



COMMISSIONER FOR HUMAN RIGHTS  
COMMISSAIRE AUX DROITS DE L'HOMME



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## **ANNUAL ACTIVITY REPORT 2009**

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**by Thomas Hammarberg,  
Commissioner for Human Rights  
of the Council of Europe**

Presented to the Committee of Ministers  
and the Parliamentary Assembly

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## Foreword by the Commissioner

2009 has been a year very rich in developments on several fronts for my Office.

Following the completion of the full cycle of comprehensive assessment missions to every member state, we launched a new series of **focused visits** with the aim of defining key problems and issuing more precise recommendations. This approach allows us to be more flexible in the scheduling of visits, and we have also adapted our reporting: it is shorter, more focused and the reports are published soon after the visit.

Genuine dialogue with the governments remains the central element of the country-monitoring. It is focused on the understanding that when I am formulating critical reviews, this is for the purpose of assisting in the defining of problems and that the aim is always constructive. Throughout the year, the responses from governments have continued to be very positive. The impartiality and independence of the Office is widely recognised and this has facilitated the dialogue with governments.

I have also continued to enhance my Office's capacity to react rapidly to developments which may affect human rights in member states. We are functioning increasingly as a rapid response mechanism, including in crisis and conflict situations.

The Office continued to pay attention to areas in dispute or post-conflict situations. One difficulty when working for human rights in such areas is of course that there are political and diplomatic sensitivities. Up until now, I have managed to work on these complex cases and have received in return support from the parties involved. However, it is not easy. An important part of my task is to relate to people living in areas that are disputed. These are ordinary people and they are the victims of ongoing political disputes about the status of certain territories in their daily lives. It must be understood that my contacts with them on no account signify any sort of political or diplomatic recognition. All political actors should accept this and facilitate my efforts - or those of other independent international actors - to assist people in such situations.

In 2009, the human rights of migrants, the fight against racism and xenophobia, non-discrimination in general, and children's rights were the focus of my **thematic activities**. I remain preoccupied by alarming trends in the treatment of asylum seekers all over Europe, as well as in the criminalisation of irregular entry and the presence of migrants as part of a so-called "migration management". These trends effectively erode the established principles of international law and of mere humanitarianism. These policies are not even effective since all they do is to marginalise migrants even more, without attaining the aim of controlling borders. Instead of applying policies which are both inhuman and ineffective, would it not be more useful to develop a strategy based on the European reality of the need for labour, and on the respect of international standards safeguarding the human rights of those concerned?

The increasingly restrictive approach towards migrants goes hand in hand with the unfortunate trend of xenophobic discourse which has penetrated public discourse in large parts of Europe. Racism and intolerance persist in our countries and the fear of "the other" is gaining ground. Minorities are the targets of hate speech, violence and systematic discrimination, particularly in employment. With the economic crisis, the threat of intolerance in our societies is even greater. Extremist groups and parties are more active and threatening. Groups such as Roma, already very vulnerable, are more and more targeted and suffer particularly violent attacks. Mainstream

political parties and the majority population display a weak and confusing reaction to these trends.

In fact, the situation in Europe requires wise political leadership more than ever. It is clear that the coming few years will be very difficult. Whatever is done to meet the crisis should not be at the cost of those who are already disadvantaged. There are groups in Europe who are already living in poverty. These and other vulnerable groups should be protected from further suffering.

It is more than ever necessary that agreed human rights standards include economic and social rights. These rights have not appeared out of nowhere. They were based on the experience of past crises and on the knowledge that ignoring social justice comes at an enormous price. They could serve as very useful guiding principles for political decision makers at a time when difficult choices have to be made.

Whether it be for the country-monitoring or for the thematic approach, in 2009 I have continued to take care to carry out my work through close relationships with **other key actors at national, European and international level.**

Cooperation with Ombudsmen and other national **human rights structures** has developed, with the strict mutual respect of each institution's full independence in all circumstances as a guiding principle. National human rights structures are my privileged partners in my human rights dialogue with member states. Regular exchanges of information and mutually reinforcing actions form the basis of our bilateral relationship. One of the aims of our cooperation is to ensure the long-term effectiveness of the protection mechanism of the European Convention on Human Rights.

I also tried to relate constructively to other European and international organisations with human rights mandates. I supported the mainstreaming of human rights into **European Union** policies and choices. I highlighted on several occasions the importance of the European Union's accession to the European Convention on Human Rights, which should take place as rapidly as possible.

I also continued my close working relationship with **UN structures**, in particular with the High Commissioner for Human Rights and her Office as well as the High Commissioner for Refugees and the UN Children's Fund. The OSCE High Commissioner on National Minorities and the Representative on Freedom of the Media are other key actors in my cooperation activities.

2009 also saw an increase in my **in-house contacts**, including with the European Court of Human Rights, the Parliamentary Assembly, the Committee for the Prevention of Torture, the European Committee for Social Rights, the European Commission against Racism and Intolerance, the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages.

I attach great importance to working effectively with the **media** to highlight human rights concerns and my communication activities increased in 2009. Interviews, articles, opinion editorials, press releases and statements on major human rights issues have been regularly published and broadcasted by major national and international media, on the occasion of visits or the publication of reports and thematic papers.

I have continued to publish fortnightly Viewpoint articles on topics of specific human rights relevance. The response from a wide range of circles has been overwhelmingly positive. The

quality of the debates generated by some of these Viewpoints shows the extent to which the protection of human rights remains a subject of primordial importance for the populations of our member states.

My team and I have started off 2010 with the feeling that even though some achievements have been made, an enormous amount of work remains to be done. Invested by a sense of urgency, then, we continue our efforts towards the full implementation of my mandate. I am aware that there are also new expectations which are being created as our work develops. The fact is that this institution has huge potential but its means are limited. I am, however, confident that in the context of the process of reform undertaken by the Secretary General, solutions will be found for a gradual updating of our resources, as I requested in the last chapter of this report.

The future heralds difficult times. But we will most certainly take up the challenge, and work even harder, in a constructive spirit, with governments and civil society to transform the promise of protection made to human beings - simply because they are human beings, equal in rights and dignity - into reality.

Strasbourg, 31 March 2010

A handwritten signature in dark ink, appearing to read "Thomas Hammarberg". The signature is written in a cursive, flowing style with a long, sweeping tail at the end.

# 1 Country visits

## *Introduction*

Country visits and their follow-up remained the major activity of the Commissioner in 2009. The Commissioner had completed the full cycle of comprehensive assessment missions to all 47 member states in 2008. Assessment reports on Belgium, Monaco, the Netherlands and Serbia, based on visits conducted in 2008, were presented to the Committee of Ministers in 2009 and are available on the Commissioner's website for consultation.<sup>1</sup>

Since the completion of the full cycle of comprehensive assessment missions, the Commissioner has carried out more focused country visits and special visits to address priority human rights concerns as well as conflict and crisis situations. The Commissioner's reports of the visits contain both an analysis of the identified human rights issues and detailed recommendations about possible means of improvement. The reports are published and widely circulated in the policy-making and NGO community as well as the media. In addition, the Commissioner carries out short contact visits aimed at strengthening continuous dialogue with national authorities and civil society. Such visits do not necessarily result in the publication of a report; rather the Commissioner may choose to address letters to the national authorities met during the visit to outline his concerns.

The present chapter gives brief summaries of the Commissioner's visits carried out in 2009. The exact references to the reports and letters referred to and published in 2009 can be found below in chapter 4.2.

## *Visit to Italy*

The Commissioner visited Italy from 13 to 15 January 2009, as a follow-up to his visit which took place from 19 to 20 June 2008. During this visit the Commissioner held constructive consultations with a number of state authorities, including the Secretary of State of the Ministry of Foreign Affairs Mr Alfredo Mantica and the Secretary of State of the Ministry of Interior Mr Alfredo Mantovano. Meetings were also held with representatives of non-governmental, national and international organisations active in the fields of migrant and Roma protection.

A report following this visit was published on 16 April. Presenting his report the Commissioner noted that although efforts have been undertaken, serious concerns remained about the situation of Roma, migration policy and practice, and the non-respect of binding interim measures requested by the European Court of Human Rights. The Commissioner added that the authorities should condemn more firmly all racist or intolerant manifestations and ensure effective implementation of anti-discrimination legislation. He also recommended that the representation of ethnic groups in the police should be increased and that an independent national human rights institution, such as an Ombudsman, should be established in order to reinforce human rights protection.

Commissioner Hammarberg recommended improving the situation of Roma, noting that there is a persistent climate of intolerance against them and their living conditions are still unacceptable in a number of settlements that he visited. The Commissioner further expressed his deep concern about the appropriateness of the census in Roma and Sinti settlements and remained worried about its compatibility with European standards guiding the collection and processing of personal data. The Commissioner urged the authorities to create consultative mechanisms at all levels with Roma and Sinti, avoid evictions without offering alternative housing and offer appropriate education solutions for children. He also hoped that the new action plan for social welfare and integration measures would be implemented soon and that the authorities would promptly implement their pledge to ratify without reservation the Council of Europe Convention on Nationality, which would benefit in particular *de facto* stateless Roma children.

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<sup>1</sup> CommDH(2009)14, CommDH(2009)10, CommDH(2009)2 and CommDH(2009)8.

The Commissioner reiterated his critique of the draft law on public security for its possible negative effects on migrants' rights. He remained particularly worried by a number of forced returns, on security-related grounds, to Tunisia of individuals who seriously risk torture in that country. The Commissioner stressed that in their duty to protect societies from terrorism, states should not contravene human rights standards such as the absolute prohibition of torture or inhuman treatment. Italy has ignored binding interim measures requested by the European Court of Human Rights to halt deportations, thus seriously jeopardising the effectiveness of the European system of human rights protection.

### ***Visits to the Russian Federation***

In 2009, the Commissioner made four visits to the Russian Federation: from 18 to 20 January, from 24 to 27 February, from 2 to 11 September and from 14 to 16 December.

In the context of his visit to St Petersburg and Moscow on 18-20 January, Commissioner Hammarberg met with the Foreign Minister of the Russian Federation, Sergey Lavrov, the head of the Russian delegation to the Parliamentary Assembly of the Council of Europe, Konstantin Kosachev, and the Prosecutor General, Yury Chaika. The Commissioner also held meetings with the Ombudsman of the Russian Federation, Vladimir Lukin, and representatives of human rights organisations.

From 24 to 27 February the Commissioner visited Moscow to discuss a broad range of human rights issues with different authorities of the Russian Federation, including the Deputy Minister for Foreign Affairs, Grigoriy Karasin, and representatives of non-governmental organisations. In addition, he visited the Andrei Sakharov Centre. During this visit he also addressed the First Conference of European Ministers responsible for social cohesion organised by the Council of Europe in cooperation with the Ministry of Public Health and Social Development of the Russian Federation

The main aim of the visit from 2 to 11 September 2009 was to review the human rights situation in the North Caucasus, in particular the Chechen Republic and the Republic of Ingushetia in the Southern Federal District. The Commissioner concluded that, in view of the extraordinary challenges which persist in this part of the North Caucasus, the effective protection of human rights in the region will require sustained efforts and a multi-pronged approach.

In the course of his visit, the Commissioner met with Sergey Lavrov, the Foreign Minister and Aleksandr Konovalov, the Minister of Justice of the Russian Federation, as well as the Presidents of the abovementioned republics and other representatives of national and local authorities. He also held discussions with the federal Ombudsman, the Chairperson of the Presidential Council for Civil Society Institutions and Human Rights, and representatives of prosecutorial authorities, the judiciary, and non-governmental organisations.

Commissioner Hammarberg also made a keynote address on social and economic rights to a round table of regional ombudsmen of the Russian Federation which was organised by the Council of Europe (Saint Petersburg, 3-4 September 2009).

On 24 November, the Commissioner published his report following the above-mentioned visit, which focused on the following major issues.

*Situation of human rights defenders:* The murder of Natalia Estemirova, the leading member of the NGO Memorial in Chechnya, provoked widespread condemnation, both nationally and internationally, and prompted serious concerns about the viability and safety of the work of human rights NGOs. The Commissioner was informed of efforts under way to elucidate this murder. Bringing the perpetrators to justice is absolutely crucial and would undoubtedly be interpreted as an indication of the determination of the relevant authorities to protect human rights and end patterns of impunity.

The Commissioner welcomed the efforts by the Ingush authorities to engage in a regular dialogue with human rights NGOs. However, the overall recommendation by the Commissioner on the subject was that much stronger actions are needed to protect activist members of human rights organisations. As regards

the legal environment for non-governmental organisations, the Commissioner noted the ongoing review of the Federal Law on non-profit organisations. In this context, he underlined that any legislation regulating associations should take full account of the case-law of the European Court of Human Rights, which has interpreted the permissible limitations on freedom of association very narrowly.

*Counter-terrorism measures:* The lifting of the decade-long counter-terrorism operation (CTO) in the Chechen Republic was not accompanied by a diminishment of the activity of illegal armed groups. Federal and Chechen authorities carried out over a hundred special operations in the first half of 2009. The President of the Republic of Ingushetia was seriously injured following a suicide car-bomb attack on his motorcade in June 2009. In each of the republics, many people – including officials, members of the security forces, as well as members of the armed groups and civilians – lost their lives in the recent period.

While fully recognising that state authorities have a clear duty to protect the public from the violent actions of illegal armed groups, counter-terrorism measures should be strictly proportionate and human rights safeguards should be applied fully and systematically in all special operations, as well as in the detention of terrorist suspects and during court proceedings. The Commissioner noted that close oversight of the different security forces in the fight against terrorism is essential for ensuring full respect of human rights obligations and for the prevention of possible extrajudicial executions and abductions. He recommended that efforts to combat corruption and improve the economic situation continue, with a view to undercutting funding for terrorism and helping vulnerable segments of the population to resist the lure of extremism.

*Abductions and disappearances:* Since the end of 2008, NGOs reported an increase in the number of abductions and disappearances in Chechnya. In some cases, the involvement of law enforcement officials was alleged. The problem of past disappearances and missing persons who are presumed dead, most of them in connection with the armed conflicts in Chechnya, has been one of the most painful unresolved legacies of the republic's troubled history.

During the September 2009 visit, the Commissioner once again received a number of complaints by people whose family members had disappeared. The estimate of the prosecution authorities is that a total of 3074 persons went missing in 2000-2009. Moreover, the Chechen authorities have located and marked some 60 graves where an estimated 3000 unidentified bodies have been buried. The Commissioner reiterated his appeal to the authorities at all levels to investigate past disappearances and to recover, identify and return to their families the remains of the people buried, demonstrating due sensitivity to the relatives concerned. Given the magnitude of the task, various realistic possibilities for providing sufficient forensic expertise and facilities should be explored.

*Combating impunity:* Concerns about the lack of effective investigations into repeated human rights violations, the alleged involvement of law enforcement officials in crimes and the deficiencies of the judiciary have been raised both by the current Commissioner and his predecessor. The European Court of Human Rights has issued a considerable body of judgments finding violations of the right to life (Article 2 of the European Convention on Human Rights) and the prohibition against torture and inhuman or degrading treatment (Article 3), many of which concern ineffective investigations. In this context, the President of the Supreme Court and the Prosecutor of Chechnya informed the Commissioner that, in the course of 2008, 164 criminal complaints concerning acts by the security forces were made, 111 of which were granted. In the first half of 2009, 52 such complaints were made, 18 of which were granted.

The Commissioner held discussions with representatives of the Investigating Committees at federal level and in the Republic of Chechnya, which are recently-created structures. The Investigating Committee in Chechnya had created a special unit for investigating past human rights violations related to judgments of the European Court of Human Rights. In Moscow, representatives of the Federal Investigating Committee and the General Prosecutor's Office referred to a comprehensive programme to ensure effective investigations into disappearances. Moreover, the Government of the Russian Federation adopted on 2 October 2009 a Witness Protection Programme for 2009-2013. Noting that a well-functioning law enforcement and criminal justice system is the cornerstone of any efforts to fight impunity, the



Commissioner expressed his strong support for further efforts to improve and strengthen the judiciary, the prosecutorial system and investigative capacity in the Chechen Republic.

On the occasion of his participation in the International Conference “Andrei Sakharov’s Ideas Today”, the Commissioner visited Moscow from 14 to 16 December. He met with Deputy Minister for Foreign Affairs Mr Grigoriy Karasin, the Ombudsman of the Russian Federation, Mr Vladimir Lukin, the Chairperson of the Council on Civil Society Institutions and Human Rights under the President of the Russian Federation, Ms Ella Pamfilova, as well as with representatives of civil society. The Commissioner also discussed the follow-up to the report on his September 2009 visit to the North Caucasus (Chechen Republic and Republic of Ingushetia) with representatives of the Office of the General Prosecutor of the Russian Federation and the Investigating Committee at the Office of the General Prosecutor.

### ***Visits to Georgia***

The Commissioner visited Georgia three times in the course of 2009, from 8 to 12 February, from 27 November to 3 December and from 16 to 19 December.

The main purpose of the February visit, the Commissioner’s fourth since the August 2008 conflict, was the ongoing monitoring of the implementation of the six principles for urgent human rights and humanitarian protection which he formulated in the immediate aftermath of the active hostilities. The Commissioner also reviewed conflict-related human rights issues in Abkhazia.

In Tbilisi the Commissioner met with the national authorities and participated in the international conference for the 10th Anniversary of establishment of the Public Defender’s (Ombudsman’s) institution in Georgia. In Sukhumi the Commissioner met with the de facto President Mr. Sergey Bagapsh, with the de facto Foreign Minister, Mr Sergey Shamba and with the de facto President’s Authorised Representative on Human Rights, Mr Georgy Otyrba. The Commissioner went to the Gali district where he visited primary-education School No.2 in Gali town and met with Mr Ruslan Kishmaria, the de facto President’s Representative in the Gali district and with local NGOs. In the course of his February visit, the Commissioner exchanged views with representatives of international organisations, including the Heads of the EU Monitoring Mission and of the OSCE Mission. He also held meetings with the Head of the UNOMIG and with NGO representatives.

During a press conference held in Tbilisi at the end of the visit, the Commissioner called upon all relevant actors to ensure a continued substantive and meaningful United Nations presence in Abkhazia and not just a mere technical extension of the UNOMIG mandate. The Commissioner also called upon all concerned parties to give the international organisations free and unhindered access to all war-affected areas.

A major aim of the visits to Georgia which took place at the end of 2009 was to contribute to the release of detainees and to family reunification. During the visits, the Commissioner for Human Rights also assessed the progress on the implementation of the six principles for urgent human rights and humanitarian protection, which he formulated in the immediate aftermath of the August 2008 conflict.

During his visit from 27 November to 3 December 2009, the Commissioner used his good offices to secure the release of two Georgian teenage school boys who were being detained in Tskhinvali since 4 November 2009. Furthermore, five Ossetians were released from Gori and could also join their families. From 16 to 19 December the Commissioner returned to Georgia to continue his efforts to bring about the release of detainees and the clarification of the fate of missing persons. During this mission the three remaining Georgian minors detained in Tskhinvali were released. However, a number of individuals remained in detention on both sides of the administrative boundary.

In Tbilisi the Commissioner met with the State Minister for Reintegration Temuri Yakobashvili, Minister for Refugees and Accommodation Koba Subeliani and First Deputy Minister of Foreign Affairs Giorgi Bokeria. He also held meetings with representatives of the Ministry of Interior, the Ombudsman and representatives of diplomatic missions and relevant international organisations. In his comments to the

media after the release of the minors, the Commissioner stressed that efforts to ensure the release of the remaining detainees – some of whom have been held for over a year - must continue, and that the fate of missing persons must be clarified.

### ***Visit to Kosovo\****

From 25 to 27 March, the Commissioner visited Kosovo. During the visit, the Commissioner met with the highest representatives of international organisations and Kosovo's institutions, members of non-governmental organisations and the local authorities in Pristina and Mitrovica. On-site visits included the lead contaminated Roma camps of Česmin Lug and Osterode in North Mitrovica.

On 2 July the Commissioner presented his report stressing that all people living in Kosovo, regardless of their ethnicity, must benefit from European standards of human rights protection. They should not be held hostage to any lack of international consensus on the status of Kosovo. In his report the Commissioner analysed the every day human rights problems faced by the people living in Kosovo. Focusing on access to justice, policing, and minority rights, as well as the fate of refugees and internally displaced persons, he observed that Kosovo has an advanced legislative framework in place but its implementation still needed to be ensured so that there is an effective access to the judicial system. Also corruption of the judiciary and different public sectors should be tackled more effectively.

The Commissioner appreciated the work of the UN-established Human Rights Advisory Panel in examining complaints against UNMIK and recommended that the European Union's Rule of Law Mission, EULEX, improve accountability by providing Kosovo with an effective mechanism to challenge alleged unlawful conduct of the international civil and security presence. In addition, Commissioner Hammarberg welcomed the efforts made to promote police training and encouraged more efforts to combat organised crime and corruption. He added that gender equality and the rights of persons with disabilities should be promoted and intercultural education policies strengthened to favour mutual respect and understanding.

The Commissioner called for an urgent closure of the lead-contaminated Roma camps in northern Mitrovica. Action on this serious health hazard is long overdue and should be carried out through an immediate relocation of the families still living there. Moreover, he urged UNMIK and the Kosovo authorities to step up their efforts to find a solution to this humanitarian disaster. Finally, the Commissioner appealed to European governments to avoid forced returns of minorities to Kosovo and to regulate the status of those in their host country until conditions permit their safe return.

### ***Visit to Moldova***

The Commissioner visited Moldova from 25 to 28 April to assess the human rights situation following the post-electoral demonstrations of 6-7 April. The Commissioner held consultations with representatives of the state authorities of the Republic of Moldova, including the Deputy Prime Minister and Minister for Foreign Affairs, Mr Andrei Stratan, the Minister of Interior, Mr Gheorghe Papuc, and the Minister of Justice, Mr Vitalie Pîrlog. The Commissioner visited the national human rights institution, the Centre for Human Rights of Moldova, and had discussions with the Parliamentary Advocates (Ombudspersons) as well as representatives of civil society and the media.

On 17 July 2009, the Commissioner published a report on his visit to Moldova. The central focus of the Commissioner's attention during that visit was on the treatment of the people detained in connection with the post-electoral demonstrations in early April. The Commissioner's delegation interviewed a number of persons who were arrested in connection with the demonstrations and alleged that they were beaten, some of them severely, by police officers. Information recorded by health care staff in medical files in the places of detention visited as well as the direct observations of the Commissioner's medical expert, were consistent with these persons' accounts.

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\* All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

The Commissioner recommended that decisive action be taken to pursue a "zero-tolerance" approach throughout the criminal justice system vis-à-vis ill-treatment of persons deprived of their liberty. Prosecutors, judges, senior police officers and lawyers were advised to be attentive to any allegations or signs of possible ill-treatment and the need for proper screening, recording and reporting of injuries in police detention facilities was underlined.

The Commissioner also took note of concerns expressed with regard to media issues and reporting on possible human rights violations. He underlined the necessity of protecting freedom of expression and information, including in times of crisis. He also stressed that the media had a key role in informing the public about important developments in society, including in a manner which might cast the authorities in a critical light. It was also stipulated that special efforts should be made to encourage a constructive dialogue and co-operation between the authorities and civil society during periods of tension to avert and minimise harm.

Establishing the facts would be one contribution to healing the severe trauma experienced by the Moldovan people as a consequence of the April 2009 events in Chisinau. The Commissioner recommended that thorough and comprehensive inquiries be carried out into those events. Apart from clarifying the issues relating to the elections themselves, it is essential that developments during the demonstrations be investigated, including the violent acts and the failed riot control measures. There needs to be a prompt follow-up to the human rights violations, in particular, the numerous instances of ill-treatment by the police. The inquiries need to be independent, impartial, transparent and perceived as credible by the people of Moldova.

As a follow-up to the visit and the publication of the report, the Office of the Commissioner organised a consultation meeting on 24 and 25 November 2009 with the chairman and a member of the Moldovan parliamentary inquiry commission tasked with the elucidation of the causes and consequences of the events following 5 April 2009 in Moldova. The meeting was attended by the Commissioner and an international expert on national commissions of inquiry, Judge Johan Hirschfeldt, former President of the Svea Court of Appeals in Stockholm, Sweden. The expert prepared a report which addressed concrete questions which were raised during the meeting, both of a conceptual and a practical nature, on the modalities of the work of commissions of inquiry in order to achieve comprehensive fact-finding of high quality.

### ***Visit to Turkey***

The Commissioner visited Turkey from 28 June to 3 July. He held discussions with the President Mr Abdullah Gül, the Minister of Justice Mr Sadullah Ergin, and the Minister of EU Affairs Mr Egemen Bağış and other representatives of national and local authorities, international agencies and non-governmental organisations. The focus of the visit was on the human rights of minorities as well as of asylum seekers and refugees.

On 1 October, the Commissioner published two reports based on this visit. The first one focused on the human rights of minorities and provided recommendations on a number of major issues. The Commissioner noted with concern that the authorities did not officially recognise the existence of any minority groups other than those of Armenians, Greeks and Jews and recommended efforts to establish a genuine dialogue with all minority groups. The Commissioner remained concerned about a continued tendency to marginalise religious minority groups and urged the authorities to promote awareness among the general public of the value of a multicultural society. He noted with interest the latest legislative measures on the protection of property rights of non-Muslim minority foundations, although he identified a number of shortcomings which necessitated further action in order to fully incorporate the European Court of Human Rights case law in the relevant legislation and practice.

On the plight of internally displaced persons (IDPs), mainly of Kurdish origin, the Commissioner urged the authorities to accelerate and guarantee the effective reparation of the IDPs, including enabling them to exercise their right to voluntary return, voluntary resettlement or local integration. He recommended that the system of village guards be abolished and that further efforts be made to complete the clearance of

the mined areas, especially those from or near the IDPs' areas of origin. The Commissioner remained concerned about the marginalisation of Roma, their serious difficulties in effectively enjoying certain social and civil rights, and instances of violence by police and non-state actors. He recommended the adoption of effective policies in order to stamp out all kinds of discrimination against Roma, to ensure proper housing and effective protection of their cultural heritage.

The second report centred upon the human rights of asylum seekers and refugees. Noting the challenges Turkey faces due to an increasing flow of mixed migration, the Commissioner welcomed the plan of the Turkish authorities to adopt new asylum legislation and called upon the European and international community to assist Turkey in managing migration flows. He recommended that domestic definitions of asylum seekers and refugees be aligned with international standards and that steps be taken to better identify asylum seekers in the flow of mixed migration. He further underlined the necessity to strengthen and enhance the authorities' co-operation with the Office of the United Nations High Commissioner for Refugees.

Finally, the Commissioner expressed his concerns about a reported increase in forced returns to Iraq and Iran in 2008 and an alleged lack of investigation into certain cases. He urged the Turkish authorities to ensure that they would effectively implement the principle of *non-refoulement*, in particular, at points of entry. Commending the special care unaccompanied asylum seeking children received in Turkey, the Commissioner recommended that the benefit of doubt in age assessment be applied, that children be well informed in a language they could understand and that they be individually assigned a personal guardian.

### ***Visit to Ukraine***

On the occasion of his visit to Kyiv to take part in the regional round table on human rights activism (15 and 16 September 2009), the Commissioner had several bilateral meetings with the Ukrainian authorities, including with the First Deputy Prime Minister, Oleksandr Turchynov, the Minister of the Interior, Yuriy Lutsenko, the Minister of Justice, Mykola Onishchuk, as well as the Head of the State Department of Execution of Sentences, Oleksandr Galinsky.

### ***Visit to Slovenia***

The Commissioner visited Slovenia on 6 and 7 October. During his visit, the Commissioner met with the Prime Minister Mr Borut Pahor and several Ministers as well as with a number of civil society representatives.

The Commissioner's visit focused on the human rights protection of Roma including their difficulties regarding access to decent living conditions. In this context, he visited two Roma neighbourhoods in Zabjek and discussed the difficulties faced by Roma with their representatives. Concerning the issue of the so called "erased" (persons from former Yugoslavia who were removed in 1992 from the country's permanent residence registry following Slovenia's independence in 1991), the Commissioner welcomed the recent improvements in this area and encouraged the authorities to strengthen their efforts in order to resolve this long-standing issue.

### ***Visit to Hungary***

During his visit to Hungary from 13 to 14 October, the Commissioner held discussions with a number of state authorities including the Prime Minister Mr Gordon Bajnai and the Minister of Foreign Affairs Dr Peter Balaz. He also met with representatives of the Roma, Jewish and LGBT communities. Discussions focused on issues relating to the fight against intolerance, discrimination and racism affecting members of minority groups, especially Roma. The Commissioner has been concerned at the rise of extremism, intolerance and racism which has specifically targeted members of the Roma minority but also affects members of the Jewish and LGBT communities.

As a follow up to the visit the Commissioner wrote a substantive letter to the Prime Minister of Hungary which was published on 26 November. The response of Prime Minister Bajnai, received on 9 December,

outlined the relevant governmental measures regarding Roma inclusion in the field of housing, employment, equal opportunity policy and public education. In the letter the Hungarian Prime Minister also committed himself to finding 'efficient legal tools against hate speech, which obviously is a grave concern to various minorities, including the Roma'.

### ***Visit to Lithuania***

The Commissioner visited Lithuania from 19 to 20 October for high-level discussions with the Lithuanian authorities on a number of human rights issues, including minority rights, the need to investigate the alleged existence in Lithuania of a secret detention centre for terrorist suspects, and the deficiencies of the Law on the Protection of Minors against the Detrimental Effects of Public Information. In the course of his visit, the Commissioner met the President of Lithuania Ms Dalia Grybauskaitė, the Prime Minister Mr Andrius Kubilius and the Minister of Foreign Affairs Mr Vygaudas Usackas, as well as representatives of the Parliament (Seimas) and the Head of Department of National Minorities and Lithuanians Living Abroad. Further meetings were held with the Head of the Seimas Ombudsmen's Office, the Ombudsman for Equal Opportunities, and with civil society representatives.

The Commissioner noted that the presidential working group created to analyse the controversial Law on the Protection of Minors against the Detrimental Effects of Public Information had proposed a list of amendments to this law. He also discussed possible solutions to various questions concerning minorities' rights, an example being the introduction of the possibility to spell names in the minority language. The Commissioner welcomed the determination of the Lithuanian authorities to fully clarify the matter of the alleged CIA prisons. The Commissioner also took part in a seminar on discrimination issues organised by the Swedish Embassy, representing the EU presidency, and the Human Rights Monitoring Institute of Vilnius.

As a follow-up to the discussions held during the visit, the Commissioner sent letters to the Lithuanian Prime Minister and the Speaker of the Lithuanian Parliament. The letters were made public together with the responses of the Lithuanian authorities in February 2010.<sup>2</sup>

### ***Visit to Bulgaria***

The Commissioner visited Bulgaria from 3 to 5 November. In the course of his visit, the Commissioner met with state authorities including the Minister of Interior Mr Tsvatan Tsvetanov and the Minister for Foreign Affairs Dr Rumiana Jeleva. He also met religious leaders and a large number of civil society representatives. Furthermore, the Commissioner visited a home for children with mental disabilities and a Roma settlement in Sofia.

The Commissioner's discussions focused on the human rights problems of minorities, including the anti-discrimination legal framework and growing intolerance towards minorities. He paid particular attention to the situation of certain minorities and ethnic groups living in Bulgaria, such as the Pomak and Turkish ones. He raised the issue of Islamophobia and the difficulties faced by the Macedonian political party in obtaining registration. The precarious situation of the Roma community, including access to housing and education for Roma, was also discussed.

The second important topic brought up during the visit was the protection of the rights of children placed in institutions or other out-of-home settings. The Commissioner focused his attention on their living conditions as well as the de-institutionalisation process. Access to, and effective implementation of the right to education of children living in institutions were also discussed. In this framework, Commissioner Hammarberg delivered a keynote speech on inclusive education of children with disabilities during an event organised by the Mental Disability Advocacy Center (MDAC) and the Bulgarian Helsinki Committee to take stock of the progress made since the 2008 European Committee on Social Rights' decision *MDAC v. Bulgaria*. The Commissioner's report on this visit was published on 9 February 2010.<sup>3</sup>

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<sup>2</sup> CommDH(2010)4, CommDH(2010)5, CommDH(2010)6, and CommDH(2010)7

<sup>3</sup> CommDH(2010)1

### ***Visit to Portugal***

During his visit to Lisbon on 12 and 13 November, the Commissioner met with the Deputy Minister of Justice Mr José Magalhães, the Secretary of State of European Affairs Mr Pedro Lourtie and the High Commissioner for Immigration and Intercultural Dialogue Mrs Rosário Farmhouse, as well as with NGOs and the Portuguese Bar Association. He also visited the only *Asylum Seekers and Refugees Reception Center* in Lisbon. The Commissioner met with migrant and Roma communities in the Vale da Amoreira neighbourhood. During his meetings he discussed the situation of minorities in Portugal, the fight against discrimination and issues concerning migration. The Commissioner also participated in the Lisbon Forum 'Creating a culture of human rights through education' during which he delivered a speech on the theme of 'Human Rights Education: Fighting ignorance, encouraging tolerance'. Following his visit the Commissioner addressed letters to the Minister of Justice and the Secretary of State of European Affairs as a follow up to the discussions they held.

## **2 Thematic activities**

### **2.1 Introduction**

In 2009, non-discrimination, the human rights of migrants and refugees, the fight against racism and xenophobia, and the rights of the child were the thematic priorities in the Commissioner's work. Roma and other national minorities, persons with disabilities, lesbian, gay, bisexual and transgender (LGBT) persons as well as migrants, including irregular migrants, received particular attention as victims of discrimination. Other important work resulted in the publication of Recommendations on systematic work for implementing human rights (see below under 2.5) and on the right to housing (see below under 4.3) as well as an Opinion concerning independent and effective determination of complaints against the police (see below under 4.3).

The Commissioner and his Office participated actively in the review process of the follow-up to the UN Durban Conference against racism, racial discrimination, xenophobia and related intolerance. On 6 March, the Commissioner submitted his contribution to the UN Durban Review Conference which took place in Geneva from 20 to 24 April 2009.<sup>4</sup> In his contribution, the Commissioner pointed out that racism, discrimination, xenophobia and other forms of intolerance persisted in European societies. He considered that the major steps for renewing the Durban commitments comprised national action plans, comprehensive non-discrimination legislation, human rights education and professional training as well as coordination and early warning mechanisms. In a Viewpoint published on 14 April ("Racism: Europeans ought to be more self-critical and remain open to thorough and frank UN discussions"), the Commissioner encouraged member states to participate constructively in the Durban review process.

On 24-25 September, the Commissioner organised an expert workshop on "Human rights responses to criminalisation of migration in Europe" in Paris. The workshop took place against the backdrop of a European trend towards the criminalisation of irregular migration that has resulted in European and domestic migration legislation that raises serious issues of compatibility with human rights standards. The expert workshop served as a forum for exchanges of views regarding the best way of providing more assistance to Council of Europe member states in order to encourage them to revisit their migration law and policy on the basis of European and international human rights standards. An Issue Paper on the subject was published by the Commissioner in February 2010.<sup>5</sup>

The Commissioner went to Washington DC on 1 and 2 June. In the course of his visit he met with several United States authorities including the Special Envoy for Closure of the Guantánamo Detainee Facility at the State Department as well as representatives of the National Security Council, White House. The Commissioner encouraged the United States to offer 'cleared' prisoners residence in the United States

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<sup>4</sup> CommDH(2009)11

<sup>5</sup> CommDH/IssuePaper(2010)1

and made clear his position that detainees for whom there was evidence of criminal activities should be tried in accordance with international human rights standards. Others should be released in full respect of the principle of presumption of innocence. Reparation for all those unlawfully detained should also be provided.

On 5 June, the Commissioner addressed a letter (available at the Commissioner's website) to all Council of Europe member states calling upon them to follow the example of certain member states and to welcome 'cleared' ex-detainees from Guantánamo in need of international protection. The Commissioner remained concerned about the fact that a number of those to be released may not be repatriated because of a real risk of ill-treatment. Some of those released have suffered human rights violations in their country of origin. The Commissioner noted that those 'cleared' detainees who cannot be repatriated and have no wish to stay in the United States should be offered an alternative country of resettlement. This requires a process during which the views of the detainees themselves should be sought as to their relocation. Possible family ties with a country are a factor to be seriously considered in this context. European governments can make a very important contribution in this respect which may be crucial for facilitating the final closure of the Guantánamo camp.

## **2.2 Children's rights**

The promotion and the reinforcement of the protection of children and their rights are at the centre of the Commissioner's concerns. In 2009, particular attention was given to several categories of vulnerable children.

The placement of children in specialised institutions continues to be an issue of concern across Europe. Children with disabilities, without parental care or with asocial behaviour are taken away from their parents or relatives to live in specific structures. In a viewpoint published on 28 December ("Each child in need should grow up in a safe and stable environment"), the Commissioner welcomed the process of de-institutionalisation initiated in Europe and considered that it must be pursued with care in the best interests of the child. Suitable alternatives must be developed and supported by the authorities – including in periods of economic crisis. During his country visits, the Commissioner put an additional focus on this issue and visited some institutions specially for children with disabilities, for example in November 2009 in Bulgaria.

In her Janusz Korczak lecture – organised by the Commissioner and delivered in Moscow in April - the Russian social policy expert Marina Gordeeva highlighted that traditional family ties between generations are disrupted, the number of divorces is growing. The level of material support of families with children is lowering; many parents lead an asocial life and avoid their parental duties. The lecture called for a policy which would combine determined efforts to support vulnerable families, progressive closure of the residential care institutions and creation of support services. The main aim of the de-institutionalisation process should not be to close down the residential institutions but to achieve a successful family placement of each child in need.

The Commissioner stressed that strong and sustained support should be given to parents to avoid placement in the first place. It has become widely recognised that a family environment is generally much better for children than institutional care. Daycare or foster care should also be developed further. In the process of placement in out-of-home care, children must have the possibility to express their view and maintain contact with their community. Competent authorities ought to establish an individual plan for each child based on his/her needs and interests. Local authorities must also take their share of responsibility for the efforts to provide support services for children. When not in conflict with the child's best interest, parents or relatives should be involved throughout the process.

The respect of children's rights when they are confronted with the justice system is another concern of the Commissioner. States use different approaches to respond to young offenders and youth justice systems vary from one country to the next. For the Commissioner, this diversity of approaches requires a better knowledge and implementation of international and European children's rights standards. In this context, he published an issue paper in June on "Children and Juvenile Justice: Proposals for Improvements". The

focus should be put on ensuring the child's rehabilitation as well as the prevention of reoffending. Any measure to tackle juvenile offences should always focus on children's needs and interests, not on repression. The Commissioner considered that preventive and diversion measures should be developed and he highlighted good practices existing in European states. Appropriate alternatives for dealing with children without resorting to judicial proceedings should be further developed.

During her Janusz Korczak lecture delivered in June in Tromsø on "Children and prisons: what can we do better?", the Deputy Secretary General Maud de Boer-Buquicchio insisted that the place of children is not in prison. The European Court of Human Rights and European Rules for juvenile offenders subject to sanctions or measures define the measures and reforms that are necessary to respect the rights of children in detention. In his issue paper, the Commissioner considered that non-custodial measures exist and they are often more effective than detention. When a child has to be judged, detention must be a decision of last resort. It should happen in small structures and an individual plan should be made for each child detained.

The impact of parental imprisonment on children is rarely considered as an issue. However, prisons are traumatising for children who visit their detained parent. Both the visiting rules and the premises are insufficiently child-friendly. In several European states, children are still not allowed to hug their parent in prison. Particular attention should be paid to the relationship between mothers and children as they are visited less than detained fathers. Therefore, responses to offending behaviour should integrate children's rights and the sentencing should take into account their impact on children. Prison staff who are in contact with children should receive specific training and measures should be developed to encourage contact between parents in prison as well as to strengthen the legal entitlement to visits. The lecture highlighted the fact that the impact can stretch far beyond the time of imprisonment and the immediate post-imprisonment period. Research has proved that many young prisoners have parents who have committed a criminal offence.

In 2009, the Commissioner continued to provide assistance and support to governments regarding the eradication of violence against children. The Janusz Korczak lecture held in June in Geneva was dedicated to the necessity to ban corporal punishment. In his lecture entitled "Respect means stopping hitting children today – not tomorrow or the day after", Peter Newell - recognised expert on the issue – stressed that violence against children should not be tolerated. The purpose of banning all corporal punishment in the family is not to prosecute more parents because it would not be in the best interests of children, or in the public interest, to do so. The purpose is to send the message that it is no more legal or acceptable to hit a child than to hit anyone else. Religious texts do not grant parents rights to use corporal punishment and the lecture drew attention to the fact that a fatwa was recently adopted in Mauritania barring physical and verbal violence against children, both in the educational system and in the home.

Even though some authorities continue to refuse to recognise this issue as a human rights problem, progress were recently achieved. Since 2007, five European States have decided to fully abolish corporal punishment, including at home. There are now 25 countries across the world that have adopted such a law, out of which 21 are members of the Council of Europe. The adoption by the Council of Europe of the Policy Guidelines on Integrated National Strategies for the Protection of Children from Violence should further encourage member states to bring their legislation into line with international and European standards. The appointment in May 2009 of a UN Special Representative on violence against children should be seen as an additional signal.

Celebrating the 20<sup>th</sup> anniversary of the UN Convention on the Rights of the Child, the Commissioner gave several speeches during international events including in Ljubljana and Geneva in October. He considered that the ratification of the Convention by all the countries in the world but two placed the situation of children higher on the political agenda. However the actual implementation of the Convention has been less effective than anticipated. The main reason is the absence of a systematic, comprehensive approach to children's rights as a political priority. States should have a rights-based approach and recognise children as subject not as object. In a viewpoint published on 16 November ("UN child treaty 20 years on: implementation still not satisfactory"), the Commissioner put forward ten recommendations on systematic measures that Governments ought to take to further the respect of children's rights. This list



included the development of a comprehensive national strategy for children, the full compatibility of all legislation with children's rights, the allocation of sufficient resources and the establishment of mechanisms to promote and monitor children's rights. It is particularly in times of crisis that states have to reaffirm their commitment and to fully respect the rights of children – all children. The Commissioner insisted that children requiring specific needs and attention such as children with disabilities or belonging to a minority should not be left aside.

On the occasion of this anniversary, the Commissioner also published a book paying tribute to Janusz Korczak and his work for and with children. The publication contained one of Korczak's best-known texts *the child's right to respect* which summarises his vision of the relationship between children and adults. Published in English, French and Polish, it also features the views of five children's rights experts on current challenges in the field of children's rights. In their lectures, which are dedicated to Janusz Korczak, they focus on areas of prime importance for children in today's Europe, including the principle of the best interests of the child; the necessity to be protected against corporal punishment or children and prisons and institutional care. Analysing current challenges, they all recalled Korczak's message of respect for children, and respect for their inherent value as human beings, as well as for their capacity and competence.

### **2.3 Human Rights of Roma and Travellers**

Roma and Travellers continued to be subject to racism and pervasive discrimination across all social sectors in most Council of Europe member states in 2009. Progress in tackling poverty among Roma and enhancing their socio-economic status continued to be slow. The Commissioner identified anti-Gypsyism as a crucial cause for such slow progress and focused extensively on combating this phenomenon throughout the year. In a Viewpoint he published on 27 April ("Anti-Gypsyism continues to be a major human rights problem in Europe – governments must start taking serious action against both official and inter-personal discrimination of Roma"), the Commissioner underlined that no programme aimed at improving the situation of Europe's Roma populations can be successful without resolute action to combat anti-Gypsyism. States must therefore promote Roma culture, knowledge of Roma history and effectively combat hate speech.

The protection of the human rights of Roma in the context of their migration or exercise of freedom of movement within the EU was also in focus and was the subject of active inter-agency co-operation in 2009. In April, the Commissioner published, together with the High Commissioner on National Minorities (HCNM) of the OSCE, a study on "Recent Migration of Roma in Europe". The study provides an analysis of the existing human rights standards concerning migration in Europe and highlights discriminatory practices that Roma migrants still face. It concludes with a set of recommendations for action by member states in order to enhance the effective protection of the human rights of Roma migrants in Europe.

Furthermore, following a working Seminar on "Protecting Freedom of movement and Human Rights of Roma" organised by the Commissioner in July in collaboration with the EU Fundamental Rights Agency (FRA), the Office for Democratic Institutions and Human Rights (ODIHR) and the HCNM of the OSCE, the four institutions organised a Joint International Conference on Roma Migration and Freedom of Movement, which took place in Vienna on 9-10 November. At the Conference, the Commissioner highlighted that Roma migrants are faced with a double jeopardy, in that migration makes life even harder for those who already face a plethora of serious, discrimination-related problems. He stressed that the protection of the human rights of Roma on the move in Europe must be placed high on the European agenda.

Another particularly important issue in 2009 concerned the forcible return of Roma to places where they are at risk of treatment contrary to Article 3 of the ECHR. In particular, the Commissioner dealt extensively with forcible returns of Roma, Askhali and Egyptians to Kosovo. In July, the Commissioner published a report on the human rights situation in Kosovo in which he concluded that the latter did not have the infrastructure to allow for sustainable reintegration of refugees. This was all the more true for the Roma, "the biggest minority in Europe subject to wide and systematic discrimination". Of particular concern to the Commissioner was the fact that a number of Roma forcibly expelled from Council of

Europe member states (especially Germany, Sweden, Austria and Switzerland) had returned to the lead-contaminated camps of Česmin Lug and Osterode in Northern Mitrovica, inhabited for a decade now by Roma families, including children, with seriously negative effects on their health. The Commissioner planned to follow up on the situation in early 2010, including on the closure of the camps and the provision of safe accommodation and decontamination treatment, as recommended in his report.

The issue of statelessness also featured prominently in the Commissioner's work on Roma and Travellers in 2009. In a Viewpoint published on 6 July ("Many Roma in Europe are stateless and live outside social protection"), the Commissioner underlined that "[i]t is not acceptable that European citizens are deprived of their right to a nationality – a basic human right". He also highlighted that the Council of Europe, through its international instruments and monitoring bodies, has clearly established the standards and obligations with which member states must comply in order to address continuing problems of statelessness and lack of personal documents among Roma.

Addressing the present lack of a comprehensive, authoritative and updated study covering the human rights situation of Roma and Travellers in all 47 member states of the Council of Europe, at the end of 2009 the Commissioner decided to commission the preparation of a report, to be completed by the Autumn 2010. Building upon the Commissioner's extensive work in the field of protecting the human rights of Roma and Travellers, the report will serve as a baseline study and provide updated and reliable information and analysis on which to anchor the on-going work of member states and all organisations concerned in this area.

The protection of the human rights of Roma and Travellers continued to feature prominently in the Commissioner's country monitoring activities throughout 2009. In his April report on Italy<sup>6</sup>, the Commissioner expressed concern at the continuing climate of intolerance vis-à-vis Roma and Sinti, the lack of institutionalised dialogue between these groups and the authorities, and the persistence of unacceptably low standards of living in a number of Roma settlements. He was also deeply concerned about the large-scale census operation in Roma and Sinti settlements, which was managed by the police and linked to a 'state of emergency' and a 'widespread public alarm'. The Commissioner welcomed the willingness of the Mayor of Rome to consult with Roma representatives and improve their living conditions, and the central authorities' commitment to addressing statelessness among Roma.

In a letter addressed to the Prime Minister of Hungary in October<sup>7</sup>, the Commissioner expressed his grave concern at the rise of extremism, intolerance and racist manifestations that had targeted, in particular, members of the Roma population. Of special concern was the public use of anti-Roma speech by certain public figures and the lack of strong condemnation of and effective measures against the reoccurrence of such incidents. In his December reply to the Commissioner's letter, the Prime Minister of Hungary outlined the governmental measures regarding Roma inclusion in the field of housing, employment, equal opportunity policy and public education. He also expressed his commitment to finding "efficient legal tools against hate speech, which obviously is a grave concern to various minorities, including the Roma".

The Commissioner addressed different aspects of the protection of the human rights of Roma and Travellers in a number of other countries in 2009. In Turkey, the Commissioner addressed in particular the dislocation of Roma from the historic area of Sulukule, Istanbul, and instances of violence by police and non-State actors.<sup>8</sup> In Slovenia, the focus was on access to decent living conditions and the long-standing issue of the so-called "erased" (persons from former Yugoslavia who were removed in 1992 from the country's permanent residence registry following Slovenia's independence in 1991), which affect in particular the Roma population. In Serbia, the Commissioner focused in particular on Roma living conditions and lack of personal documents.<sup>9</sup>

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<sup>6</sup> CommDH(2009)16

<sup>7</sup> CommDH(2009)39

<sup>8</sup> CommDH(2009)30

<sup>9</sup> CommDH(2009)8

## **2.4 Discrimination based on sexual orientation and gender identity**

Discrimination based on sexual orientation and gender identity remained an important issue on the agenda of the Commissioner in 2009. In his country assessment reports presented in 2009 (Belgium, Monaco, the Netherlands and Serbia) he raised concerns regarding the human rights situation of lesbian, gay, bisexual and transgender (LGBT) persons.<sup>10</sup> The Commissioner also wrote the introduction for the *Report on the state of Human Rights for LGBT persons in Serbia* which was published as a supplement to Serbia's daily newspaper *Blic*.

Following an expert meeting in November 2008 on gender identity and human rights, the Commissioner published an Issue Paper on the subject in July 2009. The Issue Paper points out that there is an urgent need in Council of Europe member states to do more to stop discrimination against transgender people and transphobia. The Issue Paper observes that transgender persons experience a high degree of discrimination and intolerance in all fields of life, as well as outright violence. Transgender persons often do not fully enjoy the agreed international human rights standards, such as the right to life and the right to health. Legal reforms are needed regarding procedures for changing the name and sex of a transgender person on birth certificates, identity cards, passports, educational certificates and other similar documents. Member states should also consider abolishing sterilisation and other compulsory medical treatment as a necessary legal requirement to recognise a person's gender identity.

The Issue Paper was launched during the World Outgames 2<sup>nd</sup> International Conference on LGBT Human Rights which took place in Copenhagen on 29 July. At the launch of the Issue Paper, representatives of the Office of the UN High Commissioner for Human Rights, the EU Agency for Fundamental Rights and Transgender Europe delivered statements supporting the paper. The Commissioner gave interviews on the subject and supported a number of other relevant events. For example, he addressed the participants of the Transgender Human Rights Conference 'Transforming Attitude' via a video message (17-18 April, Dublin). He also sent a substantive letter to an initiative of the *Groupe d'étude parlementaire sur l'Identité de Genre, Homosexualités & Socialisme* (HES) during a colloquium at the French National Assembly in Paris on 21 October 2009. Moreover, the Commissioner's Office participated in the NGO conference *Trans Rights Conference: Putting Trans Rights on the European Agenda* in October. The conference used the Issue Paper on Gender Identity and Human Rights as its reference point.

Faced with the need for data and objective information regarding the human rights situation of LGBT persons, the Commissioner launched in October 2009 a comparative study on the situation concerning homophobia, transphobia and discrimination on grounds of sexual orientation and gender identity in the Council of Europe member states. This one-year study will result in a comprehensive report containing a socio-legal analysis of the situation of lesbian, gay, bisexual and transgender (LGBT) persons in all Council of Europe member states. The Commissioner considers this report necessary in order to have facts and a deeper analysis available for his ongoing dialogue with authorities on this topic. The results of the study will be presented in December 2010 in Brussels.

In 2009, the Commissioner's Office attended meetings of the intergovernmental committee of experts (DH-LGBT) which was tasked by the Committee of Ministers to prepare a draft Recommendation to member states on combating discrimination based on sexual orientation and gender identity.

## **2.5 Systematic implementation of human rights**

There is a gap between the rights proclaimed in international and regional human rights instruments and how these rights are respected in individual countries. In fact, all states encounter challenges in their work towards complete fulfilment of human rights. Scarce resources are often invoked as the main obstacle. Corruption, internal tensions, racism and intolerance are other obstacles to real progress. Serious violations of human rights also take place in countries that are considered stable and non-corrupt. The

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<sup>10</sup> CommDH(2009)14, CommDH(2009)10, CommDH(2009)2 and CommDH(2009)8

illegal arrests, enforced transport of wrongfully detained people and brutal interrogation methods used in the struggle against terrorism are clear examples. In February 2009, the Commissioner issued a Recommendation on systematic work for implementing human rights at the national level in order to provide detailed advice to member states on the effective and comprehensive implementation of human rights standards.<sup>11</sup> The Recommendation drew from the debates and results of the Conference "Rights Work! – International Conference on Systematic Work for Human Rights Implementation" which was organised by the Swedish Chairmanship of the Committee of Ministers in Stockholm on 6 and 7 November 2008.

In fact, Council of Europe member states are increasingly showing an interest in methods for systematic human rights implementation and monitoring. These developments can trace their origin in the UN World Conference on Human Rights which met in Vienna in 1993. The Conference declared that human rights are universal, indivisible, interdependent and interrelated and called on member states to fulfill their human rights obligations through systematic work, including the preparation of national plans of action. Most European countries have already developed strategies or action plans targeting specific problems, such as gender inequalities, racism and discrimination or trafficking in human beings. Azerbaijan, Croatia, Lithuania, Norway, Moldova, Spain and Sweden have also adopted comprehensive action plans seeking to address the human rights situation in a coherent manner. When anchored in a thorough baseline study, such plans have proved to be useful tools for clarifying the authorities' responsibilities and for identifying and addressing gaps in human rights protection.

In the Recommendation, the Commissioner calls on member states to implement human rights effectively and comprehensively by using baseline studies, action plans, and indicators. The Recommendation stresses that systematic work for human rights means a continuous and inclusive process which brings national, regional and local authorities, national human rights structures, civil society representatives and other stakeholders together for the implementation of agreed human rights standards. It also highlights that coordination of human rights work facilitates the fulfilment of states' reporting obligations to international human rights monitoring mechanisms. Moreover, the Recommendation underlines the need to foster a human rights culture through the full integration of human rights in education and training as well as through awareness-raising using concrete and accessible language.

To develop a human rights action plan openly presenting problems and corresponding activities is a signal of commitment to human rights. To have real impact, this must be followed through by coordinated efforts to ensure that all authorities have a rights-based approach to their work, that citizens have an understanding of their human rights and access to effective remedies when they are violated; that the judiciary is independent and functions well; that the political processes - including the budgetary process - take due consideration of international standards in their decision-making; that civil society can scrutinise and criticise decision-makers in a safe and enabling environment; and that national human rights institutions (NHRIs) are adequately mandated and resourced to monitor independently how national legislation, policies and administrative practices comply with international obligations.

In a series of Viewpoint articles published in 2009, the Commissioner highlighted several aspects of systematic implementation of human rights. On 2 March ("Think globally, act locally - for human rights"), he outlined the role local and regional authorities can play in realising human rights. The Commissioner called on local decision-makers to adopt a rights-based approach when taking key decisions on education, housing, health care, social services and policing. He stressed that the human rights approach at the local level empowers patients, pupils, the elderly, the homeless and others to claim their rights and, thereby, improve their situation. This is closely related to good governance. The Commissioner encouraged local politicians and public officials to seize the opportunity to enhance the quality of life in their communities by implementing human rights in their ordinary work. In 2009, the Commissioner's Office cooperated actively with the Congress of Local and Regional Authorities and the Stakeholders' Platform on the strategy for innovation and good governance at local level in their efforts to promote a rights-based approach in local governance.

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<sup>11</sup> CommDH(2009)3

On 3 August (“State budgets reveal whether the government is committed to human rights”) the Commissioner referred to budget analysis as a potent instrument in systematic work for human rights. Looking at budget proposals from a rights perspective can assist politicians and planners to assign priorities in a non-discriminatory manner and to allocate resources where they are needed most. The Commissioner stressed that such a human rights-based budget analysis can also be a valuable tool for those who want to assess whether governments and parliaments have indeed taken steps to make reality of pledges given when international human rights standards have been ratified. On 17 August (“Serious implementation of human rights standards requires that benchmarking indicators are defined”) the Commissioner highlighted the usefulness of indicators in making human rights planning and implementation processes more efficient and transparent. He noted that indicators make it easier to hold governments accountable for the realisation of human rights and also help highlight success through accurate criteria. Moreover, indicators have great potential for clarifying and communicating the practical content of human rights in concrete situations.

The Commissioner referred to his Recommendation on systematic work for implementing human rights in his Memorandum of 7 December for the High-Level Conference on the “Future of the European Court of Human Rights” which took place in Interlaken, Switzerland, on 18-19 February 2010 on the initiative of the Swiss Chairmanship of the Committee of Ministers.<sup>12</sup> See below under 4.3.

### **3 Situation of Human Rights Activists**

#### **3.1 Introduction**

Human rights activists and NGOs, journalists and lawyers have encountered serious difficulties when peacefully promoting or monitoring the state of human rights. In 2009, the Commissioner continued to receive information about persons who suffered reprisals due to their human rights work: some have been seriously threatened, physically abused and even killed. Efforts to pressure human rights activists into abandoning their human rights work are in clear contravention of the international community’s recognition of the right to promote, develop and protect human rights by lawful and peaceful means. In the discussions that preceded the unanimous adoption of the United Nations Declaration on Human Rights Defenders, the former UN Secretary General Kofi Annan said “when the rights of human rights defenders are violated, all our rights are put in jeopardy and all of us are made less safe”.<sup>13</sup>

The concept of human rights defenders aims at protecting human rights *activities*, as underlined in the United Nations Declaration on Human Rights Defenders and in the 2008 Declaration of the Council of Europe Committee of Ministers on “Council of Europe action to improve the protection of human rights defenders and promote their activities”.<sup>14</sup> The CoE Declaration recalls that states have a primary responsibility to create an environment conducive to the work of human rights defenders, which enables individuals, groups and associations to carry out peaceful activities for the promotion and protection of human rights and fundamental freedoms, without restrictions other than those authorised under the European Convention on Human Rights.

The CoE Declaration lists different measures to be taken by states in this regard, such as ensuring the existence of effective remedies, carrying out prompt, independent and meaningful criminal investigations, strengthening the capacities of ombudspersons and national human rights institutions to receive complaints, as well as ensuring access to the European Court of Human Rights and other human rights protection mechanisms. States are requested to provide protective measures for swift assistance of human rights defenders at risk in third countries, including observation of trials and the issuance of emergency visas. The

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<sup>12</sup> CommDH(2009)38rev

<sup>13</sup> United Nations General Assembly Resolution A/RES/53/144 and Kofi Annan, UN Secretary General, 14 September 1998, NGO/DPI Conference.

<sup>14</sup> CoE Committee of Ministers Declaration on “Council of Europe action to improve the protection of human rights defenders and promote their activities”, 6 February 2008.

Declaration endorsed the developed practice of the Commissioner to support and provide protection to human rights defenders and invited the Commissioner to strengthen the role and capacity of his Office.

Along the same lines, on 28 April 2009, the Parliamentary Assembly of the Council of Europe called upon national parliaments to take relevant measures to implement both the United Nations' and the Council of Europe's Declarations, as well as to support assistance and protection measures for human rights defenders at risk, such as by establishing humanitarian visa schemes and facilitating emergency visas.<sup>15</sup> The Assembly intended to step up its support for human rights defenders across the continent and to complement the Commissioner's role. It decided to remain active on the matter and is therefore expected to continue to take action in support of human rights activists.

Freedom of expression, freedom of assembly and freedom of association are the fundamental liberties conditional to an effective exercise of human rights activity. Limitations to these rights must not extend beyond those authorised by the European Convention on Human Rights. Protection of these rights and freedoms must be accompanied by an effective remedy before a national authority, as foreseen by Article 13 of the Convention.

### **3.2 Security and protection of human rights activists**

In 2009, Europe witnessed a bleak record of fatalities of human rights activists, including journalists and lawyers. Serious threats and abuses also targeted their relatives and persons close to them. Concerns regarding criminal investigations, impunity of the perpetrators and the need to offer protection to human rights activists often failed to be effectively addressed.

The threat or offence may be perpetrated by state agents as well as non-state actors such as criminal organisations and extremist gangs. Nevertheless, even if state officials or civil servants have not been directly involved in such abuses, there is a general state responsibility to prevent criminal offences, to protect persons at risk and to investigate allegations of crimes thoroughly in order to ensure that the culprits are identified, charged, tried and punished.

In 2009, the Commissioner raised the issue of the protection of human rights NGOs and journalists with the Russian authorities on various occasions. He stressed the need for effective investigations in the cases of murders and attacks on various human rights activists, including the murder of human rights lawyer and president of the Rule of Law Institute, Stanislav Markelov, killed in Moscow in January 2009, and the assassinations of journalists Anna Politkovskaya and Anastasia Baburova. In July, the Commissioner issued a public statement following the murder of Natalia Estemirova, a leading member of the NGO Memorial in the North Caucasus.<sup>16</sup> The killing provoked widespread condemnation and prompted serious concerns about the viability and safety of the work of human rights NGOs. Memorial then decided to close its office in Grozny for some period of time. In Ingushetia, the Commissioner discussed the violent attacks to which several human rights activists had been subjected in 2008, in particular the gunshot injuries to the Deputy Chair of the Committee for the Defence of the Rights of Forced Migrants, Yakha Oligova in May; the abduction in July of Zurab Tsechoyev, the editor of the website of the human rights organisation *Mashr*; the assault with a fire arm on the leader of *Mashr*, Magomed Mutsolgov in August; and the assassination of the owner of the opposition web-site Ingushetiya.ru, Magomed Yevloyev, also in August 2008.<sup>17</sup>

The Commissioner urged the Russian authorities to carry out immediate, thorough and impartial investigations with a view to ensuring the criminal accountability and punishment of the perpetrators of such crimes. During his September visit to Chechnya, he was informed of efforts under way to elucidate the murders of the staff members of Memorial and of Save the Generation. In his talks with the Chechen and Ingush authorities, the Commissioner stressed that stronger actions were needed to protect activist

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<sup>15</sup> Resolution 1660 (2009) of 28 April, on the situation of Human Rights Defenders in Council of Europe member states.

<sup>16</sup> Press release - 570(2009) "Killing of Natalia Estemirova - Statement by Council of Europe Human Rights Commissioner Thomas Hammarberg", Strasbourg, 15 July 2009.

<sup>17</sup> CommDH(2009)36

members of human rights organisations. Bringing the perpetrators to justice in these cases would undoubtedly be interpreted as a strong indication of the commitment of the relevant authorities to protecting human rights and ending previous patterns of impunity. The Commissioner further expressed concerns about certain negative statements made by the authorities with regard to the work of human rights NGOs. He emphasised the need to promote safe and favourable conditions for the work of human rights NGOs and to provide them with protection.<sup>18</sup>

Physical acts of violence and threats towards journalists who act as a public watchdog must not be tolerated under any circumstances. If such incidents occur they should be investigated effectively and the perpetrators brought to justice. Such acts have a chilling effect on media reporting. In his 2009 report following the visit to Montenegro in 2008, the Commissioner expressed concerns about the killing of Duško Jovanović, editor-in-chief of the daily *Dan*.<sup>19</sup> Also in the 2009 report following the 2008 visit to Serbia, the Commissioner noted that intimidation and attacks against a number of journalists reportedly continued, involving physical threats and assassination attempts. He further noted the lack of progress in the investigations of murdered journalists dating back to the 1990s and of the attempted murder of a journalist in April 2007.

In Serbia, the Commissioner further observed various incidents involving inflammatory language and violence against NGOs and human rights activists, in particular those promoting the rights of lesbian, gay, bisexual and transgender persons, transitional justice and accountability for war crimes. The Commissioner noted that discriminatory statements made by political figures and the media remained largely unpunished and that human rights activists suffered intolerance, hate speech and threats, sometimes resulting in physical attacks. He recommended that such instances be condemned from the highest political level and sanctioned appropriately and that the Serbian government provide protection to human rights defenders under threat of attack.<sup>20</sup>

### **3.3 Freedom of expression**

Freedom of expression is one of the fundamental underpinnings of the work of human rights activists and NGOs, enabling them to monitor and report on human rights violations, including during emergencies and conflict situations.

According to Article 10 of the European Convention on Human Rights, freedom of expression includes the freedom to hold opinions and to seek, receive and impart information and ideas without interference by public authorities and regardless of frontiers. The right of access to information has been further strengthened by the adoption of the Council of Europe Convention on Access to Official Documents in 2008.

The European Court of Human Rights has, on numerous occasions, reaffirmed that freedom of expression constitutes one of the essential foundations of a democratic society and applies to information or ideas that offend, shock or disturb the State or any sector of the population.<sup>21</sup> As the Commissioner has often stated, when individuals – together with others or alone – speak out for human rights or work for them through other means, they should be free to do so without being subjected to pressure. The purpose of journalism and human rights “watchdog” organisations is not to please those who are in power.<sup>22</sup>

The Commissioner emphasised the need to protect free expression and information at all times, including in times of crisis, during his visit to Moldova following the post-electoral demonstrations of 6-7 April 2009. The Commissioner was informed that certain non-governmental organisations, involved in reporting on possible

<sup>18</sup> CommDH(2009)36; Press release - 878(2009)/24 November 2009, North Caucasus: “Persistent pattern of impunity”.

<sup>19</sup> CommDH(2008)25

<sup>20</sup> Press release – 199(2009)/11 March 2009 “Serbia has to strengthen human rights implementation” and CommDH(2009)8.

<sup>21</sup> *Handyside vs United Kingdom* (5493/72), §49.

<sup>22</sup> CommDH(2009)27, §31-34; §48-49.

human rights violations, received letters from the authorities requesting information on their position towards the post-electoral events and on measures taken by each organisation to prevent and stop the violence. Apparently, the organisations concerned were also requested to furnish financial information to the tax authorities. Furthermore, many concerns were voiced about restrictions on freedom of the media and free reporting including the assault and detention of local and foreign journalists reporting on the post-electoral violence; the refusal of entry to the country to certain foreign journalists; and restrictions upon access to internet services or particular websites. In the Commissioner's view, pressure of this sort upon media and NGOs involved in reporting on possible human rights violations is unacceptable.<sup>23</sup>

On the other hand, media as well as political figures can play a negative role in disseminating hate speech messages against human rights activists. During his visit to Serbia in October 2008, the Commissioner noted threats, and denigration attempts, including hate messages relayed by the media, against human rights activists. Several human rights activists and organisations had been targeted in connection with Kosovo's unilateral declaration of independence in February 2008. Personal data of activists was published in the media together with offensive comments. The Commissioner expressed concern over the authorities' silence in the face of the media's denigration campaign and over the lack of response by law enforcement agencies, as these factors created a dangerous climate of impunity favourable to such attacks.<sup>24</sup>

### **3.4 Freedom of association**

The fundamental importance of freedom of association for the realisation and development of democracy and human rights has been underlined by the Committee of Ministers in its Recommendation *on the legal status of non-governmental organisations in Europe*.<sup>25</sup>

Any legislation regulating associations should take full account of the case-law of the European Court of Human Rights, according to which the power to restrict or limit freedom of association must be "used sparingly, as exceptions to the rule of freedom of association are to be construed strictly and only convincing and compelling reasons can justify restrictions on that freedom".<sup>26</sup> In particular, legislation on associations "should be accessible to the persons concerned and formulated with sufficient precision to enable them (...) to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail; ...it must afford a measure of legal protection against arbitrary interferences by public authorities with the rights guaranteed by the Convention".<sup>27</sup>

The first report on the legal status of NGOs in Europe, produced by the Expert Council on NGO Law set up by the CoE Conference of INGOs, focused on "Conditions of Establishment of NGOs".<sup>28</sup> Generally, the report concluded that international standards governing the setting up of NGOs were observed in many European countries, but there were still a number of problems. In January 2009, the INGO Conference adopted a set of recommendations to address such concerns.<sup>29</sup> The Commissioner believes that the work undertaken by the Expert Council on NGO Law concerning freedom of association should be followed up through the promotion of its conclusions and recommendations in the national parliaments.

National and international human rights NGOs are often subjected to extremely lengthy registration procedures or see their registration denied. In some countries, the creation of associations is prohibited due to restrictions regarding their purposes and work as the objectives of the association cannot be contrary to the national law, constitution, or even "morals". In respect of the latter, the Commissioner has expressed

<sup>23</sup> Idem and Press release - 583(2009) Moldova: "Ill-treatment and police brutality should be stamped out".

<sup>24</sup> CommDH(2009)8

<sup>25</sup> CM/Rec(2007)14

<sup>26</sup> Grand Chamber judgment in the case of *Gorzelik and others v Poland*, 17/02/2004, § 94-95.

<sup>27</sup> *Koretsky and Others v. Ukraine*, no. 40269/02, § 47, 3 April 2008.

<sup>28</sup> OING Conf/Exp (2009) 1

<sup>29</sup> CONF/PLE(2009)REC1 "First report of the Expert Council on NGO Law", 28 January 2009.



concern for the fact that in some countries, in particular Russia and Turkey, LGBT organisations are denied registration for not meeting 'moral' standards.<sup>30</sup>

The Commissioner assessed limitations relating to the statute and composition of associations in his 2009 report following the visit to Monaco in October 2008. The then in force 1910 law required formal approval by the state to create any association and for altering its statutes. When Monaco acceded to the Council of Europe, it had committed to adopting new legislation on associations, since the required prior authorisation for establishing associations or altering their rules, taken together with the requirement that certain positions be held by nationals, seemed incompatible with the principles emerging from the case-law of the European Court of Human Rights.<sup>31</sup> Later, a new Law on Associations was adopted in November 2008. The Commissioner welcomed this development.

Additional challenges faced by human rights organisations may include cumbersome and frequent reporting requirements, inspections and auditing procedures, as well as civil, criminal and administrative proceedings. Fiscal legislation is sometimes used to restrict the availability of foreign and national funds.

During his visits to the Russian Federation in February and September 2009, the Commissioner heard reports about the arbitrary application of the 2006 federal law on non-governmental organisations and the abusive application of anti-extremism legislative provisions, e.g. the crime of incitement to hatred or degrading the dignity of a particular national, social or religious group. Some NGOs believed that such legislation had been used to thwart their scope for action and freedom of expression. In particular, they considered that Article 282 of the Criminal Code (incitement to hatred) had been used to target human rights activists and other critics of the Government. The Commissioner underlined the need for consultation with civil society in view of the ongoing review of the NGO Law.<sup>32</sup>

In January 2009, the Commissioner's Office observed the first court hearing of the case *Memorial v. the Prosecutor General of the Russian Federation* concerning the legality of the search and seizure carried out in December 2008, on the premises of the Memorial Research and Information Center, in Saint Petersburg. The authorities had seized the archives of Memorial with information notably on Stalin's repression and the GULAG. According to the Saint Petersburg Prosecutor, the search had been conducted within the framework of an investigation against a local newspaper pursuant to Article 282 of the Criminal Code. The St. Petersburg Dzerzhinsky District Court declared that the search of Memorial's premises was illegal and ordered that all seized material be returned to Memorial. The Commissioner welcomed the court's ruling as "it strives to uphold human rights safeguards against unlawful and insufficiently substantiated searches as well as unjustified broad and sweeping seizures of private property, in relation to criminal investigations".<sup>33</sup>

A draft amendment to the NGO law in Azerbaijan, submitted to Parliament in June 2009 would, if adopted, lead to the dissolution of various human rights NGOs. The Commissioner addressed a letter to the Azeri authorities with recommendations expressing concerns on the draft proposal's serious limitations to freedom of association and met with the Azeri Minister of Justice on the same issue. Subsequently, the most critical amendments, which would have barred NGOs from receiving more than half of their funding from abroad, required all NGOs to register with the State and prohibited NGOs from operating nationally if they did not have branches in one-third of Azerbaijan's administrative units, were dropped. Yet, some restrictive amendments remained in the law adopted by Parliament on 30 June 2009.

Finally, in Ingushetia, the Commissioner welcomed the efforts by the authorities to engage in a regular dialogue with human rights NGOs through the Public Commission for Human Rights, an institution created

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<sup>30</sup> Strasbourg, 3 November 2008 CommDH/Speech(2008)16 "Thinking Globally, Acting Locally", ILGA Europe conference.

<sup>31</sup> CommDH(2009)10

<sup>32</sup> CommDH(2009)36

<sup>33</sup> Statement on the Commissioner's website on 22 January 2009 - *Russian Federation: Commissioner Hammarberg welcomes the court decision on the case of 'Memorial'*.

under the President of the Republic in December 2008, which included representatives of NGOs, Parliament and law enforcement authorities.<sup>34</sup>

### **3.5 Freedom of assembly**

According to article 11 of the European Convention on Human Rights, everyone has the right to freedom of peaceful assembly. The case law of the Court clearly indicates that the State has a positive duty to protect the participants of a demonstration, including if this demonstration may annoy or give offence to persons opposed to the ideas or claims that the demonstration is seeking to promote.<sup>35</sup>

In 2009, human rights activists and NGOs promoting the human rights of lesbian, gay, bisexual and transgender (LGBT) persons continued to face difficulties in obtaining permission to demonstrate or to organise events. On several occasions, the Commissioner expressed concern regarding unjustified restrictions on the freedom of assembly and association of LGBT people. The Commissioner observed that a large number of Gay Pride festivals in various countries were banned or faced violent attacks, sometimes with the failure of the authorities to provide adequate protection to the participants. In May 2009, the Commissioner expressed concern over the ban of the cultural and sports festival “Raduzhnaya Vesna” (Rainbow Spring) in Mykolayiv, Ukraine, which was due to be carried out on May 15-17 but which was prohibited by the Mayor’s Office of Mykolayiv City. The decision of the Mayor’s Office was upheld by the Administrative Court on May 14.<sup>36</sup> In addition, the Commissioner sent letters of support to the participants of the 4<sup>th</sup> Riga Friendship Days and 1st Baltic Pride, in April 2009, and to the Gay Pride in Belgrade, in September 2009.

In December 2009, the Commissioner wrote to the Prime Minister of Lithuania, Mr Andrius Kubilius, and to the Speaker of the Seimas, Ms Irena Degutienė, expressing his concern about proposed amendments to the Penal Code and Administrative Code which were scheduled to be discussed by Parliament and which would make the “promotion of homosexual relations in public places” a criminal offence punishable with a fine or arrest.<sup>37</sup> The Commissioner found that, if adopted, these amendments would potentially prohibit a wide range of activities, such as public demonstrations, speeches and events promoting the human rights of LGBT persons. The Commissioner considered that such provisions would violate the ECHR, in particular the right to freedom of assembly and association, the right to freedom of expression, including the right to seek, receive and impart information, and the right to be free from discrimination.

### **3.6 Access to international and regional protection mechanisms**

The United Nations and the Council of Europe Committee of Ministers Declarations on Human Rights Defenders uphold the right of individuals and NGOs to apply to and co-operate with international organisations and mechanisms. The latter encourages member states to guarantee human rights defenders’ access to the European Court of Human Rights, the European Social Charter and other mechanisms.

The right of individual petition, enshrined in Article 34 of the European Convention on Human Rights, is a keystone of the Convention’s supervisory system. It obliges member states not to hinder in any way the effective exercise of the right to submit applications to the Court by any person, non-governmental organisation or group of individuals, claiming to be the victim of a violation of the rights set forth in the Convention. For its effectiveness, applicants or potential applicants must be “able to communicate freely with the Court without being subjected to any form of pressure from the authorities to withdraw or modify their complaints”, such as “direct coercion and flagrant acts of intimidation of applicants and their families or

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<sup>34</sup> CommDH(2009)36

<sup>35</sup> *Baczowski v. Poland* (3 May 2007)

<sup>36</sup> Video address to the World Congress on Human Rights, Sexual Orientation and Gender identity, Paris, 15 May 2009.

<sup>37</sup> CommDH(2010)4 and CommDH(2010)6

legal representatives but also other improper indirect acts designed to dissuade or discourage them from pursuing a Convention remedy".<sup>38</sup>

The Court has found incompatibility with Article 34 of the Convention in various situations of undue pressure and intimidation attempts against legal representatives of applicants.<sup>39</sup> The Commissioner believes that such interferences undermine the very core of the human rights protection system and should be promptly investigated. They may lead to a situation where those in need of legal counsel will have great difficulties in finding a lawyer to represent them.

The Round Table on Human Rights Activism organised by the Office of the Commissioner in Kyiv, in September 2009, addressed the difficulties faced by human rights activists, NGOs and lawyers in accessing international and regional human rights procedures and mechanisms. The Commissioner heard reports of harassment of individuals and their lawyers who had made use of such mechanisms. In some cases, the authorities had reportedly challenged human rights activists' participation in international discussions and meetings, as their input was perceived to undermine the interests and image of the state. As suggested by participants, it would be important to examine the possibility of applying Rule 39 of the Rules of Court, allowing for interim measures, in cases where applicants to the European Court and their lawyers face serious risks to their lives. This rule had reportedly never been applied to situations relating to human rights activists applying to the Court.

### **3.7 Challenges**

The severity of the obstacles described above requires nothing less than urgent attention and concrete responses by Council of Europe member states and by the Council of Europe as a whole. National legislation should be reviewed in order to ensure its conformity with the European Convention on Human Rights, the case law of the European Court of Human Rights, the Committee of Ministers Declaration on Human Rights Defenders and other relevant instruments. In particular, member states should tackle impunity at the national level by ensuring that threats and attacks against individuals and organisations active in defending human rights are properly investigated, condemned and the perpetrators brought to justice. There is also a need to ensure that an effective system of ombudswork for human rights is established.

Effective monitoring of the human rights situation and independent assessments on whether the laws and the judicial system work effectively, are necessary at the national level. National human rights structures, civil society organisations and also the media are of key importance in that they uncover and address human rights violations, both in regard to individual cases and structural deficiencies. A constructive engagement and dialogue with such groups is therefore essential, in particular on human rights issues.<sup>40</sup>

Tendencies towards stigmatising NGOs or impeding their peaceful human rights work are unacceptable and should be prevented. Yet, the Commissioner has on several occasions alerted against the denigration, by public officials and the media, of groups and individuals promoting human rights issues controversial among parts of the population, such as the human rights of Roma, minorities, and LGBT persons, sexual and reproductive health, post-conflict justice as well as human rights of migrants and asylum seekers. The Commissioner has also expressed concerns about the disproportionate sanctions affecting individuals who have peacefully objected to the methods used by the authorities to expel irregular migrants.<sup>41</sup>

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<sup>38</sup> Case of Sisojeva and Others v. Latvia (no. 60654/00), Grand Chamber judgment of 15 January 2007, § 115 and 116.

<sup>39</sup> Ryabov v. Russia, Colibaba v. Moldova, Kurt v Turkey, and Mc Shane v. UK.

<sup>40</sup> During his visit to Turkey from 28 June to 3 July 2009 the Commissioner welcomed that numerous NGOs were active in the human rights protection of asylum seekers and refugees and called upon the authorities to proactively involve such NGOs, thus making use of their expertise, notably in the context of preparing the new asylum law and the framework for a national human rights institution. CommDH(2009)31, § 115.

<sup>41</sup> In Belgium, the Commissioner urged the authorities to reinforce the control over expulsion procedures and to refrain from prosecuting passengers who peacefully protested against such operations. See DH(2009)14 Report by the Council of Europe Commissioner for Human Rights, Thomas Hammarberg, on his visit to Belgium 15-19

There is a need to protect those who may have become controversial for having actively promoted human rights. It is important that journalists, activists, defence lawyers, ombudsmen, judges, social workers, teachers and others can fully stand up for human rights principles in their daily work. Any tendency to penalise or retaliate against those who seek justice through established human rights complaints mechanisms, such as the European Court of Human Rights, must be firmly countered.

## **4 Summary of activities**

### **4.1 Introduction**

The main objectives of the Commissioner's work are, in line with his mandate, to:

- foster the effective observance and enjoyment of human rights;
- assist member states in the implementation of Council of Europe human rights standards;
- identify possible shortcomings in the law and practice concerning human rights;
- promote education in and awareness of human rights in member states;
- facilitate the activities of national ombudspersons and other human rights structures;
- provide advice and information regarding the protection of human rights; and
- protect and support human rights defenders.

The Commissioner's activities aimed at fulfilling these objectives can be divided into four major categories: field visits and reports, thematic work and awareness-raising, cooperation with national human rights structures and protection of human rights activists.

The present report of activities covers the calendar year 2009. During the year, the Commissioner also issued four quarterly activity reports on his activities which covered the same subjects as well as more general observations.<sup>42</sup> The quarterly reports are available on the Commissioner's website.

### **4.2 Field visits and reports**

Field visits and their follow-up remained the major activity of the Commissioner in 2009. Co-operation with Council of Europe Field and Information Offices was essential in the preparation and carrying out of the Commissioner's visits.

#### *Country assessment missions*

The Commissioner completed the full cycle of comprehensive assessment missions to all 47 member states in 2008. The following assessment reports, based on visits conducted in 2008, were presented to the Committee of Ministers in 2009 and are available online for consultation:

- Assessment report on the Netherlands, following the Commissioner's visit in September 2008, published on 11 March 2009;<sup>43</sup>
- Assessment report on Serbia, following the Commissioner's visit in October 2008, published on 11 March 2009;<sup>44</sup>
- Assessment report on Monaco, following the Commissioner's visit in October 2008, published on 11 March 2009;<sup>45</sup>

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December 2008; see also the Memorandum by Thomas Hammarberg, Council of Europe Commissioner for Human Rights, following his visit to France from 21 to 23 May 2008, 20 November 2008, CommDH(2008)34, (§ 104, 105).

<sup>42</sup> CommDH(2009)17, CommDH(2009)29, CommDH(2009)35 and CommDH(2010)2

<sup>43</sup> CommDH(2009)2

<sup>44</sup> CommDH(2009)8

<sup>45</sup> CommDH(2009)10

- Assessment report on Belgium, following the Commissioner's visit in December 2008, published on 17 June 2009.<sup>46</sup>

#### *Focused and special visits*

Since the completion of the full cycle of comprehensive assessment mission, the Commissioner has carried out more focused country visits and special visits to address priority human rights concerns as well as conflict and crisis situations.

In 2009, the following country and special visits were carried out:

13 to 15 January 2009	Italy
18 to 20 January 2009	Russian Federation (St. Petersburg and Moscow)
8 to 12 February 2009	Georgia
24 to 27 February 2009	Russian Federation (Moscow)
25 to 27 March 2009	Kosovo
25 to 28 April 2009	Moldova
28 June to 3 July 2009	Turkey
2 to 11 September 2009	Russian Federation, including Chechen Republic and the Republic of Ingushetia
15 to 16 September 2009	Ukraine
6 to 7 October 2009	Slovenia
13 to 15 October 2009	Hungary
19 to 20 October 2009	Lithuania
3 to 5 November 2009	Bulgaria
12 to 13 November 2009	Portugal
27 November to 3 December	Georgia
14 to 16 December	Russian Federation (Moscow)
17 to 19 December	Georgia

In 2009, the following reports and letters related to visits were published:

#### *Georgia*

- Report following visit in February 2009 on human rights issues following the August 2008 armed conflict (published 15 May 2009);<sup>47</sup>

#### *Greece*

- Report following visit in December 2008 - issue reviewed: human rights of asylum seekers (published 4 February 2009);<sup>48</sup>
- Report following visit in December 2008 - issue reviewed: human rights of minorities (published 19 February 2009);<sup>49</sup>

#### *Hungary*

- Letter following visit in October 2009 to Prime Minister Gordon Bajnai (published on 26 November 2009);<sup>50</sup>

#### *Italy*

- Report following visit in January 2009 (published 16 April 2009);<sup>51</sup>

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<sup>46</sup> CommDH(2009)14

<sup>47</sup> CommDH(2009)22

<sup>48</sup> CommDH(2009)6

<sup>49</sup> CommDH(2009)9

<sup>50</sup> CommDH(2009)39

<sup>51</sup> CommDH(2009)16

*Moldova*

- Report following visit in April 2009 (published on 17 July 2009);<sup>52</sup>

*Russian Federation*

- Report following visit to Chechen Republic and the Republic of Ingushetia in September 2009 (published on 24 November 2009);<sup>53</sup>

*Turkey*

- Report following visit in June-July 2009 - issue reviewed: human rights of minorities (published on 1 October 2009);<sup>54</sup>
- Report following visit in June-July 2009 - issue reviewed: human rights of asylum seekers and refugees (published 1 October 2009);<sup>55</sup>

*Kosovo*

- Report on special mission in March 2009 (published on 2 July 2009);<sup>56</sup>
- Letter to Ambassador Zannier (UNMIK), Special Representative of the UN Secretary General (published on 23 April 2009);<sup>57</sup>
- Letter to the German Chancellor Angela Merkel, sent on 25 November, concerning forced returns to Kosovo from Germany (published on 15 December 2009);<sup>58</sup>

Following his visit to meet with the authorities of the United States of America in Washington D.C. on 1 and 2 June 2009, the Commissioner addressed a letter to the Permanent Representatives of all 47 Council of Europe member states concerning the possibility of resettlement to member states of certain detainees from the Guantánamo detainee facility (published on 5 June 2009).<sup>59</sup>

### **4.3 Thematic work and awareness raising**

*Thematic priorities*

The thematic priorities of the Commissioner are mainstreamed in all activities of his Office. They are given particular consideration during country visits and in the organisation of events, the preparation of thematic documents and the Commissioner's participation in conferences.

*Thematic documents*

The Commissioner publishes Viewpoints, Statements, Issue Papers, Reports, Opinions and Recommendations on human rights themes to raise awareness and give advice to member states on the protection of human rights.

Two Recommendations and one Opinion were issued by the Commissioner in 2009:

- Recommendation on systematic work for implementing human rights at the national level<sup>60</sup>; published on 18 February. In the Recommendation, the Commissioner calls on member states to implement human rights effectively and comprehensively by using baseline studies, action plans and indicators. The Recommendation stresses that systematic work for human rights means a

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<sup>52</sup> CommDH(2009)27

<sup>53</sup> CommDH(2009)36

<sup>54</sup> CommDH(2009)30

<sup>55</sup> CommDH(2009)31

<sup>56</sup> CommDH(2009)23

<sup>57</sup> CommDH(2009)20

<sup>58</sup> CommDH(2009)42

<sup>59</sup> CommDH(2009)25

<sup>60</sup> CommDH(2009)3

continuous and inclusive process which brings national, regional and local authorities, national human rights structures, civil society representatives and other stakeholders together for the implementation of agreed human rights standards. It is also highlighted that coordination of human rights work facilitates the fulfilment of states' reporting obligations to international human rights monitoring mechanisms.

- Opinion concerning independent and effective determination of complaints against the police<sup>61</sup> ; published on 12 March. In the Opinion, the Commissioner underlines that an independent and effective police complaints system is of fundamental importance for a democratic and accountable police service. The Commissioner points out that such complaints mechanisms can enhance public trust and confidence in the police and ensure that there is no impunity for misconduct or ill-treatment. The Opinion applies five principles developed in the jurisprudence of the European Court of Human Rights in this field, namely independence, adequacy, promptness, public scrutiny and victim involvement.
- Recommendation on the implementation of the right to housing<sup>62</sup>; published on 30 June. In the Recommendation, the Commissioner calls on member states to recognise their international obligations on the right to housing in an appropriate manner in domestic law without discrimination. Remedies or means of redress must be available to individuals or groups aggrieved by the denial of housing rights. Furthermore, he calls for a sound governmental accountability both at national and local level. The standards developed by the European Committee of Social Rights and the European Court of Human Rights should be used for clarifying the legal obligations and minimum standards involved in the implementation of the right to housing as well as in the development of indicators for monitoring the situation.

Two Issue Papers were published in 2009:

- "Children and juvenile justice: proposals for improvements";<sup>63</sup> published on 19 June. It identifies the relevant international and European standards on juvenile justice and gives examples of how these standards are being implemented. The Issue Paper calls on member states to put in place juvenile justice systems which are effective and rights-based, and ensure the well-being of children and young who are people in conflict with the law.
- "Human Rights and Gender Identity";<sup>64</sup> published on 29 July. It states that agreed international human rights standards, including the principle of non-discrimination, apply equally to all people, including transgender persons. The Issue Paper describes positive steps which have been taken in some countries in order to protect the rights of transgender people. However, transphobia as well as genuine ignorance in this area are widespread. The Issue Paper recommends that member states take further action to prevent discrimination of transgender persons on the labour market, in health services and as relates to procedures required for the recognition of one's preferred gender.

On 6 March, the Commissioner submitted his contribution to the UN Durban Review Conference against racism, racial discrimination, xenophobia and related intolerance which took place in Geneva from 20 to 24 April 2009.<sup>65</sup> See above under 2.1

On 8 April, the Commissioner, together with EU Agency for Fundamental Rights, the OSCE Office for Democratic Institutions and Human Rights and the OSCE High Commissioner on National Minorities, published a Joint statement on the occasion of International Roma Day.<sup>66</sup> See below under 4.6. In April,

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<sup>61</sup> CommDH(2009)4

<sup>62</sup> CommDH(2009)5

<sup>63</sup> CommDH/IssuePaper(2009)1

<sup>64</sup> CommDH/IssuePaper(2009)2

<sup>65</sup> CommDH(2009)11

<sup>66</sup> CommDH/Speech(2009)3

the Commissioner and the OSCE High Commissioner on National Minorities also released a study on recent migration of Roma in Europe.<sup>67</sup> See below under 4.6.

On the initiative of the Commissioner, the Council of Europe published on 16 November the book “Janusz Korczak – The child’s right to respect” which contains a series of five lectures on current challenges in the field of children’s rights. Raising the issues of the best interest of the child, corporal punishment, prison, out-of-home care as well as children’s participation, the lectures analyse the difficulties faced by children in their daily life. The publication also includes one of Korczak’s best-known texts – the child’s right to respect – introduced by a presentation of Korczak’s life and legacy.

On 7 December, the Commissioner submitted his Memorandum in view of the High-Level Conference on the “Future of the European Court of Human Rights” which took place in Interlaken, Switzerland, on 18-19 February 2010, on the initiative of the Swiss Chairmanship of the Committee of Ministers.<sup>68</sup> The Commissioner’s contribution underlines the importance, for the European human rights system, of prevention by member states of human rights violations and provides recommendations regarding the systematic implementation of existing standards at national level. To this effect, the Commissioner calls on states to adopt national action plans founded on baseline studies, high-level political support and the participation of all stakeholders, including civil society and local authorities, in order to fill the human rights implementation gap.

Commissioner Hammarberg continued with the fortnightly publication of Viewpoints, published on his website, in English, French and Russian. In 2009, the following topical human rights concerns were addressed in the Viewpoints:

- "Discrimination against transgender persons must no longer be tolerated" (5 January)
- "Europe must open its doors to Guantanamo Bay detainees cleared for release" (19 January)
- "Children should not be treated as criminals" (2 February)
- "National parliaments can do more to promote human rights" (16 February)
- "Think globally, act locally - for human rights" (2 March)
- "After the human rights breakdown during the “war on terror”, the damage must be assessed and corrective action taken" (16 March)
- "Foreign policy should be based on a principled approach to human rights" (30 March)
- "Racism: Europeans ought to be more self-critical and remain open to thorough and frank UN discussions" (14 April)
- “Anti-Gypsyism continues to be a major human rights problem in Europe – governments must start taking serious action against both official and inter-personal discrimination of Roma” (27 April)
- "The response to the crisis must include a shift towards more equality" (11 May)
- “Governments should open up channels for civil society complaints against violations of social rights” (25 May)
- “International Organisations acting as quasi-governments should be held accountable” (8 June)
- "European countries should defend the International Criminal Court and request the US authorities to withdraw the idea of impunity for US nationals" (22 June)
- “Many Roma in Europe are stateless and live outside social protection” (6 July)
- “Stop and searches on ethnic or religious grounds are not effective” (20 July)
- “State budgets reveal whether the government is committed to human rights” (3 August)
- “Serious implementation of human rights standards requires that benchmarking indicators are defined” (17 August)
- “Flawed enforcement of court decisions undermines the trust in state justice” (31 August)
- “A neglected human rights crisis: persons with intellectual disabilities are still stigmatised and excluded” (14 September)

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<sup>67</sup> CommDH(2009)37

<sup>68</sup> CommDH(2009)38rev



- “Persons with mental disabilities should be assisted but not deprived of their individual human rights” (21 September)
- “It is still necessary to act for the abolition of the death penalty” (5 October)
- “Climate change is causing an unprecedented, global human rights crisis – and must now be countered by co-ordinated, rights-based action” (19 October)
- “Intelligence secrecy must not be used as an excuse to ignore or cover up human rights violations” (2 November)
- “Realising children’s rights requires more than rhetoric – systematic and concrete actions are now needed” (16 November)
- “Multiculturalism is an important dimension of our national identities” (30 November)
- “Human rights activists all over Europe are still learning from the example of Andrei Sakharov” (14 December)
- “Society has an obligation to support abandoned children and offer them a positive home environment – also when budget resources are limited” (28 December)

In April, Commissioner Hammarberg released his collection of Viewpoints written during his third year in office, entitled *Human Rights in Europe: time to honour our pledges*. The book is available for free in English, French and Russian.

### *Events*

With the aim of promoting awareness of human rights and exploring specific concerns, the Commissioner organises workshops and conferences on topical questions. The Commissioner and his Office also contribute to debates on human rights through their participation in major conferences.

In 2009, the Commissioner organised or co-organised the following events:

- Joint European Union-Council of Europe Programme (“Peer-to-Peer”) workshop in the framework of the training programme for national human rights structures “The protection of the rights of Roma people by the NHRs” (Budapest, 24-25 February).
- 4<sup>th</sup> meeting of the Commissioner for Human Rights Taskforce on Human Rights Defenders (Strasbourg, 18 May).
- CommHR joint working seminar “Protecting freedom of movement and human rights of Roma”, in collaboration with the European Union Fundamental Rights Agency, the OSCE High Commissioner on National Minorities and the OSCE Office for Democratic Institutions and Human Rights (Strasbourg, 9 July).
- CommHR round table on “Human Rights Activism” organised in cooperation with the CoE Conference of International Non-Governmental Organisations (Kyiv, 17-18 September).
- CommHR expert workshop “Human rights responses to criminalisation of migration in Europe” (Paris, 24-25 September).
- Joint international conference on “Roma migration and freedom of movement” organised by the European Union Agency for Fundamental Rights, the CoE Commissioner for Human Rights, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) and the OSCE High Commissioner on National Minorities (Vienna, 9-10 November).
- International Conference “Andrei Sakharov’s Ideas Today”, organised by the Andrei Sakharov Museum and Public Center with the support of the CoE Commissioner for Human Rights, in cooperation with the Information Office of the Council of Europe in Moscow (Moscow, 14-15 December).

The Commissioner or his Office participated in the following major events during 2009:

- 9th Informal Asia-Europe Meeting (ASEM) Seminar on Human Rights “Human Rights in Criminal Justice Systems” (Strasbourg, 18-20 February).
- CoE Conference of European Ministers responsible for social cohesion: “Investing in social cohesion: investing in stability and the well-being of society” (Moscow, 26 February).
- Award ceremony for Congress of Local and Regional Authorities’ “Dosta! - Congress Prize for Municipalities” for 2008 (Strasbourg, 4 March).
- PACE Committee on Legal Affairs and Human Rights Conference “The state of human rights in Europe: the need to eradicate impunity” (Berlin, 23 March).
- PACE Committee on Legal Affairs and Human Rights hearing on “Discrimination on the basis of sexual orientation and gender identity” (Berlin, 24 March).
- 15th meeting of the Education for Democratic citizenship and Human rights (EDC/HRE) Coordinators “Living and Learning Democracy for All” (Strasbourg, 30 March).
- Transgender Human Rights Conference/Educational Seminar 'Transforming Attitude' (Dublin, 17-18 April in Dublin).
- Exchange of views with Standing Committee of the INGO Conference on the situation of human rights defenders in Europe. (Strasbourg, 29 April).
- United Nations Durban Review Conference against racism, racial discrimination, xenophobia and related intolerance (Geneva, 20-24 April).
- Conference on the “Implementation of the UN Convention on the Rights of the Child in the Russian Federation: modern challenges and innovative approaches” organised jointly by UNICEF and the Moscow State University (Moscow, 24 April).
- Peace Brigades International Conference on human rights defenders (London, 28-29 April)
- Conference “State budgets: a key factor in real equality between women and men” organised by the Greek Ministry of the Interior and the Steering Committee for Equality (Athens, 5-6 May).
- World Congress on Human Rights, Sexual Orientation and Gender Identity (Paris, 15 May).
- Expert Meeting on the rights of people with mental disorders and/or mental disabilities in the framework of the EU Fundamental Rights Agency's socio-legal study project on ‘Protecting, respecting and promoting the rights of persons with mental disorders and/or mental disabilities in the European Union’ (Vienna, 26 May).
- The European Wergeland Centre Inaugural Event “Building bridges: Education for Intercultural Understanding, Human Rights and Democratic Citizenship, from Policy to Practice” (Oslo, 29 May).
- Launching conference of the Council of Europe Platform on Children’s Rights (Strasbourg, 3 June).

- Conference “The Polish Jewish Pioneer on Children’s Human Rights, Janusz Korczak 1879-1942 and the Today’s Convention on the Rights of the Child as International Law” organised by the Polish Representation to the United Nations (Geneva, 6 June).
- The 9<sup>th</sup> International Ombudsman Institute (IOI) World Conference and the Swedish Parliamentary Ombudsmen 200 Years Anniversary (Stockholm, 9-10 June).
- Workshop on “exploring standards and measures addressing Roma institutional visibility” organised by the Greek Ombudsman in the context of the *Eunomia* project for the promotion of Ombudsman institutions (Athens, 16 June).
- 29<sup>th</sup> CoE Conference of Ministers of Justice “Breaking the silence – united against domestic violence” (Tromsø, 18 June).
- Meeting of the INGO Conference Human Rights Committee on the situation of human rights defenders in Europe (Strasbourg, 22 June).
- 2<sup>nd</sup> meeting of National Human Rights Institutions and FRA (Vienna, 29-30 June)
- 40<sup>th</sup> study session of the International Institute of Human Rights (Strasbourg, 6 July).
- Council of Europe’s 4<sup>th</sup> Summer School of Democracy (Strasbourg, 6 July).
- 11<sup>th</sup> Annual EU-NGOs Forum on Human Rights (Stockholm, 7 July).
- World Outgames 2<sup>nd</sup> International Conference on LGBT Human Rights (Copenhagen, 29 July).
- Round Table with the Russian Ombudsmen on “The role of the ombudsman in the defence of social rights in times of economic crisis” (St. Petersburg, 3-4 September).
- 10<sup>th</sup> Annual Conference of the Association of Human Rights Institutes “Partnerships and Reform for Human Rights Protection” (Nottingham, 18-19 September).
- Annual meeting of the European Network of Ombudsmen for children ENOC (Paris, 23-25 September).
- 70<sup>th</sup> anniversary of the CIMADE (Strasbourg, 26 September).
- Wilton Park International Conference on “Terrorism, security and human rights” (Wilton Park, 3 October).
- GRECO’s 10<sup>th</sup> Anniversary Conference (Strasbourg, 5 October).
- International Conference on Children's Rights and Protection against Violence (Ljubljana, 6-7 October).
- Celebration of the 20<sup>th</sup> anniversary of the adoption of the United Nations Convention on the Rights of the Child, organised by the UN High Commissioner for Human Rights (Geneva, 8 October).
- 3<sup>rd</sup> Annual Conference of the International Centre for Democratic Transition (ICDT) “Civil Society after Twenty Years – An Unfinished Business” (Budapest, 14 October).
- CoE Forum on Human Rights Education with Young People (Budapest, 14-18 October).

- Amnesty International Human Rights Film festival (Stockholm, 16 October).
- Seminar on discrimination issues organised by the Swedish Embassy, representing the EU presidency, and the Human Rights Monitoring Institute of Vilnius (Vilnius, 19 October).
- 4<sup>th</sup> roundtable meeting of the network of LGBT friendly governments (Malta, 27 October).
- Dutch Senate Symposium on “60 years of the Council of Europe, 50 years of the European Court of Human Rights” (The Hague, 2 November).
- Roundtable “Right to education of children with mental disabilities” organised by the Mental Disability Advocacy Center (MDAC) and the Bulgarian Helsinki Committee (Sofia, 3 November).
- Fundamental Rights Agency stakeholder meeting on joined-up governance on fundamental rights (Vienna, 5-6 November).
- 9<sup>th</sup> Annual Conference of the European Partners against Corruption EPAC (Nova Gorica, 6 November).
- 20<sup>th</sup> Anniversary Conference “New partnerships for torture prevention in Europe”, co-organised by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and the Association for the Prevention of Torture (APT) (Strasbourg, 6 November).
- 2009 Lisbon Forum “Creating a culture of human rights through education” (Lisbon, 13-14 November).
- 3<sup>rd</sup> EU Equality Summit – Cooperation for Equality (Stockholm, 16 November).
- Swedish Human Rights Forum *MR-dagarna* (Stockholm, 16 November).
- 3<sup>rd</sup> Coordination Meeting between the CoE and the Office of the UN High Commissioner for Human Rights (Strasbourg, 16-17 November).
- Association of European Journalists Annual Congress (Maastricht, 20 November).
- Briefing Day for Human Rights Funders’ Network organised by ARIADNE European Human Rights Funders’ Network (Brussels, 26 November).
- SIDA Conference on Children's rights (Stockholm, 30 November).
- EU Fundamental Rights Conference "Making rights a reality for all" (Stockholm, 9 December).

#### *Communication and information work*

The activities carried out during 2009 received wide coverage in international and national media. The most covered issues were country reports and visits, as well as the statements and opinions expressed on the rights of persons with intellectual disabilities, immigration and asylum policies, rights of transgender persons, prison conditions, racism and discrimination, and the fight against terrorism.

On some occasions, journalists as well as a photographer and a cameraman from the Council of Europe have participated in the Commissioner's country visits. Photographs and videos have therefore been

published (both on websites and in papers, notably the *Financial Times* and the *International Herald Tribune*), increasing the visibility of human rights and public awareness of the themes on which the Commissioner has focused.

Cooperation with Council of Europe field and information offices continued to be very effective, in particular in relation to visits, with comments and visibility in the national media.

The Commissioner's website was regularly updated and it was reshaped on the occasion of the 10<sup>th</sup> anniversary of the establishment of the Office. It now provides an easier access both for the media and the public with a design which better mirrors that of the Council of Europe.

A film on the work of the Office, aimed at the public at large, has been initiated and will be finalised in 2010. Another film was produced on Andrei Sakharov's legacy on human rights.

Issue papers, the Viewpoint compilation and a book on Janusz Korczak were printed and distributed to different audiences.

#### **4.4 Cooperation with national human rights structures**

National human rights structures (NHRs) are the Commissioner's privileged partners in his human rights dialogue with member states as laid out in the Commissioner's mandate. In 2009, the Commissioner continued to meet with NHRs virtually every time he visited a particular country, and consulted with them closely about human rights issues and the best way to address problems. Information from NHRs was used in the preparation of country visits. Furthermore, the Russian Federal Ombudsman, Vladimir Lukin, joined the Commissioner during his visit to the Chechen Republic and the Republic of Ingushetia in the Russian Federation in September 2009.

Since April 2007, the Commissioner's Office has carried out a joint programme with the European Union ("Peer-to-Peer Project") for the setting-up of an active network of national human rights structures. A series of "Peer-to-Peer" workshops have been organised to offer the staff of these institutions the possibility to share experiences with colleagues and to receive updates about relevant Council of Europe norms and mechanisms. The last "Peer-to-Peer" workshop organised by the Office was held in Budapest from 24 to 25 February 2009 on the theme of protecting the rights of Roma by the NHRs. The topics discussed included political participation, housing rights and the right to education. Due to the growth in volume, the "Peer-to-Peer Project" has been implemented by the Directorate General of Human Rights and Legal Affairs since April 2009.

In 2009, the Commissioner maintained his contacts with national, European and international networks of NHRs. On 10 June, the Commissioner addressed the 9<sup>th</sup> International Ombudsman Institute World Conference in Stockholm which also marked the 200 Year Anniversary of the Swedish Parliamentary Ombudsman. On 3 September, the Commissioner opened a round table of Russian regional ombudsmen in St. Petersburg. In addition, on 16 June the Commissioner's Office participated in the workshop "Exploring standards and measures addressing Roma institutional visibility" organised by the Greek Ombudsman in Athens in the context of the *Eunomia* project for the promotion of ombudsman institutions in South-Eastern Europe.

#### **4.5 Human Rights Defenders**

The Commissioner's activities in support of human rights activism encompass monitoring and reporting on the situation of human rights NGOs and activists at national and regional level; intervening in urgent situations, publicly or through confidential means; raising public awareness on the importance of human rights activism; strengthening networks and cooperation, co-ordination and complementarity with other intergovernmental organisations, institutions and mechanisms.

In 2009, the Commissioner continued to develop a constructive relationship with human rights activists and non-governmental organisations working on human rights. The Commissioner promoted the strengthening of the enabling environment for human rights work by addressing key issues with the national authorities, in particular on security and protection, and by remaining in contact with human rights activists and non-governmental organisations working on human rights, notably during country visits.

#### *Meetings organised by the Office of the Commissioner*

From the discussions held during the Round Table on "The situation of Human Rights Defenders in Europe" organised by the Office of the Commissioner in Strasbourg in November 2008, it became clear that particular attention needed to be paid to the conditions in which human rights activists operated in South-east Europe and in the Caucasus.<sup>69</sup> Consequently, and as a result of the worsening of the security and safety conditions for human rights activists operating in this area, in 2009 the Commissioner decided to focus on the Caucasus region and neighbouring countries. With this perspective in mind, the following meetings were organised:

- On 18 May 2009, the fourth meeting of the Taskforce on Human Rights Defenders took place in Strasbourg, organised by the Office of the Commissioner. Participants included representatives of human rights NGOs from Armenia, Azerbaijan, Georgia, the Russian Federation, Moldova and Ukraine, major International NGOs, the UN, the OSCE and the EU. Representatives from the Secretariat of the Parliamentary Assembly of the Council of Europe and the INGO Conference also attended. During the course of the meeting, information on planned activities for 2009 of the different actors working on the situation of human rights activists in member states was exchanged, and the needs of human rights activists in the Caucasus and neighbouring countries were discussed with a view to developing a regional strategy.
- On 17-18 September 2009, the Office of the Commissioner organised, in co-operation with the Conference of International Non-Governmental Organisations and with the support of the Ukrainian Helsinki Human Rights Union, a Round Table on Human Rights Activism, in Kyiv, Ukraine. Participants included representatives of non-governmental human rights organisations from Armenia, Azerbaijan, Belarus, Georgia, Moldova, the Russian Federation and Ukraine, representatives of international non-governmental organisations and regional and international intergovernmental organisations. The meeting provided a forum for information-sharing on specific challenges faced by human rights activists and NGOs, particularly with regard to freedom of association, security and protection of human rights activists and access to international and regional protection mechanisms. Strategies to enhance the protection and security of human rights activists were considered. The round table addressed, in particular, the role of the Council of Europe and of the Commissioner for Human Rights in promoting and protecting the right to defend human rights in Europe.

#### *Consultations and participation in events*

During 2009, the Office of the Commissioner held a number of consultations with key partners and participated in several events concerning human rights activism:

- The Commissioner's Office was represented at the Peace Brigades International Conference on human rights defenders on 28-29 April in London. The Office contributed to the discussion on how to enhance the protection of human rights activists at risk and how to ensure a coordinated and complimentary approach by international actors, including the Commissioner for Human Rights, in urgent situations. The coordination role of his task force was underlined by all the participants in this respect.
- On 29 April 2009, the Standing Committee of the INGO Conference held an exchange of views with the Commissioner for Human Rights on the situation of human rights defenders in Europe. The

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<sup>69</sup> CommDH(2009)15

Standing Committee expressed its support to the initiative of the Commissioner to organise a regional round table of human rights activists working in the Caucasus, Belarus, Moldova and Ukraine.

- On 22 June 2009, the Office of the Commissioner participated in a meeting of the INGO Conference's Human Rights Committee on the situation of human rights defenders in Europe.

#### *The Andrei Sakharov Project*

In 2009, the Office of the Commissioner launched the Andrei Sakharov Project, aiming at promoting the concept of peaceful human rights activism and enhancing respect for human rights work in Europe. The project draws on the example of Nobel Peace Prize winner Andrei Sakharov, a leading human rights activist in the Soviet Union. Andrei Sakharov was a European personality and leading activist in the Soviet Union who actively promoted peace and human rights. His figure gathers a broad consensus and support in Russia and across Europe, from civil society and authorities alike.

The Commissioner supported the conference on the legacy of Andrei Sakharov held on 14-15 December 2009 in Moscow, on the occasion of the 20<sup>th</sup> anniversary of the death of Andrei Sakharov. Organised by the Andrei Sakharov Museum Public Centre, this was the first in a series of activities to highlight the human rights messages of Sakharov. During the conference, the Commissioner underlined the continuous relevance of Sakharov's ideas to contemporary society, and highlighted his contributions in the movement to achieve honest and transparent government, popular participation, truth telling about the past, the rule of law, freedom of association, and freedom of the media. On that occasion, the Commissioner published a Viewpoint "Human rights activists all over Europe are still learning from the example of Andrei Sakharov", on 14 December 2009.

The Andrei Sakharov project's other activities, planned for 2010, include the exhibition "*Andrei Sakharov: Alarm and Hope*", produced by the Sakharov Public Centre and by the Human Rights Association Memorial with the support of the Commissioner, and a publication of human rights writings of Andrei Sakharov.

## **4.6 External relations**

The Commissioner continued to consult and cooperate with his main international partners throughout 2009. This cooperation took the form of bilateral meetings, informal contacts and exchanges of information as well as joint statements and initiatives. The protection of human rights activists was a theme requiring enhanced multilateral cooperation with several international partners including the European Commission, OSCE/ODIHR and the Office of the UN High Commissioner for Human Rights (see above under 4.5).

### *European Union*

During 2009, the Commissioner continued his regular meetings with members of the European Commission with duties related to human rights. In February, he met with the Commissioner for External Relations, Benita Ferrero Waldner, to discuss human rights situations in Armenia, Azerbaijan and the Russian Federation. In March, he exchanged information on country visits and discussed migration and asylum related issues with the Commissioner for Justice, Freedom and Security, Jacques Barrot. In November, he met with the Commissioner for Employment, Social Affairs and Equal Opportunities, Vladimir Špidla, to discuss the human rights situation of Roma and Travellers as well as discrimination on the grounds of sexual orientation and gender identity. Information on the results of the Commissioner's country monitoring was also exchanged with relevant Commission services on several occasions during the year.

Contacts with the EU Council were further developed in 2009. In February, Commissioner Hammarberg held a meeting with the EU High Representative for the Common Foreign and Security Policy, Javier Solana. The meeting focused on the need to ensure a continued international presence in the areas affected by the 2008 conflict in Georgia. In June, the Commissioner discussed the closure of the

Guantánamo detainee facility and data protection issues related to counter-terrorism measures with the EU Counter-Terrorism Coordinator, Gilles de Kerchove. In June, the Commissioner also addressed a meeting of the EU Council Working Group on the OSCE and the Council of Europe (COSCE) with particular reference to the human rights situation in Moldova and the conflict areas in Georgia.

In October, Commissioner Hammarberg participated in a meeting of the European Parliament's Subcommittee on Human Rights. He exchanged views with members of the Sub-Committee on the human rights situation in the Russian Federation as well as issues related to human rights defenders and discrimination based on sexual orientation and gender identity. The Commissioner maintained regular contacts in Strasbourg with the European Ombudsman, Nikiforos Diamandouros.

Cooperation between the EU Agency for Fundamental Rights (FRA) and the Commissioner's Office was close and continuous. The Commissioner met with the Director of FRA, Morten Kjaerum, in November in conjunction with an International Conference on Roma Migration and Freedom of Movement, jointly organised in Vienna by the FRA, OSCE/ODIHR, the OSCE High Commissioner on National Minorities and the Commissioner's Office. Information and data on a broad range of human rights subjects were regularly exchanged between the FRA and the Commissioner's Office also in the context of expert meetings, workshops and roundtables organised by both organisations. The human rights situation of Roma, discrimination on the grounds of sexual orientation and gender identity, the rights of the child, and multi-level human rights implementation were shared priority concerns in 2009.

The Commissioner addressed two major EU conferences related to human rights in 2009. In November, he delivered the keynote address at the EU Equality Summit in Stockholm, organised by the Swedish EU Presidency and the European Commission. In December, Commissioner Hammarberg participated in the high-level panel of the EU Fundamental Rights Conference in Stockholm, organised by the FRA and the Swedish EU Presidency.

In 2009, the Office completed its joint EU-Council of Europe programme (so-called "Peer-to-Peer Project") for the setting-up of an active network of national human rights structures (NHRs). The last "Peer to Peer" workshop – on the protection of the rights of Roma by NHRs – organised by the Office took place in Budapest in February.

### *United Nations*

In 2009, the Commissioner met with the High Commissioner for Human Rights, Navanethem Pillay, in March and in October, and with the High Commissioner for Refugees, António Guterres, in October. He also met with the UNICEF Regional Director, Maria Calivis, in March. In October, the Commissioner addressed the 20<sup>th</sup> Anniversary Conference of the UN Convention on the Rights of the Child in Geneva. Regular meetings took place between the Commissioner's Office and the respective organisations at working level.

Among the themes where close collaboration evolved during 2009 with the OHCHR were human rights in crisis and conflict situations, counter-terrorism measures, the protection of human rights activists, the rights of the child, the rights of persons with disabilities as well as the follow-up process to the Durban Declaration and Programme of Action against racism, racial discrimination, xenophobia and related intolerance. The Commissioner submitted his contribution to the Durban Review Conference in March and published a Viewpoint article on the topic.

The Commissioner's country reports were made available for the Universal Periodic Review conducted by the Human Rights Council and were frequently referred to in the outcome documents. Contacts were maintained with UN special rapporteurs and treaty bodies in the course of country and thematic monitoring. The Commissioner regularly met with the OHCHR field representatives or offices during his country visits.



The Commissioner's Office attended the Durban Review Conference in Geneva in April and the UN Regional Consultation Meeting for Europe in Strasbourg in December. It also contributed to the regular coordination meeting between the OHCHR and the Council of Europe in November.

The Commissioner's Office has a very close working relationship with the UNHCR, which is facilitated by the UNHCR liaison office in Strasbourg. The Commissioner met regularly with UNHCR representatives during his country visits. Cooperation in 2009 had a particular focus on the reception conditions of refugees, access to refugee determination procedures, burden sharing among member states and the human rights consequences of the criminalisation of migration.

Cooperation with UNICEF aims at the realisation of the rights of the child throughout the European continent. Information on the situation of children was exchanged in the context of the Commissioner's country visits. In 2009, special emphasis was put on the reform of juvenile justice systems.

## OSCE

In 2009, cooperation with the OSCE focused on the situation of Roma and the protection of human rights defenders. In April, the OSCE High Commissioner on National Minorities and the Commissioner published a study on recent migration of Roma in Europe. The study provides analysis of the existing human rights standards concerning migration in Europe and highlights discriminatory practices that Roma migrants still face. During the same month, a joint statement on the occasion of International Roma Day was issued by the Commissioner, the OSCE/ODIHR, the OSCE High Commissioner on National Minorities and the FRA. The statement called on governments, intergovernmental organisations and civil society to step up their efforts to tackle the human rights violations that the Roma continue to face in Europe.

This multi-agency initiative was followed up by a workshop, organised jointly in Strasbourg in July, on protecting the freedom of movement and human rights of Roma. The cooperation was continued through a conference on Roma Migration and Freedom of Movement which was organised in Vienna in November. On this occasion, the Commissioner met with the Director of ODIHR, Janez Lenarčič. In November, Commissioner Hammarberg met twice with the High Commissioner for National Minorities, Knut Vollebaek, to discuss the protection of minorities as well as the human rights situation in Georgia.

The OSCE/ODIHR and the Commissioner's Office exchanged information regularly on the situation of human rights defenders and the incidence of hate crimes in Europe. Close contacts were maintained with the ODIHR's focal point for human rights defenders in the context of the Commissioner's Task Force on Human Rights Defenders. In addition, the Commissioner liaised with OSCE field missions during his country visits.

## 5 Staff and budget

In 2009, the total number of permanent posts in the Commissioner's office was 19 (11 A-grade posts and eight B-grade posts) and two fixed-term positions (one of which was frozen until June). Two staff were seconded to DGHL (one A4 from April and one A3 throughout) to assist with co-operation activities. To cope with the increasing workload, the Office employed 6 temporary staff and five staff were seconded by the following governments: Sweden (until June), Switzerland (one in Strasbourg and one in Tbilisi from March), Romania and the Netherlands (from August). The ordinary overall budget appropriations were of €2,837,800. The Commissioner's budget represents about one per cent of the total ordinary budget of the Council of Europe.

In 2009, the Commissioner benefited from a total amount of €796,223 in voluntary contributions from the governments of Finland, Germany, Greece, Liechtenstein, Luxembourg, Monaco, the Netherlands, Norway, Spain, Sweden and the United Kingdom. The Commissioner expresses his sincere gratitude for the voluntary contributions given by these member states.

The Commissioner has often drawn attention to the fact that the potential of his mandate is only partially and inconsistently fulfilled due to the limited resources at his disposal. In 2009, the Office was reorganised and the use of the limited resources rationalised in order to make it work as effective as possible. Further progress is not possible without an increase of resources. In this sense, the moment of truth has arrived.

In December 2009, the final decisions on the Council of Europe budget for 2010 meant that there were no additional posts for the Office and only one new position (function). The consequence is that there is no possibility for real continuity in the work to assist member states.

The Commissioner will present once again the resources necessary for the full implementation of his mandate in detail in the context of the preparatory discussions for the 2011 budget.

The basic structure necessary for the implementation of the mandatory activities should be ensured by permanent means covered by the ordinary budget of the Council of Europe. This will permit this institution, which can be considered as having proved itself, to function adequately in the medium and long term, ensuring the quality of its output and guaranteeing the essential element of its mandate, which is the principle of the independence of the Commissioner.

The additional resources requested by the Commissioner are in themselves limited to what is strictly necessary. It is important for him to be able to function with a small but efficient team. The Office should maintain a limited size, in order to function with as much fluidity as possible, to remain flexible and keep bureaucracy to a minimum.

The Commissioner's requests are thus modest, and he believes that the Council of Europe is in fact wasting an opportunity by not allocating the necessary resources for the fulfilment of his Office's potential.