify the rights of elderly people.

Without referring specifically to the situation of elderly people in institutions, the European Convention for the Protection of Human Rights and Fundamental Freedoms guarantees everyone the right to respect for private and family life, their home and their correspondence (Article 8 ECHR). The residential and welfare arrangements, healthcare provision and organisation of everyday life in an institution affect or may affect these guarantees directly. This is not the place for a comprehensive list of elderly people's fundamental rights, but it is still worth mentioning a number of them.

Maintaining personal contacts with third parties outside the establishment (family, friends, social workers, spiritual advisers, etc) through visits, correspondence, telephone conversations and other means (the generation of elderly people familiar with the Internet should soon be arriving) is extremely important. Studies show that keeping up a good network of social contacts and making it possible for residents to choose the persons with whom they wish to maintain or develop relations greatly enhances their self-esteem and hence their feeling of well-being within the institution. Visiting times, places where meetings can take place within the institution and the possibility of having a conversation away from potential eavesdroppers or onlookers are factors which have a direct impact on elderly people's lives.

The social and cultural amenities to which elderly people have access when living in institutions is another extremely important aspect. The Committee of Ministers already noted this in 1994:

"Society should increase or facilitate activities for elderly people, especially those who live in institutions, by providing opportunities for social, cultural and individual activities in a manner that secures self-determination and freedom of choice for the people concerned". (Guiding principles appended to Recommendation no. R (94) 9 of the Committee of Ministers on elderly people).

As a rule, residence in an institution is a long-term arrangement not a temporary one and so it is crucial to organise recreational and cultural activities for residents. This helps both to preserve the intellectual capacities of those involved and to make them feel more at home in the institution. The activities organised must be geared not only to the intellectual and physical capacities of residents but also to their interests.

It is also extremely important that elderly people are involved in the organisation of life in the institution.

"Elderly people should be able to participate in the establishment and the provision of services for themselves, including in their setting up, management and evaluation" (Guiding principles appended to Recommendation no. R (94) 9 of the Committee of Ministers).

Decisions concerning meal times, choice of food, the type of activities on offer, etc have a major impact on residents. They are much more likely to be accepted if the residents are able to put forward their opinions and express their preferences. They can participate directly or, if necessary, through a carer or a representative.

Finally, it should also be said that healthcare, residential, and welfare provision should respect the principle of self- determination for elderly people (even where it comes to choosing the person who is to provide treatment) as well as their privacy and dignity.

3. Protection of elderly people living in institutions – guardianship or appointment of a carer

Sometimes elderly people are partly or totally unable to look after their own interests because of a mental disorder or a state of extreme of extreme physical frailty. This can affect their legal relationship with the institution, its medical staff, the authorities and other third parties.

In such cases a guardianship measure is pronounced under which a third party is granted powers of representation and, sometimes, administration. In some cases this entails a complete or partial loss of civil capacity for the elderly person concerned. It is worth discussing the types of measures which can be taken, the way in which the authorities are informed of the need to order such measures and the procedural safeguards that are established.

Sometimes domestic law also provides for the possibility of appointing an adviser or carer. They have no powers of representation but advise, guide and support the elderly person in the decisions they must take. It could be argued that the nature of the legal relationship between the institutions and elderly people and the fact that residents are frequently physically or psychologically dependent should prompt states to appoint a carer systematically.

4. Ill-treatment and unwarranted restraints infringing human rights

Ill-treatment

Ill-treatment comprises all practices whereby an elderly person's interests are harmed without any legitimate reason or for selfish purposes. This is also described as abuse. Depending on the legally protected interest, a distinction is made between

physical abuse (physical integrity), sexual abuse (sexual integrity), mental abuse (psychological duress, interference in emotional relationships, defamation) and economic abuse (interference with private property).

The Committee of Ministers already drew attention to this problem in 1994:

"Elderly people should be able to live in security, wherever they are, free from fear of exploitation or of physical or mental abuse".

When the victim is a child, ill-treatment is covered by specific legal provisions which protect the child, establish the criminal responsibility or civil liability of third parties or initiate a prevention and information programme. Ill-treatment is rarely covered by specific provisions when the victim is an elderly person. Standard rules are applied which do not always make it possible to deal with the problem satisfactorily. For instance, there are very few legal instruments designed to facilitate the reporting of cases of ill-treatment to the relevant authorities. There is also very little training for staff in this area and a lack of prevention policies.

Physical restraints

Some institutions make frequent use of physical restraints. For instance, they keep elderly people in a sitting position using lap-trays or belts or force them to stay in bed using bed barriers or sleeping tablets. The aim is to prevent the person from injuring him- or herself or others or to ensure that order is kept within the institution. It is not unusual for staff shortages to lead to the use of such methods. While it does not refer specifically to the situation of elderly people in institutions, the European Convention for the Protection of Human Rights and Fundamental Freedoms states that no-one may be subjected to inhuman or degrading treatment (Art.3 ECHR, see also, mutatis mutandis, although the case did not relate specifically to an elderly person, the judgment on Merczegfaluy v. Austria of 24.09.1992, A series No. 244, and the judgment on Price v. United Kingdom of 10 July 2001 relating to the detention of a paraplegic person) and that everyone has the right to liberty (Art. 5 ECHR). This also applies to the use of restraints in institutions. Domestic legislation sometimes contains more detailed rules which prohibit the use of restraints in principle but authorise it under exceptional circumstances subject to compliance with certain monitoring procedures and the availability of appeals. It is worth noting the varying approaches to this question adopted by the Council of Europe member States.

5. Health care costs for elderly people in specialised institutions, rationing of treatment and quality control

It is not the aim of this seminar to deal with health care questions and so the discussion will be limited to two aspects directly linked to the situation of elderly people - the rationing of treatment for elderly people and the standard of care provided in institutions.

Rationing of treatment

Healthcare is a major burden on state budgets. All governments are therefore obliged to look into ways of cutting costs. Because of this, the justification for treating a person who has only a few more years to live is sometimes looked at primarily from an economic viewpoint. The Convention on Human Rights and Biomedicine stipulates that States must ensure equal access to health care of an appropriate standard, taking into account health needs and available resources (Art. 3 of the Convention). The recommendation of the Parliamentary Assembly of the Council of Europe on the medical and welfare rights of the elderly also emphasises the importance of "*a suitable policy for the control of public health costs which avoids financial excesses and rejects ethical aberrations such as unequal treatment of patients, or treatment withdrawal or euthanasia on financial grounds"* (Recommendation 1254 (1994) of the Parliamentary Assembly). This means that it is important to view the notion of "*access to health care (…), taking into account available resources"* in terms of the specific situation of the elderly person and taking particular account of the fact that age should not be a reason for discrimination.

The standard of health care provided in institutions for the elderly

The Committee of Ministers' Recommendation on dependence has the following to say about this subject:

"The role of the public authorities is to guarantee the quality of care (in particular by establishing a set of conditions and clearly defined evaluation rules). This involves monitoring the services provided and drawing up clearly defined quality standards". (Principle 3.6 of Recommendation no R (98) 9 of the Committee of Ministers).

It would be worth reviewing measures taken to date by the Council of Europe member States to ensure genuine quality control of the care provided for elderly people in institutions.

6. Access to palliative care in institutions vs. supportive measures in relation to the decision to end one's life

It is worth highlighting two closely interrelated aspects of the final stages of a person's life, namely access to palliative care and supportive measures in relation to the decision to end one's life.

Access to palliative care

Some people end their lives in unbearable pain. To tackle this problem a new solution has gradually emerged in the member States which is generally referred to as palliative care. The World Health Organisation (WHO) defines palliative care as "*The active, total care of patients whose disease is not responsive to curative treatment. Control of pain, of other symptoms and of psychological, social and spiritual problems is paramount. The goal of palliative care is the achievement of the best quality of life for patients and their families*".

Human dignity should be respected throughout all the stages in the life of every individual, including the terminally ill and the dying. Palliative care helps to preserve this dignity by providing an appropriate environment for these patients and helping them to cope with pain. Access to palliative care should therefore be guaranteed to all terminally ill and dying patients. In its Recommendation on the protection of the human rights of the terminally ill and the dying, the Parliamentary Assembly of the Council of Europe stressed how much of a problem was currently posed by "*insufficient access to palliative care and good pain management"*. It recommended that the Committee of Ministers:

"*encourage the member states of the Council of Europe to respect and protect the dignity of terminally ill or dying persons in all respects"*,

particularly by taking measures,

"to provide equitable access to appropriate palliative care for all terminally ill or dying persons" (Recommendation 1418 (1999) 1 of the Parliamentary Assembly of the Council of Europe).

Institutions specialising in care for the elderly are frequently confronted with the pain and the death of their residents. It would therefore be worth reviewing measures adopted by the Council of Europe member States to promote palliative care, particularly in institutions for the elderly, along with any training they offer on the subject for the staff of these institutions.

Supportive measures in relation to the decision to end one's life

In the debate on these measures, those opposed to any form of support focus on the right to life, which some people believe implies an obligation for the state to protect life even against the patient's will, while those in favour stress the right to self-determination, including the right for people to decide whether to live or not. The topic is well worth discussing because the member States have highly conflicting laws on the subject. The issue has recently been the subject of much controversy in Switzerland. The City of Zurich has adopted a set of special rules which apply in institutions for the elderly which are supervised by the city authorities or entitled to public funding. The regulations rule out any participation in the act by the staff of the establishment, it being considered that all action should be taken by patients themselves. A procedure has been introduced to check that the resident's decision is taken of his or her own free will and on the basis of sufficient information on the alternatives, particularly those afforded by palliative care.

7. Compulsory placement and treatment of the elderly

The authorities are sometimes obliged to take a decision against the wishes or without the consent of the elderly person concerned. Our discussion will focus on two instances of this, namely compulsory placement and compulsory treatment.

Compulsory placement

Moving persons to an institution against their will or without their consent is a measure which seriously infringes the fundamental rights of the person concerned. The European Convention for the Protection of Human Rights and Fundamental Freedoms states in this respect that everyone has the right to liberty (Art. 5 ECHR) and this of course includes the elderly.

Generally speaking, elderly people may only be moved to a specialised institution if they give their free consent. Compulsory placement against the will or without the consent of the person concerned may be allowed in exceptional circumstances subject to the conditions set out in Article 5.1 ECHR. The decision must also be open to appeal by the person concerned before a court which will give a prompt ruling on the lawfulness of the placement order. Sometimes elderly people infringe the rights and freedoms of third parties (for example carers, family or neighbours). They can also become a danger to themselves (attempted self-mutilation for example), incapable of seeing to their basic personal needs, or a threat to law and order. In such cases it is necessary to decide whether a compulsory placement order can be issued without contravening the ECHR and if so under what conditions.

Compulsory treatment

Under the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine (Convention on Human Rights and Biomedicine), health care may usually only be provided if the person concerned gives his or her consent (Art. 5 of the Convention). In exceptional circumstances, when the patient is suffering from a mental disorder, healthcare personnel are authorised to ignore a refusal to give consent to the treatment being offered. In such cases treatment may be imposed, but only if a failure to act may pose a serious threat to the health of the person concerned and subject to protective conditions prescribed by law, including supervisory, control and appeal procedures (Art. 7 of the Convention). States may afford greater protection to persons suffering from a mental disorder and for example rule out, except in emergencies, any possibility of treating patients without their consent or that of their legal representative. It would be well worth opening the discussion on this subject.

PROGRAMME

Sunday, 21 October 2001

Morning

1. Restrictions of the freedom of elderly people living in non-custodial institutions

2. Protection of elderly people living in institutions – supervision, guardianship or appointment of a carer

Afternoon

3. Ill-treatment and restraints infringing human rights

Monday, 22 October 2001

Morning

4. Health care costs for elderly people in specialised institutions, rationing of care and quality control

Afternoon

5. Acces to palliative care in institutions vs. support for patients who decide to put an end to their lives

Tuesday, 23 October 2001

Morning

6. Reasons for an elderly person to move into an institution

7. Compulsory placement and treatment of the elderly

Afternoon

Press Conference at the Hotel Beaulac

Public Conference at the Hotel Beaulac

CONCLUSIONS

Introduction

A seminar took place from 21 to 23 October 2001 on the human rights of elderly people in retirement homes or institutions. The Council of Europe's Commissioner for Human Rights, Mr. Alvaro Gil-Robles, organized it in cooperation with the *Institut de droit de la santé* of the Swiss University of Neuchâtel.

Study themes during the seminar included the particular situation of elderly people in retirement homes, the reasons and criteria for their placement in semi-open or closed institutions, and compulsory placement and treatment. The serious and unwarranted constraints elderly people sometimes have to endure were also analyzed from a human rights perspective. More than thirty experts attended the seminar from member States, NGOs, and national and international organizations. The Commissioner rounded off the debates with a verbal presentation of the seminar's conclusions. The final written text of the conclusions adopted by the participants is given below:

1. The elderly people

Like anyone else, elderly people have basic rights that are protected by law. Growing old is not an illness, and people's age must not be used as justification for restricting their rights in any way.

Elderly people have the same right to human dignity as any other members of society. They must be able to exercise their right to self-determination and make choices freely, whereby account should be taken of the different stages of ageing. In this respect, it seems essential that elderly people should be free to choose their own lifestyle. Unless otherwise provided by law, the decision to go into an institution must be left to the elderly person concerned or, if his or her judgment is impaired, his or her representative. Before they give their consent to such a move, elderly people must have been suitably informed, notably about living conditions in the institution, the cost involved, and financial arrangements. Their consent must be freely given, and they must be able to withdraw it at any time.

It is essential that elderly people should be able to state clearly in a testament drawn up while they are still able to think for themselves how they would like to be treated should their physical or mental health deteriorate. They must also be able to appoint someone to represent their wishes and ensure they are respected.

Guaranteeing respect for the fundamental rights of elderly people does not in any way mean that they should be relieved of their obligations towards society.

2. Elderly people who carry on living at home

Elderly people are usually keen to continue living in their own homes for as long as possible. Sometimes it can be difficult to respect this wish because, depending on the care administered, allowing them to stay at home can cost more than their placement in an institution. Nonetheless, everything must be done to enable elderly people to live at home should they so wish. It is primarily up to the authorities, followed by the family, to help this to happen, but society as a whole must do its bit.

Several measures are to be taken in this respect. In order to reduce the cost burden of the assistance that has to be provided to dependent elderly people living in their own home, the authorities will set up a system of special allowances designed to cover a large share of the cost. If the elderly are to carry on living at home, existing housing must be adapted and where necessary new housing built so that there are a sufficient number of suitable dwellings catering for the special needs of elderly people who have become physically dependent. Enabling elderly people to stay in their homes also means support structures will have to be developed, for example short-stay institutions where the elderly can go to spend a day or night or even a few days.

Lastly, and this also applies to care administered in an institution, it is vital that the people whose job it is to look after the personal needs of elderly people and administer healthcare receive the appropriate training, not least by participating in continuing training courses. Their pay must also accurately reflect the difficulty of their job and the effort required on their part. Wherever possible, the authorities must help to improve the status of people working with the elderly.

3. Life in an institutional setting

How the life of elderly people living in an institution is organized is a determining factor for their quality of life, autonomy and general well being. For that reason, it is absolutely essential that institutions for the elderly should require approval or an operating license, granted only after the institution in question has passed an inspection focusing on the quality and technical nature of the equipment with respect to hygiene standards, lighting, space, etc, and the extent to which the Director and staff are able, in terms of their training and experience, etc, to deliver the services offered by the institution. In addition, the rules governing the institution must be checked to make sure that they respect the fundamental rights of elderly people (their contacts with the outside world, mealtimes, etc). The competent public authorities have an important role to play in this respect in carrying out regular inspections which must be unannounced and followed up by a full report which the people living in the institution concerned must have the opportunity to consult. The role of the authorities must be to make sure that each institution meets the requirements for the operating license at all times.

The relationship that develops between elderly people and the institution where they live is one of often long-term dependency, where the two parties are on an unequal footing. In order to restore the balance, parliament has a duty to enact legislation that encourages solutions as the possibility for the elderly people to appoint individual carers, accompagnants", in other words a reference person who, where possible, has independent status and is neither on the staff of the institution nor a member of the

family. The role of these accompagnants is to advise the elderly people in their charge, make sure they are kept informed, and help them when they have to take decisions by serving, when required, as their link with the management and staff of the institution, and with the authorities.

Concerning the costs associated with life in an institution (social, accommodation and catering, healthcare costs), the financing system put in place by the authorities must ensure that the cost burden is spread evenly across the different generations and enables elderly people to have any care they require.

Lastly, a standard set of rules needs to be drawn up at European level, in particular to define the minimum conditions for guaranteeing that the human rights of elderly people in institutions are respected. Such rules would have the benefit of encouraging subsequent monitoring by inter-governmental organizations such as the Regional Office for Europe of the World Health Organization.

4. Respect for the rights of the elderly people and protection against ill treatment

Any restrictions on the basic rights of elderly people must be prescribed by law and ordered by a judge. It must also be the subject of a decision in writing that gives the reasons for the restrictions. Elderly people or their representatives must have the possibility, if need be, to bring an action before an independent body, such as a pluri-disciplinary supervisory body, endowed with the necessary powers to make the institution in question respect the elderly people's rights. At their request, elderly people must be able to have their interests defended by a lawyer or, when they do not have the necessary resources, by an officially assigned defense counsel.

Provision must be made in domestic law for elderly people or their accompagnants to report acts of ill treatment without fear of reprisals. To ensure that ill treatment does not go unpunished, carers must be under an obligation to report any such acts. Elderly people, for their part, must be free to decide whether or not they wish to report any ill treatment they suffer.

5. A response to elderly people's needs

Associations set up to defend elderly people's interests demand respect for their rights and dignity but fear that enactment of legislation specifically concerned with the elderly could have a stigmatizing effect. It is primarily up to the competent public authorities to ensure that elderly people are completely free to exercise their fundamental rights. To that end, rather than passing a law on the elderly that might have a discriminatory effect, they will adopt statutory provisions, after consulting with the people principally concerned, for incorporation in existing laws. The purpose of such provisions will be to make sure that due account is taken of the specific needs of elderly people, not least their spiritual and cultural needs.

At this stage, the idea of setting up a European observatory is very attractive insofar as it would then be possible to develop a system for exchanging information and assessing national practices, including the inspection procedures in place in the different countries.

There is thus a need for radical change throughout society, not only at the level of available resources but also in terms of people's attitudes. With the help of public information and awareness campaigns and advice given to elderly people, the whole of society must be made to understand that elderly people are citizens like any other members of society, with the same rights and obligations. Having devoted a considerable part of their lives to the socio-economic development of the whole of society, elderly people deserve the solidarity of all the different social players.

Lastly, it is important to stress that priority must be given to elderly people's needs and not the costs to society of satisfying such needs. This can only be achieved by involving groups working to defend the interests of the elderly and their relatives in the decision-making process and by calling for solidarity between generations.

V. INTER-RELIGIOUS DIALOGUE

Seminar organised by the Office of the Commissioner for Human Rights

THE EXERCISE OF THE RIGHT TO FREEDOM OF RELIGION IN CHURCH - STATE RELATIONS

Strasbourg, 10-11 December 2001

Background paper

I. Introduction

In December 2000, the Commissioner for Human Rights of the Council of Europe organised a seminar in Syracuse, Italy, on the role of monotheistic religions in armed conflicts. This year's seminar seeks to extend the reflection begun in Syracuse on the role and place of Churches[1] in European societies through an examination of the effects of the institutional relations between Churches and States on the freedom of religion.

II. The scope of the notion of freedom of religion as guaranteed by the Convention.

The right to freedom of thought, conscience and religion is guaranteed by article 9 of the European Convention of Human rights of 1950 (hereafter the "Convention"). This liberty represents one of the foundations of a "democratic society" within the meaning of the Convention. According to the European Court of Human Rights (hereafter the "Court"), it is one of the most vital elements that go to make up the identity of believers and their conception of life but it is also a precious asset for atheists, agnostics, sceptics and the unconcerned. The pluralism indissociable from a democratic society, which has been dearly won over the centuries, depends on it[2].

Though freedom of religion is primarily a matter of individual conscience, it also implies the freedom to manifest one's religion or belief either alone or in community with others and in public or in private, in worship, teaching, practise, and observance.

The convention does not define what is to be understood under a "religion"[3], but it follows from the text of article 9 and the subsequent jurisprudence that the right to freedom of religion has three aspects.

i) The first concerns the absolute right of each individual to adhere, or not, to a religion or belief and to change his religion or belief. The state has no role to play as a "guardian of conscience" and must abstain from all attempts to define the permissible content of individual beliefs, which are, and must remain, free. This

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[1] In this paper the term "Church" will be used to refer to all organised groups composed of a clergy and believers of a single faith. In the strict sense of the term, the word "church" only refers to the Christian church or churches. There is no such thing as a Jewish or Muslim Church.

[2] European Court of Human Rights ; judgements in Kokkinakis v. Greece, 25th May 1993, Otto-Preminger-Institut v. Austria, 29th September 1994.

[3] Nor does it define "sect". See also Recommendation 1412 (1999) of the Parliamentary Assembly of the Council of Europe on the illegal activity of sects. The Assembly concludes that it is not necessary to provide a definition of "sect" and invites member States to use the normal procedures of criminal and civil law against illegal practices carried out in the name of groups of a religious, esoteric or spiritual nature.

implies that no person shall be discriminated against in the enjoyment of his political[4] and civil rights on the grounds of his adherence or not to a particular religious faith.

ii) The second covers the right to practise, individually or collectively, one's religion, or, in other words, to be able to participate effectively in a religion and to observe its rites. The freedom to manifest one's religion or belief can, nonetheless, be subject to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health, morals, or for the protection of the rights and freedoms of others. This right to limit the freedom of religion is frequently invoked by states to justify their interventions in the form either of the protection of individual victims of "sects", or through the banning or refusal to recognise churches or religious associations officially.

iii) As legal entities ("*personnes morales*"), Churches also enjoy the rights guaranteed under article 9. As a result, the third aspect concerns the right of religious associations to organise themselves freely. This means that the State ought in principle to intervene neither in the selection of religious officers[5] nor in the internal organisation of Churches[6].

III. The nature and basis of State-Church relations.

Churches and States have long been partners. The history of their relations is at once one of power struggle and mutual support, even if, in recent years, we have witnessed a decline in the temporal authority of Churches and a strengthening of that of States.

Taking the principles laid down by the Court as a starting point, it is proposed that the wide variety of State-Church relations be examined. Generally, the foundation and nature of these relations varies according to the traditional presence of Churches, or some amongst them, within each State. The intensity and privileged nature of these relations also depends on the attachment felt by the population to these religions, which is often a function of cultural and national identity[7]. Lastly the effects of the migratory movements within Europe and the flow of migrants towards it need to be taken into account.

a. The diversity of institutional models governing the relations between Church and State.

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[4] It is to be noted that the Court has recently extended the prohibition of discrimination on the grounds of religion to cover employment; it decided in Thlimmenos v. Greece, 6th April 2000, that the Greek state had violated the Convention by refusing to allow a Jehovah's Witness, who had been criminally convicted for refusing to do his military service, to work as a chartered accountant.

[5] See, for example, the judgement in Serif v. Greece, 14th December 1999, concerning the criminal conviction of an elected mufti for usurping the functions of the state-appointed mufti in the region of Thrace.

[6] See the judgement in Hassan and Tchaouch v. Bulgaria, 26th October 2000, on the changes made by the Bulgarian State to the leadership and statutes of the Muslim community, which was very divided at the time, and which led to the forced destitution of the Grand Mufti.

[7] See Recommendation 1202 (1993) of the Parliamentary Assembly on religious tolerance in a democratic society.

i) There are some secular states which neither recognise nor privilege (at least officially) any of the Churches on their territory; in these countries Church and State are strictly separated. This is the case in France, Turkey and Russia, which have all constitutionally enshrined secularism[8].

ii) Several other European countries acknowledge state religions, which consequently benefit from a privileged status in comparison to other Churches, whilst otherwise respecting the freedom to practise any religion or belong to none. Such is the situation in Greece and in the Scandinavian countries.

iii) Lastly, other countries, like Germany, Belgium and the Netherlands, employ a recognition mechanism to confer a special status on certain religious communities, which then benefit from legal advantages not enjoyed by unrecognised beliefs. The officially recognised religious communities will enjoy either a public or private law status.

In theory, none of these systems are considered inconsistent with the principles of freedom of religion and non-discrimination. Nonetheless, it cannot be ignored that, in practise, minority or unrecognised religions may well be discriminated against *de facto* when compared to other recognised or established ones.

b. State recognition of Churches

Article 9 of the convention presents the freedom of religion, thought and conscience in a general manner. Does this liberty imply, however, that all faiths have an equal right to recognition? Furthermore, does recognition imply merely the granting of legal personality or might there be other consequences?

The answer to these questions is not obvious since state recognition can take various forms. It might, for instance, involve a system of prior registration and approval, or of a formal or substantive control[9], or the conferring of the status of a religious association, or even a collection of rules giving the authorities the power to dissolve religious associations in the event that they engage in activities considered illegal or dangerous. State recognition may also have various consequences, for example through the granting of certain fiscal benefits or special exemptions.

The Court has held that, when considering the organisation of a religious community, Article 9 should be interpreted in the light of Article 11 of the Convention, which protects freedom of association from unjustifiable state interference. Indeed, the autonomy of religious associations is a vital element in the pluralism of a democratic society, and States have an obligation to remain neutral in the matter. This should

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[8] It is to be noted that these are all countries with one dominant religion; Catholicism in France, Islam in Turkey and the Orthodox Church in Russia.

[9] See, for example, application n° 28626/95, the Christian Association of Jehovah's Witnesses v. Bulgaria, concerning the refusal on the part of the Bulgarian authorities to renew the registration of the association following the adoption of a law subjecting registration to the consent of the Council of Ministers (Report, friendly settlement, Comm. DH, 9th March 1998, D.R. 92-B, p. 44)

prevent them, for example, from favouring one leader of a divided congregation over another, or insisting that a congregation accept a single leadership, or from systematically supporting established religions to the detriment of minority beliefs[10].

The criteria used for recognition are important not only because a certain number of "traditional" churches represent majority religions in some States, but minority religions in others[11], but also with regards to the accommodation of new religious movements, as much, indeed, by other Churches as by the State itself. Finally, the question of the status of religious communities can be of paramount importance in multi-ethnic societies, where religious differences are, as for instance in Yugoslavia, often used as pretexts or justifications for armed conflicts

c. Privileged relations

It is necessary to consider whether it is still acceptable for a State to privilege only one Church on its territory. The point at which such privileging becomes discriminatory will also need to be examined. In effect, as recalled by the Parliamentary Assembly in its Recommendation 1396 (1999), States must protect religious pluralism by ensuring equal opportunities for development to all religions and Churches that respect the conditions set out in the Convention.

The current situation amongst member States shows that the practice of privileging one or other religion and its Church is broadly accepted in Europe. It is necessary, however, to ensure that the preferential treatment is based on objective criteria. One might mention the following:

- no positive discrimination should have a negatively discriminating effect on any other religion. This to say that preferential treatment should not be awarded to any one Church to the detriment of another. It needs to be emphasised that the "favours" granted to established, traditional churches cannot justify a State's ignoring or discriminating against minority Churches or those new to its territory. These last must enjoy at least the right to the recognition of their legal personality[12] ;

- there should be no derogations to the three aspects of religious freedom outlined above.

- criteria such as the number of adherents should be taken into account when considering whether or not to grant special status. At the same time, factors relating to the religious history of a country and the traditions of its people might play an important role.

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[10] Judgement in Hassan and Tchaouch, see above, § 62 and 78-80

[11] As is the case, for example, for the Catholic Church in Greece and Russia.

[12] See the judgement in The Catholic Church of Canea v. Greece, 16th December 1997, concerning the Catholic Church's inability to take legal action for lack of legal personality.

- finally, the state ought to refrain from all value judgements on the content of religious belief, unless it can be shown that the belief in question endangers the foundations of democratic society[13].

Even if the freedom of religion is guaranteed by normative texts in the majority of European States, it is still necessary that it can be exercised in satisfactory conditions. Indeed, religious communities must be allowed to establish and maintain their places of worship[14], to solicit and receive contributions from their faithful, to found charitable and humanitarian institutions and to furnish themselves with the necessary materials.

IV. Economic freedom as an essential element of the freedom of religion

The economic rights of Churches consist notably of the rights to own goods[15] and to receive donations and offers. There does not, however, appear to be any consensus on whether there exists a positive obligation on States to contribute to the financing of Churches through, for instance, subsidies or tax breaks.

a. Do States have an obligation to finance churches?

Democratic states, whether secular or linked to a religion, must allow all religions to develop under the same conditions, and enable them to find an appropriate place in society[16]. It needs to be asked, therefore, whether Article 9 imposes an obligation on the State to finance Churches? It seems that the answer is negative[17]. Certainly, there is a large difference between those countries in which religious belief is considered to be a matter of personal conviction and those in which it is deemed to constitute an essential basis of society.

In the first case, the protection of the freedom of religion is intended to guarantee an individual right enjoyed by all citizens and state funding is considered legitimate only in the event that, for certain reasons, citizens are deprived of their normal right to practise their religion. This is the case for conscripts and convicts. In these cases, it is recognised that the State must assume responsibility for the funding of military and penitentiary chaplaincies in order to guarantee the enjoyment of the right of affected

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[13] In a judgement of 31st July 2001, the Court decided, 4 against 3, that the dissolution of the Refah Partisi (the Prosperity Party, which was in power at the time) by the Turkish constitutional court was justified under article 11 § 2 of the Convention since this party advocated the application of the sharia and the recourse to the jihad, or holy war, as a political method. See also Recommendation 1396(1999) of the Parliamentary Assembly on religion and democracy.

[14] See Manoussakis v. Greece, 26th September 1996, concerning the criminal investigations against Jehovah's Witness for having rented a place of worship without prior authorisation.

[15] See The Holy Monasteries v. Greece, 9th December 1994, or The Institute of French Priests v. Turkey, 14th December 2000.

[16] See Recommendation 1396 (1999), above.

[17] Indeed, article 9 gives no right to a special fiscal status (Church of El Salvador v. Spain, n° 17522/90, dec. 11.01.92, D.R. 72, p. 256).

persons to the freedom of religion. In principle, therefore, secular states are only obliged to finance this kind of religious service. For the rest, Churches are financed through the donations and gifts of its faithful, as is the case in France for example[18].

In the second case, religion is seen as an essential element of society, such that without it the nation could not exist. This makes for a more active role on the part of the public authorities, notably in the provision of financial assistance to Churches. In this context, the protection of religious freedom is not enough. Public authorities will also play a role in supporting religious communities, since this is the expressed will of the people.

b. The diversity of financial relations

The financial relations between Churches and State are numerous and complex. In all European countries, public authorities play a direct[19] or indirect[20] role in the financing of religious activity. A large number of countries employ a system of church taxes. Despite the diversity of such systems, two broad kinds can be distinguished.

1. The system of "State Churches"

In some European countries, like Finland, Denmark and Norway, one particular religion or State Church is constitutionally enshrined. In these countries the State Church fulfils not only a religious role but also undertakes certain civil functions like keeping civil registers or providing undertaking services. This system presupposes a church tax to cover the costs, on the one hand, of the religious offices themselves and, on the other, those incurred in fulfilling its social functions.

The liability to this tax is general with, in principle, no exemptions. Indeed, even when it is possible to refuse to pay the tax in virtue of one's non-adherence to the faith in question, the exoneration is not complete owing to the public services assumed by the Church (in Sweden, for example, everyone is obliged to pay at least 30% of the total tax).

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[18] The law of 1905 on the separation of the Church and State states that the French Republic will neither recognise nor subsidise any religion. Nonetheless, the religious associations recognised as such can receive donations and legacies and benefit from a favourable fiscal regime (see the case of the Union of Atheists v. France, Rapp. Comm. DH of the 6th July 1994, concerning the legal impossibility of self-declared associations of receiving donations through testamentary provisions).

[19] See, for example, the problem of the maintenance of religious buildings deemed to be part of the cultural and historical heritage of the state, which was examined by the Parliamentary Assembly in its Recommendation 1484 (2000) on the management of cathedrals and other major religious buildings in use.

[20] Even if only by granting certain advantages with financial consequences. So, for instance, in France, only the Consistoire Central Israelite is authorised to operate ritual slaughterhouses, which enables it to levy a kosher certification tax. In Cha'are Shalom Ve Tsedek v. France, 27th June 2000, the Court decided that a minority, ultra-orthodox Jewish association, which had been unable to obtain authorisation, had not been subject to religious discrimination.

The State then grants the Church subsidies in virtue of the public services provided. This arrangement obviously puts State Churches in an advantageous position in comparison to excluded Churches and religious associations.

Even though in most of the countries with such a system, the majority of the population belongs to the State Church, still a significant number of people belong to others. Is there not, therefore, a certain inequality arising from the privileges enjoyed by some and denied to others, though all citizens are required to contribute to the budget of the State Church?

2. The system of recognised Churches

A number of European countries have devised a novel tax system allowing their citizens to contribute, according to their personal convictions, to the financing of those Churches that the State recognises. This substantial aid has become these Churches' principle source of funding, covering *inter alia* the costs of ministers and the maintenance of buildings in, for example, Germany, Italy, Spain and a number of Swiss cantons. It should be noted that the concordat, the conventions agreed between the Holy See and a number of States defining the status of the Catholic Church, falls within this system.

Depending on the country, this system either allows individuals to choose themselves which Church to support (as is the case in Italy) or gives the civil administration, or churches directly, the right to define and declare the religious affiliation of contributing individuals. Still, usually, anyone can declare that he adheres to no religion and consequently pay either no tax (as in Germany) or a tax for the benefit of humanitarian organisations (as in Spain).

Though this system allows individuals to choose the community they would like to support and accords as such greater respect to the freedom of religion, it still raises several questions notably about its compatibility with the right to respect for one's private life. Can one impose an obligation to declare one's religious convictions, or lack thereof, to one's employer or to a state authority? Is a register of the population according to religious beliefs permissible?

V. Further considerations.

The democratic system provides the best framework for the freedom of conscience, religious observance and religious pluralism. For their part, Churches, through their moral and ethical engagement, through the values they preach, through their cultural references and their critical eye are to be considered vital partners in a democratic society. Churches and States must take care, however, that their institutional relations respect the right to effective enjoyment of freedom of religion.

The practise of privileging certain religions and not others is not in itself unacceptable, so long as the advantages are conferred according to well-defined, objective criteria. Nonetheless, the criteria for state recognition and the elaboration of the resulting rights raise several tricky questions.

The same is true of the state funding of Churches. Which Churches and religious associations ought to be able to benefit? What should the role of the State's tax administration be and what controls are there for preventing abuses? How should revenues be divided between the groups standing to benefit?

How is discrimination to be avoided? For example, in the majority of member States with an ecclesiastical tax system only the traditional Christian (Protestant, Catholic and Orthodox) Churches and the Jewish and Muslim communities benefit. How, furthermore, does one assess whether the faithful of a particular religious community are adequately represented? In many member States[21], the Muslim community suffers from the lack of a hierarchical structure capable of representing it before State organs, which have, in turn, been seeking official interlocutors.

Would more satisfactory representation result from the creation of organisations uniting the diverse tendencies within individual religions, as well as, at a higher level, ecumenical organisations[22] bringing together all the Churches in the State in question?

Churches and States must remain free to organise their relations as they see fit. Certainly, it is not for the Commissioner for Human Rights to propose any one institutional model. However, reflection on the modalities of the cooperation between Churches and States will also have to cover the respect of the right of all persons to the freedom of thought, conscience and religion and the promotion of mutual respect and religious tolerance.

[21] Notably in France and, at least until very recently, in Belgium.

[22] In the broadest sense of the term, that is uniting not only Christian Churches, but also other religious communities.

PROGRAMME

Monday 10 December 2001

Session 1

The rights of Churches and the scope of the notion of freedom of religion as guaranteed by article 9 of the European Convention on Human Rights

Session 2

The diversity of institutional models governing the relations between Churches and States and the types of State assistance :

- Secular states, State Churches, Recognised Churches

- Do States have an obligation to recognize Churches (the legal status of religious communities, the types of recognition, the dissolution of Churches and religious movements) ?

Tuesday 11 December 2001

Session 3

The diversity of institutional models governing the relations between Churches and States and the types of State assistance (*continued*) :

- Does the recognition of Churches by States imply a right to public funding (privileged relations between States and certain Churches, different kinds of financing arrangements) ?

Session 4

Final discussion and summing up by the Commissioner

CONCLUSIONS

1. At the request of the Council of Europe Commissioner for Human Rights, we, representatives of monotheistic religions or members of the administrations of Council of Europe member states, have discussed the effects of the institutional relations between Churches and States on the exercise of the right to freedom of thought, conscience and religion embodied in the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). We welcome the key role played by the Council of Europe in safeguarding human rights, a role which is reinforced by the work done by its Commissioner for Human Rights.

2. We acknowledge that, for historical reasons, there is a wide variety of laws and regulations in Council of Europe member states governing relations between Churches and religious communities and the State. Nevertheless, we reaffirm the fundamental right to manifest one's religion, either alone or in community with others, and the right of religious associations to organise themselves freely and decide on the content of their spiritual beliefs, in accordance with Article 9 of the ECHR and the principles set out in other international instruments. Nor should there be any discrimination between religions, as stipulated in Article 14 of the ECHR.

3. We confirm the need to grant religious believers and representatives the right to freedom of association through the establishment of a legal entity to ensure the free exercise of the right to freedom of religion, provided that such religious communities carry out their activities in accordance with the principles set out in the ECHR, in particular Articles 9 and 11.

4. We believe that all Council of Europe member states must grant religious communities the necessary rights to enable them to fully enjoy the rights set out in Article 9. Such rights must be granted to ensure equal treatment of the different religions without any distinction based on historical traditions or the number of believers. In this context both official checking prior to registration and substantive control by the state must be carried out solely in accordance with the stipulations of Articles 9, para. 2, and 11 of the ECHR. As part of this minimal level of recognition, religious associations ought to be granted, where appropriate, the same financial benefits as any other non-profit making association.

5. Religious communities which, in addition to the rights already granted under Articles 9 and 11 of the ECHR, wish to take part in activities that are in the public interest, should be granted the same advantages as given to other legal entities with similar aims.

6. The participants acknowledge that certain religious communities may be granted a special status. This does not constitute a discrimination provided that co-operation between these communities and the state is based on objective and reasonable criteria such as their historical or cultural relevance, representativeness or

usefulness to society as a whole or to a large or specific sector of the population. The state also has a positive obligation to help preserve the religious, cultural or historical heritage that religious communities have contributed to mankind over the centuries.

7. The participants encourage religious communities to co-operate in a spirit of mutual understanding and respect and, as key partners of the national authorities, to contribute to the study, discussion and resolution of the main problems currently facing society.

VI. OMBUDSMEN

CONCLUSIONS
OF THE MEETING BETWEEN
THE OMBUDSMEN OF CENTRAL & EASTERN EUROPE

and

MR. ALVARO GIL-ROBLES,
COMMISSIONER FOR HUMAN RIGHTS

Warsaw, 28 -29 May 2001

The meeting was held on 28 and 29 May 2001 in Warsaw on the initiative of Mr Alvaro Gil-Robles, Council of Europe Commissioner for Human Rights, with the cooperation of Poland's Ombudsman, Mr. Zoll, bearing in mind the conclusions of the meeting held in Budapest on 23 and 24 June 2000. It was attended by ombudsmen, or their deputies, from 14 central and eastern European countries, namely: Albania, the Czech Republic, Estonia, Georgia, Hungary, Latvia, Lithuania, "the former Yugoslav Republic of Macedonia", Moldova, Poland, Romania, the Russian Federation, Slovenia and Ukraine.

The participants held an exchange of views on all aspects of their activities and, above all, on their co-operation with the Council of Europe Commissioner for Human Rights, in accordance with Article 3 (c) and (d) and Article 5 (1) of Resolution (99) 50, adopted by the Committee of Ministers on 7 May 1999.

A. The participants made an initial analysis of the conclusions of the meeting held in Budapest the previous year and noted:

a. the need to continue to foster the establishment and consolidation of the institution of ombudsman in the Council of Europe's member states.

   It was particularly important that new ombudsmen offices should be established on the basis of a parliamentary vote, guaranteed full independence and provided with the requisite financial and human resources for the task.

   At present the priority was to foster the national ombudsman institution rather than to set up specialist or sectoral ombudsmen, who tended to dilute the effort to protect human rights without offering any guarantee of efficacy.

b. The meeting welcomed the initiative of the Government of the Slovak Republic to present a bill in Parliament to appoint an Ombudsman and hoped that it would be put into effect as soon as possible. The ombudsmen hoped that similar projects would be elaborated in the newly joined Member States.

c. Participants stressed the need for the Council of Europe Commissioner for Human Rights to prepare and convene meetings with judges and experts from the European Court of Human Rights, as agreed at the previous meeting in Budapest.

d. They considered it extremely useful for the Commissioner, when visiting their countries, to call in at their offices and take heed of the information and opinions they put forward.

e. They agreed to appoint liaison officers in their offices to foster improved co-operation between the office of the Commissioner and those of the ombudsmen.

f. They further agreed that other ombudsmen or similar institutions from states which were not members of the Council of Europe, and in particular the European Union's Ombudsman and those of other international organisations working in the human rights field, could be invited to attend future meetings as observers.

g. They considered it important that such meetings should be held once a year, normally in May, and that, in addition to matters of a general nature, a specific theme of common interest should be addressed. The next meeting is to be held in Tbilisi in May 2002. In addition to general problems between the institutions the following are to be treated as specific topics: 1. "Identification of sources of human right violations – the public sector and the private sector", with an introduction by Ms. Nana Devdariani, Acting Public Defender of Georgia, and 2. "Trafficking in human beings", with an introduction by Ms. Nina Karpachova, National Ombudsperson of Ukraine. It was also agreed to examine a project aiming at a charter of human obligations inspired by a similar charter adopted in Gdansk in 2000.

h. The ombudsmen urged the international organisations to make an effort to coordinate the preparation of the different meetings to which they are invited.

B. The meeting also dealt with two specific subjects: Roma issues and illegal immigration and people in transit.

On the matter of Protecting Roma/Gypsy rights Mr. Jenő Kaltenbach, Hungary's Commissioner for National and Ethnic Minorities, introduced the subject of integration problems facing Roma in eastern Europe from the

viewpoint of an ombudsman for minorities. Poland's Ombudsman, Mr. Andrzej Zoll, introduced the discussion on the problems of illegal immigration and transit.

a. Mr. Kaltenbach expressed concern at the prospect of Hungary's Roma becoming scapegoats in the near future and described the various forms of racial discrimination that went on, for example, in education, the labour market, public services, and relations between the Roma and the police. Participants highlighted the principle of equality and non-discrimination against minorities, including Roma, and the importance of access to education. In view of the cultural wealth of such a heterogeneous society, participants stressed the need to respect the Roma identity.

1. More specifically, along the lines already laid down by the European Committee on Migration and the Specialist Group on Roma/Gypsies set up by the Committee of Ministers in 1995, the ombudsmen also considered it important for the protection of Roma/Gypsies that the Framework Convention for the Protections of National Minorities, in force since 1998, Recommendation (83) 1 on stateless nomads and nomads of undetermined nationality, dated 22.02.1983, and the European Convention on Nationality, in force since 1 March 2000, should be referred to and applied without hesitation.

2. They considered it very important that national governments should develop special education, housing and employment projects and, if necessary, in co-operation with the Council of Europe's Development Bank.

3. The ombudsmen resolved to make a special effort to defend the rights of Roma/Gypsies, although they did not consider it necessary to institute a special supra-national ombudsman for the purpose, as the Council of Europe Commissioner for Human Rights was well placed to deal on the supra-national level with general issues concerning this minority.

4. The ombudsmen will make an effort to engage in their offices a person specialised in Roma questions and if possible belonging to this minority.

5. In order to put forward a process to approach the ombudsmen and the Roma community the ombudsmen proposed to the Commissioner for Human Rights to prepare a meeting with representatives of the minority in question and representatives of the ombudsmen's offices.

b. Mr. Zoll's contribution on illegal immigration and transit addressed the questions of foreigners and illegal employment, trafficking in women and prostitution, the crossing of borders and residence permits. The ensuing discussion addressed various issues, including the need to respect the rights of legal immigrants, to improve their chances of

integration; this meant respecting their customs and their language. Participants explained their misgivings concerning family reunification, the right to or and to housing and education. On the matter of illegal immigration, they considered it important to make sure that everything was done to prevent the exploitation of people with no papers. Authorities should co-operate with the authorities in other countries and with trade unions and NGOs to review the situation of long-term immigrants working in their countries. The participants agreed that expulsions should always be subject to the effective right to appeal and to due respect for the human rights and dignity of the persons concerned.

The Commissioner announced that a seminar on “Human rights standards applying to the holding of aliens wishing to enter a Council of Europe member State and to the enforcement of any expulsion orders”, organised jointly with the NGOs, was shortly to be held in Strasbourg. The conclusions would be forwarded to all the ombudsmen.

The ombudsmen were also convinced of the need to protect the rights of their countries’ nationals who emigrated to EU countries, particularly the right to be reunited with their families.

CONCLUSIONS
OF THE MEETING BETWEEN
THE OMBUDSMEN AND THE ROMA/GYPSY COMMUNITY OF CENTRAL & EASTERN EUROPE

organised by

MR. ALVARO GIL-ROBLES,
COMMISSIONER FOR HUMAN RIGHTS

Strasbourg, 19-20 November 2001

As decided at the last meeting of Ombudsmen of the countries of Central and Eastern Europe (CCEE) in Warsaw (Poland) on 28 and 29 May 2001, the Commissioner for Human Rights, Mr Alvaro Gil-Robles, held a meeting with representatives of the Roma/Gypsy community in Strasbourg (France) on 19 November 2001.

The Commissioner for Human Rights began by opening the meeting and giving the floor to Mr Henry Scicluna, Council of Europe Co-ordinator of activities on Roma/Gypsies, who explained the functions and activities of his department. Mr Jenö Kaltenbach, the Hungarian Ombudsman for National and Ethnic Minority Rights, then spoke about the Ombudsman's role in national government, particularly in relation to the rights of minorities. All the representatives of the Roma/Gypsy community then spoke in turn, outlining the role of their particular organisation and their hopes for the meeting.

The lively debate that followed produced the following joint conclusions:

1. Co-operation between the Roma/Gypsy community and the national Ombudsmen should be stepped up as a matter of urgency. This would lead to a greater understanding of the problems facing this community in each country.

2. Some Roma/Gypsy representatives clearly wished to broaden the debate and to invite all European Ombudsmen and representatives of the Roma/Gypsy community from the same geographic area to a future meeting. This meeting should take place some time in 2002.

3. The theme of the next meeting would be access to education for Roma/Gypsies. All the participants (both the Ombudsmen and representatives of the Roma/Gypsy community) agreed to take stock of the situation in their own country so that an open, constructive debate could take place.

4. None of the participants deemed it necessary at present to create new structures (bodies or institutions) to defend the rights of the Roma/Gypsy community in Europe. Indeed, it seemed that working with existing institutions would be more effective for the time being. For instance, at the national level this would involve working with the courts, national Ombudsmen and all other relevant bodies so that everything possible was done to protect the rights of the Roma/Gypsy community. At the international level, all the regional, international and global organisations working both directly and indirectly to uphold the rights of minorities naturally had a part to play. Finally, as regards the existing legal framework for combating all forms of discrimination, it was emphasised that the Council of Europe's European Convention on Human Rights and the Protocols thereto and its Framework Convention for the Protection of National Minorities contained provisions protecting the fundamental rights of this community. Therefore the existing international framework should be applied in countries where adequate national legislation had not yet been enacted.

5. The entire day of 20 November (as also decided in Warsaw) was spent discussing the role of the European Court of Human Rights and the bodies established under the European Social Charter. A Court judge, Mr Kristaq Traja, a representative of the Commissioner's Office, Ms Caroline Ravaud, and the Executive Secretary of the Charter, Mr Regis Brillat, described these institutions to the Ombudsmen. This was followed by a debate that underscored the importance of the case law of the European Court of Human Rights for the everyday work of the Ombudsmen. Furthermore, it was stressed that social rights must be respected, as they were an integral part of Human Rights.

6. The Ombudsmen and the Commissioner agreed to continue co-operating and working on this and other issues.

CONCLUSIONS OF THE MEETING BETWEEN EUROPEAN OMBUDSMEN

and

MR. ALVARO GIL-ROBLES, COMMISSIONER FOR HUMAN RIGHTS

Zurich, Switzerland, 21 November 2001

The 7th Round Table of European Ombudsmen took place in Zurich from 21 to 24 November 2001. This Round Table, which was organised by the Council of Europe's Human Rights Directorate, was attended by the Ombudsmen of a large number of west, central and east European countries. It also provided a fresh opportunity for the Ombudsmen to meet the Commissioner for Human Rights on 21 November 2001.

The theme dealt with at the meeting between the Ombudsmen and the Commissioner was "Immigration in Europe today".

The address by Mr Roel Fernhout, the national Ombudsman of the Netherlands, served as a basis for the discussion. Mr Fernhout described the precarious situation in which foreign nationals found themselves on arriving in Europe. He drew special attention to their difficult living conditions, the lengthy administrative procedures and their last-minute refusals to board planes returning them to their home country.

During the ensuing discussion, his colleagues mentioned similar findings in their own countries showing that foreigners, and in particular refugees, increasingly found themselves in extremely precarious situations. The Ombudsmen said that in many cases they did not receive the information they required, mainly because the authorities (police, migration officers, etc) failed to forward such information. The fact that Ombudsmen very often did not have access to waiting zones in airports or to some refugee centres was also criticised.

In conclusion, the importance of the role of Ombudsmen in ensuring the transparency of procedures and respect for the rights of foreigners arriving in Europe was reaffirmed.

The Recommendation of the Commissioner for Human Rights "concerning the rights of aliens wishing to enter a Council of Europe member State and the enforcement of expulsion orders" was therefore of prime importance because it set out very clear guidelines in this field and clearly described the rights to which these persons were entitled.

VII. PARTICIPATION IN COLLOQUIES, CONFERENCES AND OTHER EVENTS

PARTICIPATION IN COLLOQUIES, CONFERENCES AND OTHER EVENTS

2-3 April	Working Group on "*Health and Human Rights*", organised by the WHO and the Pan-American Health Organization in Geneva
9-12 April	17th René Cassin competition, organised by the Association JURIS LUDI, in Strasbourg; final jury member
17-20 May	Seminar on "T*ransit Zones, Lawless Zones?*", organised by Exodus in Geneva
21 May	Seminar on "*Modern Slavery: Strengthening Cross-Border Co-operation in Combating Human Trafficking*", organised by Ms Helle Degn, Commissioner of the Council of Baltic Sea States (CBSS) for Democratic Development in Copenhagen
15-16 June	Colloquy on "*Social Rights or Demolishing a Number of Clichés*", organised by Robert Schumann University in Strasbourg
23 June	Second European Forum on "*The European Union's Charter of Fundamental Rights: its content, scope and future, and European and universal values*", organised by Thierry Cornillet, MEP, rapporteur on the situation of fundamental rights in the EU in Montélimar
25-27 June	IVth International Congress of the International Council for Global Health Progress on the theme "*Global Health Equity: Medical Progress and Quality of Life in the 21st Century*", at UNESCO headquarters in Paris
10 July	Seminar on "*Human Rights Commissions and Human Rights Promotion*", organised by the University of Ulster and the Irish United Nations Association, at the House of Commons in London
22-26 July	Conference on "*the New Political Philosophy and Ethics in a Changing Europe*", conference on law, politics, economics and the mass media organised by the Moscow School of Politics in co-operation with the Council of Europe and the Open Society Institute in Moscow

10-13 September	Conference on "*Equal Opportunities for Roma and Sinti: Translating Words into Facts*", organised by the OSCE in Bucharest
18-19 September	"*The Role of the Ombudsperson in Protecting Human Rights*", OSCE Human Dimension Implementation Meeting 2001, organised by the ODIHR in Warsaw
31 September	Colloquy on "*the Dignity and Rights of Mentally Ill Patients*", organised by the World Psychiatric Association in Madrid
3-4 October	Conference on "*Irregular Migration and Dignity of Migrants: Co-operation in the Mediterranean Region*", organised by the European Committee on Migration (DG III) in Athens
8-9 October	Conference on "*Plurality and Singularity of the Ombudsman: a Comparative European Perspective*", organised by the *Provedor de justicia* in Lisbon
11-12 October	Seminar on "*the Rights of the Elderly*", organised by the Social, Health and Family Affairs Committee of the Council of Europe Parliamentary Assembly in Budapest
19-20 October	Colloquy on "*Borders and Waiting Zones: Controlled Freedom of Movement*", organised by the ANAFE and held at the Palais de Luxembourg, Paris, at the invitation of the Senator for Bouches-du-Rhône
8-10 November	Caritas Europe Migration Forum 2001: "*Trafficking and Smuggling in Human Beings: causes and consequences*" in Prague
17-19 November	Annual General Meeting of the *International Helsinki Federation* in Zagreb
13 December	Conference on "t*he Situation of Illegal Migrants in Council of Europe Member States*", organised by the Committee on Migration, Refugees and Demography of the Council of Europe Parliamentary Assembly in Paris (Assemblée Nationale)
13-14 December	"Exploratory Group for a Pan European Roma Advisory Body"; First meeting, Strasbourg

VIII. PERSONNEL

PERSONNEL

MEMBERS OF THE OFFICE BETWEEN 1 APRIL AND 31 DECEMBER 2001[1]

1. PERMANENT AND TEMPORARY STAFF

Mr Ekkehart MÜLLER-RAPPARD	Director of the Office
Ms Caroline RAVAUD	Deputy Director (as from 1 June 2001)
Mr Alexandre GUESSEL	Administrator
Ms Muriel DABIRI	Documentalist (as from 1 April 2001)
Ms Marina DILLON	Personal assistant
Ms Christine GIGANT	Personal assistant

2. SECONDED STAFF

Mr Mika BOEDEKER	Administrator seconded by the Finnish Government (up to 31 October)
Mr Fernando MORA	Administrator seconded by the Swiss Government
Mr John DALHUISEN	Long-term trainee seconded by the United Kingdom Government

[1] Ms. Michèle Kennel worked as assistant from October to December. Mr Stanislav Witkowsi (April-June), Miss Valérie Wolff (June-July) and Miss Ainara Gomez (October-December) worked as trainees.

IX. BUDGET

2001 BUDGET

ARTICLE	ITEM	APPROPRIATION IN EUROS
11001-2-3	Remuneration of the Commissioner and personnel (both permanent and temporary)	647,200
11005	Official journeys	92,800
11006	Interpretation	16,500
11007	Translation	46,400
11008	Document production and distribution	18,500
11009	Meeting expenses	59,100
11010	Representational expenses	3,600
11011	Consultants	6,800
	Total:	**890,900**