



1st Annual Report of the Commissioner for Human Rights



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1ST ANNUAL REPORT OF THE COMMISSIONER FOR HUMAN RIGHTS

(15 OCTOBER 1999 TO 1 APRIL 2001)

to the Committee of Ministers
and the Parliamentary Assembly

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I. FOREWORD

The mandate of the Commissioner for Human Rights of the Council of Europe (hereafter, the commissioner)¹ stipulates that he shall "... submit an annual report to the Committee of Ministers and the Parliamentary Assembly", without giving any indication as to the form or content expected. Up till now the commissioner has limited his contact with the Committee of Ministers and the Parliamentary Assembly to detailed reports, or presentations made to different parliamentary commissions on specific issues. Now, in accordance with his mandate, it is necessary to offer an account of all the work accomplished to date having regard to the interventions effected, the recommendations made and the co-operative ties established. It will also be necessary to focus on the resources – logistic, financial and personnel – on which the commissioner has relied for his work.

It was essential, on taking office, to define the extent and scope of the commissioner's activity and, at the same time, to set up his office so as to best fulfil those objectives.

According to his mandate, the commissioner is to promote not only education in and awareness of human rights in all member states but also their effective observance. A dual role can be deduced: on the one hand, the promotion of human rights and, on the other, the examination of the enjoyment or abuse of these rights in practice in specific situations. It is consequently on these two complementary objectives that the work of the office of the commissioner has focused.

With regards to the first role, my main concern, at this early stage, has been to establish the necessary links with the structures working in the domain of the protection and promotion of human rights. Links with national ombudsmen have been particularly important not only because such institutions are closely involved in the protection and promotion of human rights, but also because the commissioner's mandate encourages this co-operation by indicating that he shall promote such institutions in member states in which they do not yet exist. To this end I have organised meetings with ombudsmen with the intention of establishing the necessary co-operative ties.

I attach an equally great importance to the regular contact established with non-governmental organisations (NGOs), who provide me with valuable information prior to and during my visits to member states. We are also in the process of establishing the basis for the joint study of a number of different problems of a general nature.

1. Resolution (99) 50 of the Council of Europe on the Commissioner for Human Rights.

I have also sought to establish links not only with the different organs of the Council of Europe but also with all the international organisations working in the domain of the promotion and protection of and the respect for human rights. To this end contacts and exchanges of information have been organised.

I have paid especial attention to the branch of my activity concerning the full respect and effective enjoyment of human rights, which is to say, the analysis of various instances of human rights violations in member states. It has always seemed to me to be essential that one does not seek simply to loudly denounce recognised violations. It is necessary also, in so far as possible, to make concrete recommendations in order to put an end to such abuses, or at least to limit their most serious effects. For this reason I have always taken into account, as an essential factor, the victims of such violations and their rights to redress by insisting on both the need for putting an end to the impunity of those responsible for abuses and the victims' right to live in peace within the framework of democratic institutions fully respecting their human dignity.

Confronted in the course of my activities by flagrant violations of human rights, I have always tried to apply these considerations, despite the difficulty of the task and the obvious limitations of an institution whose only tool is the moral force of its recommendations. I must state, however, that I have never felt alone. On the contrary, the constant support of the Council of Europe, through the Committee of Ministers, the Parliamentary Assembly and the Secretary General, has greatly encouraged me. Furthermore, it must be said that the different member states in question have always supported my efforts and taken the recommendations I have made into account.

I have tried to exercise my functions in a spirit of both co-operation and co-ordination with all the sectors of the Council of Europe. It would be absurd to presume that the commissioner might act differently. Rather, I believe the mandate of the commissioner to confer on him a complementary role, to be carried out within the framework of the Council of Europe. At the same time, the commissioner's independent position has enabled him to present the Committee of Ministers, the Parliamentary Assembly and the Secretary General with information and recommendations that they have been free to evaluate with a view to achieving the best possible protection and promotion of human rights, democracy and the rule of law.

I arrive finally at the organisational difficulties I have encountered in setting up the office and which, though not inconsiderable, have since been slowly reduced. The office of the commissioner operated for several months with a team of only five persons, including two administrators and myself. Today, owing to a modest increase in the budget for the year 2001 and courtesy of the provision of financial assistance and personnel from certain member states, the office includes eight persons, with whom I hope to be able to meet

future challenges. I would like to thank all the personnel and, in particular, Mr Müller-Rappard for having made the office's effective operation possible.

I would also like to thank the Secretary General for having, within the limits of the organisation, put the resources, necessary for the accomplishment of the commissioner's functions, at his disposal. It remains also to thank the different directorate generals for having provided me with invaluable information and advice. At the same time, however, I am worried that a de facto freezing of the budget in the near future will result in operational difficulties, even if the voluntary contributions of member states provide a means of covering additional ad hoc expenses. It is clear, though, that the future stability of this institution will depend on the consolidation of its resources, both financially and in terms of personnel.

I must, at this point, concede that this annual report is unusual in that it covers the last months of 1999 as well as the first few of 2001. However, I have preferred to give a more complete and up to date account of the commissioner's activities than a twelve-month report would allow and, whilst anticipating a return to the more conventional yearly model in the future, beg your present indulgence.

ALVARO GIL-ROBLES
Commissioner for Human Rights

**II. ACTIVITIES
OF THE COMMISSIONER
FOR HUMAN RIGHTS
15 OCTOBER 1999 TO 1 APRIL 2000**

The office of the Commissioner for Human Rights was established following the adoption, by the Committee of Ministers, of Resolution (99) 50 on 7 May 1999. Mr Alvaro Gil-Robles was elected commissioner by the Parliamentary Assembly in September 1999 and launched his office on 15 October that year. Whilst a significant amount of activity has inevitably been directed to internal, operational concerns, the commissioner has nonetheless been able to begin to fulfil the requirements of his mandate.

According to Resolution (99) 50, the commissioner shall both promote education in human rights and contribute to the effective observance of those rights. It is stated that he is to work impartially yet in co-operation with existing national, international, governmental and non-governmental human rights structures. The commissioner is to avoid the unnecessary duplication of activities already engaged in by other organs of the Council of Europe. In his inaugural year, therefore, the commissioner has sought to establish these links and define more exactly through his actions the role envisaged by his mandate. To this end his most prominent activities have been high profile visits to member states of the Council of Europe and meetings with various human rights structures and associations.

1. The promotion of the effective observance of human rights

In pursuance of this limb of his mandate the commissioner has made eight official visits to date: to the Russian Federation (Daghestan, Chechnya and Ingushetia), three times, from 29 November to 3 December 1999, 27 to 29 February 2000 and 25 February to 4 March 2001, to Georgia (twice) from 1 to 7 July 2000 and 10 to 14 February 2001, to Moldova from 16 to 20 October 2000, to Andorra from 10 to 12 January 2001 and the Basque country, Spain from 5 to 8 February 2001. The aim of these visits has been to gain an accurate, independent view of the human rights situations in these states and to make such recommendations as the situation demanded and the commissioner's authority allowed. Each visit consisted of meetings with political and legal officials and interviews with the representatives of human rights organisations working in the area. The personal inspection of sites such as prisons, refugee camps and other areas tending to the undermining of human rights were central to the commissioner's itineraries. On his return from each visit the commissioner outlined, in a report addressed to the Committee of Ministers and the Parliamentary Assembly and published on the Internet, his opinion of the human rights situation in each area and his recommendations for their possible improvement. The commissioner is pleased to report on the generally high level of official co-operation he received from the member states in question, without which the effective fulfil-

ment of his role would be, as is recognised by his mandate, almost impossible.

The main conclusions of the first two visits to Chechnya were, firstly, the urgent need to establish a Commissioner for Human Rights in Chechnya who would act, in the absence of a domestic police force and judiciary, as an intermediary between the local Chechen community and the Russian federal forces and, secondly, that a seminar should be organised in the Caucasus region with the aim of bringing together representatives of the Russian authorities, international organisations, local authorities and national and international NGOs in order to discuss ways of advancing respect for human rights in the region. Both suggestions were subsequently taken up. On 17 February 2000, President Putin appointed Mr Kalamonov as “Special Representative of the President of the Russian Federation for the protection of human rights and freedoms and citizens’ rights in the Chechen Republic” and the commissioner has, since his second visit, been instrumental in securing the financial and administrative support of the Council of Europe for Mr Kalamonov’s office. With regard to the commissioner’s second suggestion, the Council of Europe organised, with the co-operation of the Russian authorities, a seminar in Vladikavkaz in May 2000 on “The Rule of Law, Democracy and Human Rights”, which resulted in several proposals for the rapid re-establishment of local administrative structures, most notably of public prosecutors, a judiciary and a local police force. The assessment of the implementation of these initiatives was one of the primary objectives of a third visit to the region.

This last visit to Chechnya clearly revealed the difficulties still remaining in the region. Three main problems were focused on. They were social reconstruction and economic regeneration, the restoration of political and administrative institutions and, finally, the prevention of impunity and the re-establishment of the judicial system. It was proposed that humanitarian assistance, especially in form of housing aid, be directed towards Chechnya itself, and that, to facilitate and encourage foreign aid, a supervisory body, also containing a number of international experts, be established. A proposition to organise a follow-up seminar to the one held in Vladikavkaz on 30 May 2000, in order to continue the dialogue between the Russian and the Chechen leaders, was accepted by the Russian authorities. In order to put an end to impunity, the need for the restoration of the judicial system was underlined and it was proposed, to this end, to organise co-operation on a regular basis between the *Prokuratura* and the bureau of the Special Representative of the President of the Russian Federation for Human Rights, Mr Kalamonov.

The commissioner’s visit to Georgia resulted in several recommendations concerning, *inter alia*, legislation on non-nationals, the regulation of the legal profession, police administration, prison conditions and the return of

refugees and the status of internally displaced persons. The Georgian authorities promised to take many of these recommendations into account. A seminar in Pitsunda in Abkhazia, organised, on the commissioner's recommendation, by the Council of Europe and the Unomig took place in February 2001 and provided an opportunity for dialogue between representatives of the Georgian Government and the Abkhazian side of the conflict. In the conclusions of the seminar it was stated that a second seminar should be held in Tbilisi on the central issues of the conflict.

Acknowledging that a number of difficulties and human rights violations were already widely reported and in the process of being redressed, the commissioner restricted his observations on the situation in Moldova to less well publicised, but in his view equally important, problems. These concerned widespread abuses by an impoverished police force and the lack of judicial supervision thereof, the abuse of administrative detentions, the conditions prevailing in a number of prisons, the discrimination against minority languages in schools and dealings with public officials resulting from the aggressive assertion of Moldovan as the only official language in Moldova and a number of analogous problems in the de facto independent Republic of Transnistria.

The commissioner visited Andorra in January 2001 on the invitation of the Andorran Government. The visit shed light on the transition made by Andorran society following the adoption of its first constitution in 1993 and Andorra's subsequent accession to the Council of Europe. Whilst no serious human rights violations were revealed, either in its legislation or in practice, certain transitional problems remain, particularly with regard to immigrant workers, and a number of European conventions remain to be ratified.

The visit of the commissioner to Spain and the Basque country in early February 2001 highlighted the human rights violations resulting from the terrorist action perpetrated by ETA and the urban violence labelled *kale borroka*. The report clearly points out the need for more concerted action on the part of the police of the autonomy (Ertzaintza) to confront the violations and to provide sufficient and effective protection of citizens' fundamental rights in the Basque country.

2. The promotion of education in and awareness of human rights

It has been necessary, before any effective work in this area could be begun, to establish the links with other human rights structures that the commissioner's mandate envisages. A significant amount of activity was consequently devoted to this end as a prelude to more concrete action in the future.

Meetings were held with the ombudsmen of the central and east European member states in Budapest from 23 to 24 June and with the ombudsmen of

the western member states in Paris on 1 December 2000. At the meeting in Budapest the main points of discussion were the need to encourage the appointment of ombudsmen in those countries and federal states in which they did not yet exist, the need to increase the resources available to national ombudsmen, their role in crisis situations, the constant need to protect the most vulnerable sectors of society and the need for stronger links with domestic and international non-governmental organisations. The ombudsmen all expressed a strong support for the office of the commissioner and the desire for continued co-operation. The meeting with the ombudsmen of west European countries, though focusing to some extent on different concerns, most notably the explosion of complaints in recent years and the possible human rights functions of ombudsmen in the absence of mandates specifically referring to them, also resulted in the general conviction that co-operation with the commissioner's office would be profitable. It was proposed that each ombudsman appoint a liaison officer responsible for all dealings with the commissioner's office.

This co-operation has proved particularly important in the light of the many individual complaints addressed to the commissioner, but which, according to Article 1 of his mandate, he is unable to pursue. Each of these requests are replied to in letters informing the petitioner of this statutory limitation and indicating, wherever possible, more appropriate national or international authorities he might turn to. The agreement reached with the ombudsmen that the commissioner might transfer individual complaints he believes fall within their competence, has been most useful in this regard and stands as concrete proof of the possibilities for constructive inter-institutional co-operation.

A seminar intended to introduce the commissioner and non-governmental human rights organisations to each other's work was held in Paris from 18 to 20 December 2000. It was recognised that there were several areas in which the commissioner and the attending NGOs could effectively contribute to each other's work. It was agreed that the commissioner should be able to call on NGOs for information on the human rights situation in particular fields or prior to an official visit and that he would in turn seek to publicise the serious abuses brought to his attention by them. The participants also suggested that an annual conference be established to discuss significant developments or specific topics and to improve the co-ordination of their activities.

The first topic specific seminar, on the role of monotheistic religions in situations of conflict, was held in Syracuse, Sicily, from 6 to 10 December 2000. Prominent representatives from the Protestant, Catholic, Orthodox, Jewish and Muslim faiths attended. The participants were unanimous in their condemnation of religious fanaticism and in their call for tolerance. It was agreed that religious authorities could play an important role in furthering

these aims through their teachings and that concerted efforts to this end needed to be made.

Believing strong ties with national executive and legislative bodies to be essential to his work the commissioner has to date made brief visits to Switzerland (19 September 2000) and Poland (21 to 23 February 2000). The commissioner met with the Swiss Foreign Minister and a number of administrative bodies. In Poland the commissioner held talks with the Parliamentary Commissions on the Administration of Justice and Human Rights, the Speaker of the Senate and the Minister for Foreign Affairs. Whilst in Poland the commissioner also met with representatives of the OSCE and ODIHR offices based there. Indeed, forging links with other international organisations, has been a priority in the commissioner's first year in office. The commissioner has consequently been in contact with the United Nations High Commissioners for Human Rights and Refugees, the OSCE and the International Committee of the Red Cross, to explain his role and promote co-operation wherever possible.

In his inaugural year the commissioner has also made concerted efforts to inform a wider public of the roles of both his office and the Council of Europe. He has consequently given several media interviews and made a number of addresses to university audiences. The commissioner has participated, in his official role, in conferences throughout Europe with the constant aim of promoting human rights and the in-depth analysis of salient human rights' problems.

Given the proliferation of international human rights structures and the large number of specialist divisions already operating within the Council of Europe, the commissioner has had actively to establish an area of competence unique to his office, such that he might complement and not compete with their activities. The several meetings organised across this spectrum have certainly helped in this regard and the benefits of the ties established ought to become increasingly evident in the coming years.

It is to be hoped that, having established his role and laid the foundations of his office, both operationally and in terms of its relation to other organs, the commissioner will now be able to expand his activity and seek ever more effectively to fulfil the requirements of his mandate.

**III. PRESENTATION OF
THE COMMISSIONER
FOR HUMAN RIGHTS'
ANNUAL REPORT TO
THE PARLIAMENTARY ASSEMBLY**

**Extract from the verbal proceedings
of the Parliamentary Assembly session of 23 April 2001**

THE PRESIDENT. – I now welcome to the Assembly the Commissioner for Human Rights of the Council of Europe, Mr Alvaro Gil-Robles, who has kindly agreed to take questions. The post that Mr Gil-Robles currently occupies was created on the initiative of our Assembly. He was elected to this post by our Assembly and it is therefore only logical that he should be here today reporting to us on the first year and a half of his mandate. The timing of his intervention is most appropriate as it has given the Commission enough time to adopt a *modus operandi* for an office without precedent and with terms of reference where efficiency, if there is such a thing in applying human rights, has nevertheless to be tested on the ground. I also understand that, henceforth, our co-operation should be more regular and I believe that arrangements are under way with the Committee on Legal Affairs and Human Rights, and also the Monitoring Committee.

I now give the floor to the Commissioner, and I have no doubt that his intervention will be as clear, precise and balanced as his reports have been.

MR GIL-ROBLES (*Council of Europe Commissioner for Human Rights*) (Translation). – Mr President, ladies and gentlemen, it gives me great satisfaction to be able to address you today and present the main thrusts of the first report by the Commissioner for Human Rights, who, as the President just said, has been in office for a little over a year.

I took up my duties in September 1999, so I now have an overall idea of the work of the Commissioner. Since my appointment, I have also maintained contacts and worked closely with the Assembly through various committees. However, I have not yet had an opportunity to talk directly with all of you, so I am very pleased to be able to do so today.

When I took up my duties as Commissioner, there were two main problems to be resolved. The first was to achieve a logical interpretation of the Commissioner's terms of reference and to determine his exact field of activity, while establishing efficient structures for the office so as to enable us to perform our duties.

As far as the Commissioner's terms of reference were concerned, Article 3 was quite clear. The Commissioner had a general remit to promote education in and awareness of human rights in all Council of Europe member states. A further remit was to promote the effective observance and full enjoyment of human rights in the member states, while identifying possible shortcomings in their law and practices. So these were three clearly comple-

mentary areas, namely human rights awareness, education and diagnosis – wherever there were problems with human rights in Council of Europe member countries.

Of course, I have focused more particularly on the latter aspect, in other words, the diagnosis of the human rights problems that persist in certain Council of Europe member countries, always bearing in mind the situation of the citizens who suffer human rights violations. However, the first aspect, that is to say promoting awareness of and educating people in human rights, has not been neglected either.

I have, therefore, co-operated very intensively and very directly with the ombudsmen in the various countries. We have held regular meetings at which we have discussed ways of working together and tackling common problems. We also wanted to find out about the human rights problems in each country. I have co-operated very directly with non-governmental organisations, which have played a key role in my work, as they have given us direct input about the situation on the ground and offered very incisive analysis of the human rights situation in each country. This has been most useful not only during our visits to individual countries but also in the general meetings that we have held, and will continue to hold in the years ahead, on the broader issues.

I have also initiated a number of other interesting meetings, for instance with representatives of all of the monotheistic churches to discuss some problems of particular interest to me, namely armed violence, the violation of human rights and the influence and responsibility of churches in the events we have witnessed in the Balkans, the Caucasus and elsewhere. You are aware of the results of the meetings. They are detailed in the report and are most interesting. All of the participants undertook to fight for human rights.

The promotion of the effective enjoyment of human rights is the aspect that has demanded most time, effort and work. All the more so, since I was confronted with the problem of the war in Chechnya as soon as I took up my duties.

It was a problem that absolutely had to be tackled head-on. We began with a fact-finding visit, having made contact with the Russian Government, which provided assistance to enable us to visit the region. We tried at all times to approach the problem from the angle of the defence of the victims' rights and of the situation of the people who were living in the most dreadful conditions. We tried to promote various recommendations acceptable to both sides, with which the Council of Europe could make a mark and act to defend human rights.

I have to admit, my first failure came when I asked the government to stop the violence and stop the war. For me, that had to be the basis for all

further action, as war is an absolute violation of human rights. As we all know, my request was not acted upon.

In the course of my three visits, we therefore tried to propose the most positive solutions possible. We looked at the return of the refugees, the normalisation of the country's institutions, insofar as possible, and, more particularly, solutions to ensure that justice was done for the victims of human rights violations.

Although the recommendation that an ombudsman should be appointed to protect Chechen citizens, who, at the time, were directly exposed to the Russian army, was not followed by the appointment of an ombudsman proper, it did lead to the appointment of Mr Kalamenov and the setting up of an office in which Council of Europe officials are helping the Chechen population.

When I look at the figures and consider all the men who have been released from prison and all those whose lives have been saved by the work of the office, I believe we can say that its efforts already deserve respect.

The question that worries me greatly on the ground in Chechnya at the moment, and on which I am keeping a very close eye, is that of the refugee camps. On visiting Grozny, Gudermes and all the other towns, I realise that there are still huge problems to be resolved, as we have just heard. However, as I said in my last report, we really must work hard and make major efforts to enable the refugees to return home and put an end to the exile of the Chechen people. To that end, we must assist with the reconstruction of schools, houses and public buildings. We must help build security in Chechnya. And we must help also to rebuild Chechnya's institutions.

This demands dialogue between the Chechens, as their country's destiny lies in their hands. From this point of view, I focused during my last visit on a point both your Assembly and myself are most interested in – justice.

I believe that peace, justice and reconciliation will never be achieved unless the human rights violations are tackled at the very core. That is why I placed particularly great emphasis on the need to prevent human rights crimes from going unpunished.

I said this to the Russian Government and I said it directly to the generals on the ground. I understand that it was not particularly welcome in certain quarters, but it was my duty to make the point. And I did.

That is why I insisted that Mr Kalamenov's office must be able to co-operate with the *Prokuratura* to follow up all the reports and all the files on human rights violations and crimes that are still shrouded in silence. Everything must be brought to light here and proceedings must be followed through. The *Prokuratura* and the Russian Government have agreed to do

this work together. We must be vigilant here because the victims naturally have a right to truth and justice.

We have done also a lot of work on Georgia and Moldova. You will find the details in the general report.

In these countries, too, there are serious violations of human rights, not only because they are experiencing grave economic problems but also because not every situation can be resolved with money alone; political will is also necessary. It is not money you need to prevent torture; it is the political will not to carry out torture and not to make illegal arrests. We really need to keep a very close eye on these problems.

Of course, there are also all the problems concerning the refugees from the war with Abkhazia. We managed to provide some scope for dialogue through the seminar we held with the United Nations. However, I cannot remain silent about the situation of the thousands of refugees that we saw in terrible human situations at the border. We should never forget that they have the right to return to their country. We should do everything possible to help them with this.

In Moldova, we also encountered serious difficulties concerning the justice system, language, social services and the situation in prisons. I will not go into the details here, as they are set out in my report. However, we must give very close consideration to the fact that many countries make major efforts to bring their legal frameworks into line with the European Convention on Human Rights, yet their laws do not then always follow suit in practice. Practical implementation is far from satisfactory.

We must all make an effort to help these countries not only to improve, change and perfect their legal frameworks so that they are fully in line with the Convention – which is already very positive in itself – but also to ensure that the relevant legislation is actually implemented on a daily basis. That is absolutely essential.

Again with regard to what actually happens in practice, I have also looked into the problem of violence in the Basque country in Spain, which I have visited. As you are aware, the region is affected by a very serious terrorist problem, which has a direct impact on elected representatives, intellectuals and all those who do not agree with the terrorists, creating a terrible situation for everybody who lives there. Members of parliament, local councillors, journalists and university professors whose ideas challenge the theories of violence and terrorism are all victims. They live under very difficult conditions.

Terrorist activity is accompanied by street violence, known as *"kale borroka"*, which compounds the climate of violence and undermines the rule

of law and democracy. We democrats must all make a major effort of social solidarity to overcome the situation.

All of my activity as Commissioner which I am describing briefly – you will find the details in my report – is based on very clear operating criteria: I have tried to work within the Council on the basis of internal co-ordination, while also developing complementary activity with other international organisations, for instance through active co-ordination with the United Nations, with Mrs Robinson, with the Red Cross, with the Office of the High Commissioner for Refugees and with the OSCE, engaging in ongoing dialogue and ensuring that we all knew very clearly what each one of us was doing, and, of course, also co-operating with the European Union, which followed the report closely.

What resources do we have at our disposal for doing all of this? I have no desire to go on about my own problems, but, apart from the general difficulties facing the Council, you are all aware of the size of the budget allocated to the Commissioner. That is part of my difficulties, too. The situation is far from ideal. Nevertheless, we have been allocated three additional officials, and I would like to thank the Secretariat for that laudable effort. Finland and Switzerland have placed officials on secondment with the Commissioner, and the United Kingdom has also appointed a long-term trainee to provide further assistance. I am sure that we are doing good work with this small team.

The general budget has, of course, been frozen – I do not know until when, but if the situation were to persist, there can be no doubt that we would face serious difficulties in the near future.

Mr President, ladies and gentlemen, I remain at your disposal to answer your questions. It is important for the Commissioner for Human Rights elected by the Assembly to maintain smooth, direct and open contact with your members. I therefore remain entirely at your disposal, not only for dialogue of the kind we are engaging in today in general terms, but also as regards the work I will continue to do on a day-to-day basis.

THE PRESIDENT. – Thank you very much, Mr Gil-Robles, for your work and your most interesting statement. Members of the Assembly have expressed a wish to put questions to you. Some of the questions have a common subject. When that is the case, I shall call the members concerned to ask their questions one after the other and then invite Mr Gil-Robles to reply to them together.

There are twenty questions for Mr Gil-Robles. I remind members that questions must be limited to thirty seconds and no more, and I shall rigorously apply that rule. Colleagues should ask questions and not make speeches. I appreciate that members may want to pay tribute to Mr Gil-Robles. Although he would doubtless welcome tributes, I request that

members simply ask their question. To ensure that as many members as possible are able to ask a question, I do not propose to allow supplementary questions. Although I think that they are usually a good thing, I do not propose allowing them on this occasion.

The first group of questions is on Chechnya. There are four questions in the group, and I shall call two at a time. The first question is from Lord Judd.

LORD JUDD (*United Kingdom*). – Commissioner, thank you for your very interesting report. I am sure that you agree that what matters are the levers to get things to happen. Are you satisfied with the role played by our own Committee of Ministers to get effective results, as distinct from declarations of concern, in Chechnya?

THE PRESIDENT. – I call Mr Landsbergis.

MR LANDSBERGIS (*Lithuania*). – Mr Commissioner, the most serious violations of human rights are being perpetuated by the Russian military in the Chechen Republic. Some European institutions have made no effort to stop the war crimes being committed there. Despite your statement more than one year ago that any such war constitutes a violation of human rights, that armed conflicts must cease as soon as possible and that a political solution is urgently required, the war in Chechnya has not stopped. How can we help your excellent institution to act effectively? What resources and authorisation do you need to help you to stop the racist murder and massacre of the local population? Are you working with the legitimate Chechen authorities, which were freely elected four years ago, and President Maskhadov?

THE PRESIDENT. – That question was more than twice the time allowed. I call Mr Gil-Robles to answer the two questions.

MR GIL-ROBLES (Translation). – The Committee of Ministers has helped me and has listened to and supported my recommendations.

The Commissioner must continue his work on the ground, actively and on a daily basis, and work with the NGOs in the country, the Chechens and the Russians so as try and put an end to the human rights violations. That will take time, but we will succeed through joint efforts by the Committee of Ministers, the Assembly and myself.

THE PRESIDENT. – Thank you. The next two questions are from Mrs Fehr and Mr Frunda.

MRS FEHR (*Switzerland*) (Translation). – According to reports, various legal systems operate in Chechnya – the Islamic Sharia law, the law of the Chechen Republic and the law of the Russian Federation. Are these systems mutually compatible? How does their simultaneous operation affect the work of the Human Rights Office, and the way in which human rights violations are dealt with?

THE PRESIDENT. – I call Mr Frunda.

Mr FRUNDA (*Romania*). – Thank you, Mr Gil-Robles, for the information that you have given us. Generally, we have been receiving contradictory information from Chechnya. We are very concerned about human rights there and we need to have better information. Can you give us some concrete information on whether progress is being made on the fundamental issues in Chechnya?

THE PRESIDENT. – I call the European Commissioner for Human Rights.

Mr GIL-ROBLES (*Translation*). – The situation in Chechnya is still very difficult, as human rights violations are continuing on both sides. We have taken steps in terms of the justice system by establishing a minimum of legal structures. I saw some courts in Gudermes, which were beginning to operate. What is needed, in fact, is the establishment of a proper system of justice. At the same time, the work by Mr Kalamonov's office means that all the files involving human rights violations and crimes that have so far gone unprosecuted can now be brought before the courts.

This work is being supported by the NGOs, which every day bring to light and condemn the undue pressure that is still being exercised in various quarters. The Assembly and the Duma will also work in the same direction. These are positive signs against a background that remains very difficult, as many people are unable to return because of internal insecurity. There are some signs of progress, though.

I am not an expert on the legal system. However, I can tell you that Russian law applies alongside traditional customs at present. Everything is in a state of flux at the moment. It is precisely the future constitution and the institutions and systems that will be put in place that are now the big question.

THE PRESIDENT. – Thank you. We will now have six questions on the Basque country. The first two will be from Mr González de Txabarri and Mr Guardans.

Mr GONZÁLEZ DE TXABARRI (*Spain*) (*Interpretation*) said that the Assembly had very specific human rights goals. He asked what further initiatives might be adopted to fight terrorism.

THE PRESIDENT. – I call Mr Guardans.

Mr GUARDANS (*Spain*) (*Translation*). – Commissioner, your report on the Basque country has come in the middle of the election campaign there. It therefore runs the risk of being misinterpreted or used for political ends. So I would ask you whether you believe it is wise to mix terrorism and the

legitimate defence of the Council of Europe's political ideals, whatever they may be.

At the same time, is it wise to indicate in your report that a simple change in the political complexion of the Basque country would alter the climate of violence, assassinations and lack of freedom that currently prevails?

THE PRESIDENT. – I call Mr Gil-Robles to reply.

Mr GIL-ROBLES (Translation). – I will not comment on the second question, as it does not fall to me to prejudge the will of the Basque people in an election.

The human rights situation in the Basque country resulting from the armed violence that the terrorist group ETA directs against those opposed to its nationalist ideology leads some people to believe that their freedom is under threat.

That is a reality. It cannot be denied that terrorism does exist there. It is a sad reality that hurts me greatly, as you will understand.

ETA is the main reason for the violence and the human rights violations in the Basque country. My report reflects what people described to me and what is going on in the streets. It indicates that everybody has to shoulder his or her share of responsibility. I am not attempting to enter into the disputes surrounding elections and parties. All democrats must be totally and actively committed to combating armed violence and terrorism and promoting democracy.

A democratic system must never allow a group to decide that its ideology is the only valid one and that the supporters of other ideologies must either leave the country or die. All elected representatives from the Basque country must shoulder their responsibilities here.

THE PRESIDENT. – Thank you. We will now take questions from Mr de Arístegui and Mr de Puig.

Mr de ARÍSTEGUI (*Spain*). – Thank you, Mr President. I also thank the Commissioner for his visit to the Basque country and for fulfilling his obligations and giving a sign of solidarity with the victims of terrorism.

(*The speaker continued in Spanish*) (Interpretation). He said that the report could be strengthened by including other ideas for the fostering of human rights in the Basque country.

THE PRESIDENT. – Thank you. I call Mr de Puig.

Mr de PUIG (*Spain*) (Interpretation) said that teaching and training were important in promoting human rights. The media had an important role in fostering democracy.

THE PRESIDENT. – The commissioner will reply.

Mr GIL-ROBLES (Translation). – You have raised two very important subjects, teaching and training. My report condemns armed violence outright. There are general problems of culture, education and training, public spiritedness and respect for democracy.

I have heard very direct criticism about Basque television in recent days. Is it justified? I gave the head of Basque television exact details of dates and programmes where children sang unacceptable and discriminatory songs. I have not received a reply. I am sure that these were exceptions, but we must be very careful to avoid the culture of violence finding its way into the mass media and television, especially children's programmes.

I will not labour the point. I have many documents, which you are free to consult, that incite people to violence. And I have books and documents that claim that ETA is a patriotic organisation, but I will not go on.

We must all make an effort to change the situation. It is true that we have taken steps to promote human rights, but the documents I am talking about do exist. I cannot deny their existence. A huge effort is needed to prevent young Basques being educated in a spirit of exclusion.

THE PRESIDENT. – Finally, we will have questions from Mr Martínez Casañ and Mr Solé Tura.

Mr MARTÍNEZ CASAN (Spain) (Interpretation) referred to a letter he had received from a member of the European Parliament which advocated violence. He asked Mr Gil-Robles what he thought of such an attitude.

THE PRESIDENT. – I call Mr Solé Tura.

Mr SOLÉ TURA (Spain) (Interpretation) asked what role the Council of Europe could play in tackling the issue. The ideological commitment of the ETA terrorists was to create an independent country that included parts of the existing territories of Spain and France. He did not believe that that was an acceptable view; achievement of that aim would certainly not be helped by such terrorists killing innocent people.

THE PRESIDENT. – I call Mr Gil-Robles.

Mr GIL-ROBLES (Translation). – I respect the opinion of that member of the European Parliament whose name I will not disclose. I received the same letter.

I respect all opinions, even including those of the people who want to silence me or advocate violence and never condemn it. However, I do not agree with them. I am on the other side: opposed to violence and championing democracy and human rights. I will never support those who take up

arms against elected representatives who do not subscribe to a particular vision of society.

I would remind the honourable member that the Council of Europe has a crucial role, not only in the Basque country but also in all regions of Europe where fanaticism, intolerance and dictatorships of ideas prevail. The Council of Europe must reiterate its founding principles very clearly: the rule of law, democracy and freedom must come first. This just has to be repeated clearly. Everyone who agrees with these principles is on our side. Anything else is unacceptable. It is essential to reiterate certain principles today, in particular, the need to combat intolerance and fanaticism and to promote freedom, tolerance and democracy in constitutional states. Those are the reasons why I am Commissioner for Human Rights.

THE PRESIDENT. – Thank you.

I call Mr Hegyi, who wants to ask about the Roma/Gypsies.

Mr HEGYI (*Hungary*). – What is your assessment of the social and cultural situation of the Roma/Gypsy population across Europe? There are no Roma/Gypsy members of our parliament; nobody speaks up for them. Perhaps you can give some information on the situation. What can the Council of Europe do to improve the cultural and social conditions of the Roma/Gypsy population across Europe?

THE PRESIDENT. – I call Mr Gil-Robles.

Mr GIL-ROBLES (Translation). – The situation of the Roma/Gypsy people is very important to me. I took part in a meeting on the subject here a few weeks ago. I offered to establish a permanent link between the Commissioner for Human Rights and the relevant working group. I also offered to study all the initiatives in this area and to support them to the best of my abilities. At my next meeting with the ombudsmen in Warsaw, I will point out that the problem of the Roma/Gypsy people is a crucial aspect of human rights.

THE PRESIDENT. – Thank you.

I call Mr Vasył Kostytsky of Ukraine.

Mr KOSTYTYSKY (*Ukraine*). – First, let me congratulate you, Mr Gil-Robles.

Two years ago, I asked – I continue to ask – for help for the Ukrainian minorities who live in countries neighbouring Ukraine. The rights of Ukrainian people are being grossly overridden. What is your information? Are you prepared to visit regions of countries neighbouring Ukraine in which Ukrainian people live?

THE PRESIDENT. – I call the commissioner to reply.

Mr GIL-ROBLES (Translation). – I must admit that the information I have in this area is quite limited. The matter actually concerns the OSCE more directly.

I visited Moldova and other countries to examine the language problems facing minorities. I must tell you the truth: the question does not really concern me directly. Given the problems I have faced over the last seven and a half years, I cannot devote all of my efforts to this language problem. I will continue to keep an eye on it and I will maintain contacts with the OSCE in dealing with it. However, I cannot promise you positive developments in this area.

THE PRESIDENT. – Thank you. I call Mr Tom Cox, who is hiding behind the camera.

Mr COX (*United Kingdom*). – I should like to ask whether the Commissioner is in a position to comment on the Loizidou case, which went before the European Court of Human Rights a considerable time ago. The Court found overwhelmingly in favour of Mrs Loizidou, but nothing is happening in relation to pursuing the case.

THE PRESIDENT. – I call the commissioner to reply

Mr GIL-ROBLES (Translation). – I know as much about this case as everyone else. I am sure you understand that I respect completely the independence of the European Court of Human Rights. The commissioner is not in charge of the Court.

THE PRESIDENT. – Thank you. I call Mr Iwinski, who wants to ask a question on immigration from Africa.

Mr IWINSKI (*Poland*). – We are witnessing an increasing flow of migrants into western Europe from Asia, Africa and other places, quite often illegally. Such people usually face dramatic circumstances, both while travelling – let us consider the recent cases on ships east of Gallipoli – and by being exploited at work. Do your activities also cover the issue of the protection of such migrants' human rights?

THE PRESIDENT. – I call Mr Gil-Robles.

Mr GIL-ROBLES (Translation). – The clear answer is yes, because they are human beings who are covered also by the Convention.

I have dealt with this problem since the outset. I gave it a tremendous amount of attention when I was ombudsman in my own country. The question of these people's rights is very important throughout Europe. Here I am thinking, in particular, of the people who arrive in Europe with the aid of Mafia groups and end up in very difficult situations.

I am currently preparing a colloquy with NGOs on these people's rights and the problems of extradition and repatriation procedures. We are going to look very seriously at the problem with the support of the Council of Europe and NGOs.

THE PRESIDENT. – Because of the pressure of time, I shall take together the three questions on co-operation: those of Mrs Gatterer, Mr Kofod-Svendsen and Mr Jaskiernia.

I call Mrs Gatterer.

Mrs GATTERER (*Austria*). – Can the Commissioner tell us more about co-operation with the Committee of Ministers? Does that committee offer real support for your initiatives? Can you give examples to show that such co-operation is a fact?

THE PRESIDENT. – I call Mr Kofod-Svendsen.

Mr KOFOD-SVENDSEN (*Denmark*). – What is your experience of co-operation with the Organisation for Security and Co-operation in Europe? Are there any signs of competition with the Council of Europe? Can you propose concrete initiatives for better co-operation between both European institutions?

THE PRESIDENT. – I call Mr Jaskiernia.

Mr JASKIERNIA (*Poland*). – You represent one of the new institutions in the framework of the Council of Europe. Can you explain the relationship between your office and the monitoring procedure of the Council of Europe in the Parliamentary Assembly and the Committee of Ministers? To what extent do your findings influence the monitoring procedure, and to what extent do the findings under the monitoring procedure influence your job?

THE PRESIDENT. – I call Mr Gil-Robles.

Mr GIL-ROBLES (Translation). – I believe that the co-operation with the Committee of Ministers is adequate, useful and positive.

Every report I produce is discussed by the Ministers' Deputies. Everything possible is being done to get Mr Kalamenov's office running smoothly. There are other initiatives, too, but they need political decisions to give them impetus. Our dialogue has always been honest, frank and clear. Although we have had our differences on some points, in overall terms, the support I have received has been most significant, especially in terms of enabling us to discuss fresh issues on our return. Likewise, dialogue with the Assembly is crucial. Parliamentary support is essential when we are engaged in dialogue with individual governments during times of crisis regarding human rights.

As far as monitoring is concerned, I would like to see a lot more of it, but I prefer to be cautious on that point.

With regard to relations with the OSCE, I can tell you quite honestly that there are no problems between the Commissioner and the OSCE. There were doubts at one point about who was more active. The Council of Europe was able to play a more active role concerning the problem of Chechnya. The line followed was: I kept the OSCE informed and the OSCE kept us informed. We agreed in the Human Rights Office to make it clear in Warsaw. I myself went to Vienna to meet the Minister for Foreign Affairs. We are keeping up our contacts.

THE PRESIDENT. – Thank you. I now call Mr Kuptsev to ask a question on minorities in Kosovo.

MR KUPTSEV (*Russian Federation*) (Interpretation) questioned whether the international community's response to the situation of the Serb minority in Kosovo was adequate.

THE PRESIDENT. – I call Mr Gil-Robles.

MR GIL-ROBLES (Translation). – Kosovo is outside my remit. So I cannot comment without going beyond my terms of reference. I wish to be very cautious. Just as I can be very clear on certain points, I will also be very clear that I do not wish to overstep my mandate on this matter. Please excuse me.

THE PRESIDENT. – Also from the Russian Federation, Mr Ustiugov wants to ask about entry visas for citizens from non-European Union countries.

MR USTIUGOV (*Russian Federation*) (Interpretation) said that stringent visa regulations applied to visitors from states that were not candidates to join the European Union. He asked whether that was not a violation of human rights.

THE PRESIDENT. – I call Mr Gil-Robles.

MR GIL-ROBLES (Translation). – This question affects national sovereignty. The Commissioner cannot comment on it. The Convention says nothing about obtaining visas for entering countries. At the same time, we must all try to be as open as possible so that problems can be resolved reasonably.

THE PRESIDENT. – We have now reached the last question almost on time, which is a small miracle for Monday. The last question is from Ms Hajiyeva from Azerbaijan.

MS HAJIYEVA (*Azerbaijan*). – As everyone knows, the Council of Europe has proclaimed the protection of human rights and freedoms as a basic principle of its activity. In that case, how can you explain the Council of Europe's

silence while daily there is gross violation of the personal, economic, social and cultural rights of more than a million refugees caused by the military aggression and occupation of 20% of the territory of one member state, Azerbaijan, by another member state, Armenia? Why do we shut our eyes to the mass violation of the fundamental human rights and freedoms of one million people that is taking place today in the territory of our common home – the Council of Europe?

THE PRESIDENT. – I call the commissioner.

Mr GIL-ROBLES (Translation). – I am keenly aware of the problem you have raised. However, the country you are referring to has only very recently become a member of the Council of Europe, and the Commissioner was not therefore able to look into the matter.

As far as refugees are concerned, I have felt the greatest of sympathy for those I have met, who have been the victims of various wars. I have just spoken about the tragic situation of certain refugees in the Gali region, from the war in Chechnya, and elsewhere. Unfortunately, although we democrats may be very sensitive to suffering, with time, things tend to be forgotten. However, like you, I would prefer us never to forget the plight of people who have lost everything, absolutely everything, and who quite clearly have the right to return home no matter what the situation there may be.

THE PRESIDENT. – Thank you, Mr Gil-Robles. You have given us a lot to think about and have answered our questions directly and frankly. Thank you very much for all that you do.

IV. APPENDICES

A. MISSION REPORTS

Reports by Mr Alvaro Gil-Robles, Commissioner for Human Rights to the Committee of Ministers and the Parliamentary Assembly of the Council of Europe¹

Visit to the Russian Federation (in particular Chechnya, Daghestan and Ingushetia)²

29 November to 3 December 1999

Thank you for giving me this opportunity of presenting to you orally, in an official meeting, a brief account of my recent mission to the North Caucasus region. You will also shortly have a written summary, together with the programme giving the names of the persons and places visited, and the public authorities and private associations whom I contacted in the course of my journey.

1. Introduction

As I told you during our first and last interview on 16 November, the principle and the approximate date of this trip had already been approved during my meeting with the Foreign Minister of the Russian Federation, Mr Ivanov, on 3 November in Moscow (in fact, on the day before the ministerial session of our member states on 4 November in Strasbourg). Moreover the Secretary General referred to this when he addressed the OSCE Summit in Istanbul on 18 and 19 November, following which he confirmed it to you again last week. I mention these dates mainly in order to point out that you were all informed about this plan, which I embarked upon in the light of Articles 3.c, e and 5.1 of your Resolution (99) 50 defining the terms of reference of the Council of Europe's Human Rights Commissioner.

The federal Russian authorities clearly took advantage of the four weeks (from 3 to 30 November 1999) needed to prepare my trip to the North Caucasus in order to organise it in the best possible manner (see

1. When this publication was being prepared Andorra had not yet presented its report to the Committee of Ministers.

2. Report prepared from 7 to 10 December 1999.

Resolution (99) 50, Article 6.1), while allowing me, once I had arrived there, to decide, virtually at the last minute, what I wanted to see in this or that place, without having to abide by the provisional programme which had already been officially drawn up. Likewise, it was only after I arrived in Moscow, more precisely on the evening of the 29 November, on the day before I left for the North Caucasus, that I learned that as well as the Federal Minister of Justice, Mr Chayka, and his deputy, Mr Kalinin, among whose responsibilities are questions of prison administration, I was to be accompanied by Mr Koshman, Vice-Prime Minister of the Federal Russian Government and official representative of that government for Chechnya. In other words, the federal Russian authorities had decided to accord the highest possible status to my mission and clearly did their utmost to demonstrate their desire for co-operation with the Council of Europe as such. Indeed, they gave me all the technical facilities I could wish for – from the Ministry of the Interior's official aircraft in order to get to the North Caucasus more quickly, to the helicopter to fly over certain regions there and see for myself the destruction of certain built-up areas, to the convoy under military escort between and inside certain built-up areas in order to visit social institutions, refugee camps, and indeed the only crossover point for Chechens fleeing into Ingushetia. In addition, and I should like to stress this point, the federal Russian authorities – in the person of their official representative for Chechnya – demonstrated a remarkable effort of co-operation and openness in respect of all questions of specific information and requests for on-site visits: within the limits of the time available (scarcely forty-eight hours really is a very short time in view of the distances to be covered and the complexity of the situation), Mr Koshman acceded to all my requests for visits within the controlled zone – notwithstanding the reservations of the security services assigned to us – and did his best, together with his colleagues and staff, to reply somehow or other to the many and sometimes difficult and delicate questions, which I raised, unfortunately always through an interpreter.

I should therefore like to start by thanking the federal Russian authorities for all the help they gave me (in accordance with Article 6.1 of my terms of reference) in order to facilitate the independent and effective discharge of my functions, and I should consequently like to ask the permanent representative of the Russian Federation, Mr Vdovin, to kindly convey to his authorities my thanks for their support in the accomplishment of the first mission of the Council of Europe's Human Rights Commissioner to a member country: the Russian Federation.

Mr Chairman, ladies and gentlemen, inasmuch as you have before you the full final programme of my trip, including my visit to the North Caucasus, I see no point in giving you a detailed account of it. Allow me simply to emphasise that before leaving Moscow, – even before discussing the content of my programme of visits with the federal Russian authorities – I had contacted three NGOs particularly involved in the field of human rights

protection, in connection with the anti-terrorist operations being carried out by federal Russian forces in Chechnya, namely Memorial, Moscow Helsinki Group and Glasnost. Of course I took account of, when I made my requests to visit particular places, the specific information and allegations of human rights violations which were passed to me by these three NGOs, but also of those obtained from other sources, starting with Mr Gerikhanov, former President of the Constitutional Court of Chechnya, and from others such as private associations, journalists, politicians and personal friends from the academic world. On the other hand, I was also keen to supplement my information in Moscow, given in Article 5.1 of my terms of reference, after my trip to the North Caucasus. For that reason when I returned to Moscow, I had a whole series of talks on 2 and 3 December with particularly appropriate potential informers such as, one of the many organisations of expatriate Chechens set up in Moscow even before the recent war in Chechnya (Adamalla); the Human Rights Commissioner of the Russian Federation (Mr Mironov); members of the Russian parliamentary delegation to our own Parliamentary Assembly including the Head of Delegation, Mr Glotov; the Deputy Head of the European Union Delegation (Mr Dubois); a great many journalists; a few personal friends and, once again, representatives of Memorial (Mr Orlov and Mrs Kasatkina). The most informative, if not the longest, interview was however the one accorded to me by Mr Ivanov, in the presence of the Federal Minister of Justice, Mr Chayka, who had accompanied us to the North Caucasus, at the Federal Ministry of Foreign Affairs on the afternoon of 2 December, in order to make an at least provisional assessment of my impressions following my lightning trip to the North Caucasus.

2. Assessment of the visit

What initial conclusions do I draw from this trip to the Russian Federation? For the time being, I have some more or less objective information, general personal impressions and particular observations concerning respect for human rights in certain regions of the North Caucasus at the precise time when we visited those regions.

First of all, the Chechen problem is extremely complex, has existed for a very long time and has already broken out on many occasions, notably during the last century, during the second world war (when the entire Chechen population was moved to Kazakhstan) and again in the early 1990s, when the USSR broke up. To date, the Chechen problem has not been amenable to a solution, either by negotiation or by force – however great the severity of the repression applied – or whatever the measure of the concessions made during certain negotiations.

I do not claim in any way to be a specialist on the North Caucasus question, nor to be able at the present time to give you a complete historical rundown of the situation since national sovereignty was proclaimed in Chechnya on

1 November 1991. I shall consequently spare you an account of the reasons and the various stages in the last armed conflict in Chechnya, from 11 December 1994 to 31 August 1996, which led, at the end of December 1996, to the complete withdrawal of the federal Russian armed forces from the entire territory of Chechnya, and the de facto loss of federal control over this republic by the Russian Federation.

Similarly, I shall merely remind you that the present armed conflict began last August following the incursion of armed Chechen groups into Daghestan, declaring their intention of setting up an independent Islamic state comprising several republics in the North Caucasus which are at present an integral part of the Russian Federation. Having repulsed these aggressors from Daghestan in the course of sometimes very violent and costly fighting, the federal Russian authorities decided to pursue them into Chechen territory in the context of what are officially called “anti-terrorist (military) operations”. The scale of the armed forces involved on both sides, all of them operating on Russian territory, means however that these anti-terrorist operations undoubtedly have the character and form of a major internal armed conflict. However that may be, no-one could reasonably deny that the Russian Federation is entitled to defend its territorial integrity, nor that it has the right, and indeed the duty, to pursue on its own territory fanatical gangs resolved to combat a democratically established federal Russian order by force of arms. Indeed, the only question on which opinions may differ, concerns the appropriate and lawful means of combating these armed groups who are entrenched in urban areas which are also inhabited by a civilian population who are victims of the conflict and being used as hostages. I shall of course revert to this question at the end of my statement.

It was not my main intention – and neither am I in a position to do so – to assess the successive Chechen regimes, from the Dudayev regime to that of Maskhadov, the current president. However, it is clear from everything that I have read and heard about the subject that these regimes have not only been nationalist, that is, opposed to the Russian Federation, to the extent of forcing tens of thousands of Russian speakers to flee Chechnya in order to protect themselves from discrimination, degrading treatment and physical assault of all kinds. (The documentation produced by the Russian Federal Ministry of the Interior in preparation for the OSCE summit in Istanbul mentions a figure of 200 000 Russian speakers, including 7800 “forced migrants”, between July 1992 and November 1994. We were assured that a considerable proportion were still in camps in neighbouring regions, awaiting the possibility to return home. Owing to lack of time, we did not ask to see one of these camps to have confirmation of this). The Chechen regimes in question seem, above all, to have been incapable of controlling the various armed factions and organised gangs, reducing the rampant crime in the region or halting the permanent decline in law and order and the local population’s economic and social situation. That would explain the recent voluntary departure of

tens of thousands of Chechens to other republics of the Russian Federation, and in particular to Moscow, as well as the fact that a considerable proportion of the population, faced with a chaotic situation, dissociated themselves from the Islamic militants as from August 1996 – on 27 May, a ceasefire agreement was signed. Moreover, many people were repulsed by the general application of sharia law with effect from 1997. In the present situation, any members of the remaining civilian population refusing to obey and assist the armed Islamic militants would immediately see their lives and physical integrity severely threatened. However, since I did not visit any areas that were not supervised by the federal authorities, I must of course reserve any definitive judgment on whether human rights are being respected in the region, even though I believe that I can entirely trust the accounts given in Dagestan, by survivors of the Botlikh offensive, in the free zone of Chechnya and in the refugee camps in Ingushetia, of severe, widespread human rights violations committed under the Chechen regime, in particular by Islamic militants, members of armed gangs and certain representatives of the Chechen public authorities.

I do not think that I am in a position to pass judgment on the situation of all those who have fled the Chechen Republic of the Russian Federation, since my interviews were mainly conducted with people in tents with insufficient heating or in the carriages (chosen at random) of a long train which formed the basis of the Severnyi camp in the Republic of Ingushetia (26 000 to 27 000 people). None of the people I met there complained about the material conditions in which they were housed, since the carriages were dry and had heating, although they were poorly lit. Each refugee had a sheet and a blanket and the people I met seemed, at first sight, to have adequate clothing and footwear and to be receiving enough food to survive. Nevertheless, each compartment of the carriages (135 approximately) seemed to be teeming with people with a bare minimum of luggage. There were no canteens, communal showers or schools for the many children and young people present, and not enough medicine or medical staff – not to mention the total absence of warm clothing supplies for the coming winter.

Many people seemed to be traumatised by what had occurred to them and some told of their own tragic situation. However, it soon emerged that most people within the camp – according to the Ingushetian authorities – had fled their homes in panic at bombing elsewhere. In other words, they came from areas of Chechnya that had never been attacked, went back from time to time and could even stay there and then returned to the Severnyi camp, again by local bus, for a few nights.

In fact, we were again told about this somewhat surprising phenomenon shortly afterwards, on 1 December, when we visited the only border crossing between the Chechen and Ingush republics (Caucasus 1), which was closed after dusk. We received confirmation that the crossing was used by several

thousand people every day leaving or returning to the Chechen Republic. The daily total of people leaving was said to be on average between 450 and 500 higher than the daily total of people returning, a trend which, however, had apparently been reversed in the three days before our visit.

In reply to our questions about the safety of the road leaving Grozny, and the criteria and waiting time for entry to the Ingush Republic, we were assured at Caucasus 1 that general instructions had been issued not to shoot at persons using the road to escape and that, in practice, there were no restrictions or major delays for old people, women and children, and that the more extensive checks at the sorting office, which was equipped with databases, were more concerned with the registration, origin and contents of any private cars, and with the middle-aged men arriving at the border – the fear being that terrorists might infiltrate the camps containing Chechen refugees. Only after the curfew were orders given to shoot at any non-official vehicle using the road. I was particularly concerned by this information. In any case, during my talks with both the Russian federal authorities and the relevant Ingush authorities, I was anxious to stress that open, safe escape routes were necessary and that the numbers of people piled up within the trains and the lack of adequate sanitary facilities could lead to the outbreak of an epidemic at any moment. I also stressed the need to provide medicine and warm clothing for the coming winter.

The official authorities of the Republic of Ingushetia also provided us with some extremely interesting statistics: the number of people who had fled to Ingushetia from Chechnya (some 231 000) and the number of people remaining (some 200 000) roughly corresponded to two thirds of the total population of Ingushetia (317 000). People have been received in private homes in Ingushetia (16 400). Others are being accommodated in public buildings (10 000) and 26 000 others are in the tents and train carriages. Since they claim to have received only 10% (the equivalent of approximately US\$2 million) of the subsidies they requested from the Russian authorities, and half the aid in kind, their official reserves are apparently very limited and the citizens housing refugees at their own expense – sometimes over 30 refugees within a single family – are being ruined financially. That is why great hope is being placed on international solidarity, unless the financial aid promised by the Russian federal authorities finally materialises. Above all, it explains the desire for all measures to be taken – including ending the war – to ensure that the Chechen refugees can return home as soon as possible.

One of Mr Koshman's answers to the above concerns will make it easier to understand why a problem which at first sight seems so easy to solve can turn out to be so complex: He explained that the federal authorities are determined to provide an exceptional level of financial resources to provide assistance to the displaced persons and refugees in the Ingush Republic, including the reconstruction of the social institutions in the Chechen

Republic, so that they will dare to return as soon as possible. However, Ingushetia also houses camps containing tens of thousands of Russian speakers driven out of Chechnya several years ago. Is national public opinion likely to accept that – and, moreover, are the Russian-speaking refugees likely to understand why – the federal authorities should suddenly take much more action to support the Chechen refugees than they ever did to support the Russian-speaking refugees when they were driven out of the Chechen Republic?

All this brings me onto my penultimate point: the efforts of the federal authorities to restore normal civilian life and to re-establish the social institutions in the so-called free zone in northern Chechnya. One of the main aims of these measures is obviously to facilitate the return of the people who fled this zone. We were impressed by the highly professional efforts to prepare two camps (in Znamenskoye) to receive those returning to Chechnya who have lost, or do not yet have access to their former homes. In Naurskaya, we visited a school which was surprisingly empty, to interview the teachers, then a hospital, which will no doubt have more patients when public transport is re-established and also a temporary detention and remand centre, which was used as a mass prison under the former regime. The cells that we visited were so gruesome that I asked the Federal Justice Minister to close down the establishment as soon as possible; Mr Chayka promised there and then that he would do so.

Neither in Naurskaya nor in Gudermes, where on the following day we attended the reopening of a school (at least for young children presenting no security risk for the establishment), did we really have the time to question individuals on the living conditions under the previous regime – or on the abuses of authority or violations of the rights of the local community by the federal forces which had been reported by several refugees and such groups as NGO representatives and journalists, after our visit to Gudermes. Nevertheless the general atmosphere in these two conurbations recently taken over by the federal authorities and still heavily occupied by their police and army forces is very heavy, not to say repressive and sinister, with many buildings which were considerably damaged, grimly testifying to the misery of their residents and the tension between them and the federal forces.

In the light of this, I have proposed that the office of a Chechen Commissioner for Human Rights be set up for the territories recently liberated from the Chechen regime, which would *inter alia* have the task, for as long as there are neither native police forces nor courts nor similar supervisory bodies, of serving as an intermediary between the local community and the federal forces of occupation. Mr Chayka and Mr Ivanov are said to be well disposed to my proposal and would be prepared to implement it, the only difficulty being to find someone with the right kind of profile, namely

an individual who is known and respected locally and capable of making his views prevail where necessary.

This brings me to my last point, by far the most difficult, which concerns the present armed conflict in the Chechen Republic. On the basis of all the statements gathered from our different contacts, the reasons for and origins of this war are as follows: attacks last August, by heavily armed groups of militant Muslim fundamentalists from Chechnya, on several conurbations within Daghestan close to the Chechen border (particularly in the Botlikh region) and the proclamation of an independent Muslim state, implying the secession of the territory in question from the Russian Federation and its separation from several republics, in addition to Chechnya and Daghestan, which are all integral components of the territory of the Russian Federation. In a manner of speaking this was also, from a strategic or geopolitical point of view, a provocation which was unacceptable to the Russian Federation authorities. This was all the more so since they considered, according to our contacts, that the official authorities of Chechnya, despite the autonomy granted to them, either had not been able or had not been willing to contain and control the Muslim fundamentalist militants in their country and prevent them from attacking neighbouring republics.

Whatever the case, I have said and reiterated to the Russian federal authorities as well as to the media representatives who interviewed me on this question, that while a state obviously has the right to defend its territorial integrity and also the right and indeed the duty to take steps against any groups or individuals appropriating the “right” to forcibly overthrow the established order, a democratic state should not use any means regardless. The strategy of bombing built-up areas where the armed groups in question have gone to ground among the civilian population, albeit a reduced one, cannot be considered in this context as a legitimate means of combating terrorism. That, at least, is my opinion, even if I am perfectly aware that Russian public opinion virtually in its entirety, the Duma, the Russian Federal Parliament, and even the President and the Government of the Russian Federation believe, together with the army and police undertaking these anti-terrorist operations, that war, including bombardment, is the appropriate means of ridding Chechnya of its Muslim fundamentalist militants. In my view, any such war constitutes a violation of human rights – firstly of those who are killed on both sides, whether Russian soldiers or armed Chechens. These military operations obviously hit many members of the civilian population, – “innocents” who are prevented from or incapable of fleeing the combat zones in time.

Armed hostilities must be ceased as soon as possible and a political solution to this conflict must be found as a matter of urgency. The Russian federal authorities have always insisted on the necessity of such a political solution to bring an end to the conflict but consider officially that it cannot be achieved and, consequently, that negotiations should not be begun before having

finished with the terrorists. I do not agree with this either, and I have said as much to the Russian federal authorities, although I have absolutely no mandate to lecture them.

Finally, I have the impression, and this gives me some hope, that despite everything that is said officially, all manner of highly intensive efforts are already under way to establish with which individuals negotiations should be held when the time at last comes to arrive at a political solution.

3. Conclusions

I will conclude by expressing the belief that my findings on my visit on behalf of the Council of Europe are more positive than negative, and I would like to emphasise the following two points:

Firstly, my first fact-finding visit concerning a deeply serious and complex situation was made possible through decisive co-operation on the part of Russia, the member state concerned. It is a good omen for the future and for the future role of the Commissioner for Human Rights, a new institution which you have just set up; but it is above all a resounding demonstration of the role of the Council of Europe, of the acknowledgement by an important member state of the potential assistance that the Council could provide and of the Russian wish to co-operate openly and closely with the Council of Europe to better resolve certain domestic problems touching on human rights protection.

As proposed by the Minister of Justice and seconded by the Minister for Foreign Affairs of the Russian Federation, this co-operation could be given tangible form in this case by the holding in the near future of a seminar in the North Caucasus on the "role of democratic institutions in the construction of a state founded on the principles of the rule of law and respect for human rights". Nevertheless, the Russian Federation remains open to all other suggestions from us as regards co-operation, for example where the implementation of an office of an ombudsman for human rights in Chechnya is concerned. In addition, Mr Ivanov has also pledged his unconditional support for the organisation of any visits to follow up the one I have just made and that I might wish to undertake in the Russian Federation in the coming months.

I myself believe that in this particular case it would be in the best interest of the Council of Europe to support the Russian Federation in its status as a fully fledged member of the European family of democratic states, having accepted the essential obligation to respect human rights and, once an urgent and indispensable cessation of hostilities in this republic of the Russian Federation has been secured, to closely co-operate with the Russian Federation to seek a political solution.

2nd visit to the Russian Federation (in particular Ingushetia and Chechnya – Grozny)¹

25 to 28 February 2000

Having just returned only yesterday evening from my journey which took me to Warsaw (21-23 February) then to Moscow and the North Caucasus region (25-28 February), the report which I now submit to you (and which you will receive subsequently in writing) will necessarily be brief, but it should nevertheless enable you to continue your discussions on this item of your agenda in fuller knowledge of the relevant facts.

In order to be quite clear regarding the sequence and aims of my last trip and the scope and content of this report, I wish to state at the outset that:

- the date of my visit to ODIHR in Warsaw had been decided well before the date of my meeting with the Russian federal authorities in Moscow;
- it was only once in Moscow, on 25 February, that the itinerary for my journey to the North Caucasus was approved and prepared;
- I obviously took advantage of my presence in Warsaw to make contact with Polish NGOs, (thanks to the very welcome assistance of the Director of our Information Centre, Ms Machinska) and also to arrange meetings, with the equally welcome assistance of the Polish Permanent Delegation, with the Polish parliamentary representatives having a particular interest in the protection of human rights (including Mr Wielowiejski of the Sejm and Mr Romaszewski and Mrs Grzeskowiak of the Polish Senate) as well as attending a very interesting interview with the Foreign Minister, Mr Geremek.

1. Report prepared 1 March 2000.

Considering however that my terms of reference make express provision for such contacts with IGOs (intergovernmental organisations), particularly with a view to avoiding unnecessary duplication of activities, and with human rights structures and authorities in the member states (Resolution (99) 50, Article 3.c, *e, i*), I intend to provide you with full information in my annual report (as above, *h*). In other words, with regard to my recent talks in Warsaw, I shall restrict myself to informing you today of matters relating to the position of ODIHR/OSCE concerning the proposed Council of Europe contribution relating to developments in the Chechen conflict – that is to say a few details relating directly to the item on your agenda today.

In this connection, the current Director of ODIHR, Mr Stoudmann, accompanied *inter alia* by Ms Tagliavini (personal representative for the Caucasus of the OSCE Chairperson-in-Office), laid great stress on the fact that there could be no question of competition between the OSCE and the Council of Europe in terms of presence and action in Chechnya, and particularly with regard to implementing the two proposals which I reported to you after my first fact-finding visit to the North Caucasus region in November 1999, namely the establishment of a mediator/ombudsman office in Chechnya and the organisation of a seminar. According to Mr Stoudmann, the ODIHR is only currently active in the Chechen Republic of the Russian Federation for the purpose of monitoring the elections (which are likely to take place under very precarious conditions) and not for the purpose of monitoring respect for human rights, a matter much more in line with my terms of reference. And if the OSCE Assistance Group, which had left Grozny for Moscow for security reasons, were to return to Chechnya (which was not likely to happen in the near future according to Ms Tagliavini), the said group would be perfectly willing to co-operate with the Council of Europe, provided that the latter made officials available for the new office to be set up there by Mr Kalamanov, who has just been appointed Special Representative of the President of the Russian Federation for the protection of human rights and freedoms and citizens' rights in the Chechen Republic.

At a meeting on 23 February in Warsaw, the ODIHR showed unreserved support for my initiatives, keen interest regarding the relevant follow-up action by the Russian federal authorities, a clear desire to be kept informed of the practical arrangements for our possible co-operation with Mr Kalamanov's Office and the promise to co-operate with us in Chechnya if this proved materially possible. Lastly, Mr Stoudmann informed us of his intention to travel shortly to Gudermes and also to write to Mr Kalamanov.

My visit to Moscow on 24 and 25 February enabled me to make a whole series of contacts with NGOs (Memorial, Civic Assistance and the Sakharov Foundation in particular), with personal acquaintances in academic circles and with parliamentarians (Mr Rogozin, Chair of the International Affairs Committee of the State Duma of the Russian Federation, and even the

Speaker of the Duma, Mr Selezniev), with the Ombudsman of the Russian Federation, Mr Mironov, and of course, several representatives of the media. My talks of 25 February enabled me above all to clarify the situation regarding my application to visit Grozny, if possible accompanied by Mr Kalamonov, and to make a prior visit, accompanied by the latter, to certain camps for displaced persons in the Republic of Ingushetia. Lastly, I wished to find out about the requirements on the part of the Russian federal authorities for implementing the two proposals (paragraph 3 above) which I had made during my first visit to the North Caucasian region and to obtain some information of interest to you for your discussion today on this item of your agenda.

Since the Babitsky affair was raised at our last meeting here on 16 February, I broached the general problem of current access by journalists and the media to Grozny, especially with the person in charge of this aspect, Mr Yastrzhembsky, Special Adviser to the President of the Russian Federation. The latter told me that almost 60% of the journalists licensed to operate in the Chechen Republic of the Russian Federation were foreigners (341 out of 546), that he himself regularly authorised group tours for all those who wished to go and see for themselves, that there was no press censorship in the Russian Federation nor reprisals in the event of the breach of professional rules by journalists, so that many journalists, particularly from the West, were able to continue producing reports accusing the Russian federal authorities of all kinds of happenings in Chechnya such as alleged violations of human rights at the screening centre in Chernokosovo (in fact, of the 700 persons said to have been "screened" in the camp, 360 have apparently been released, 34 had been accused of common-law crimes and handed over to the prosecuting authorities, 140 persons were still on the site and the remainder had been sent to other camps). According to the same source, Grozny was not sealed off for fear of news reports, however malevolent or damning they might be for the Russian federal authorities, but solely for questions of security (clearing mines, demolishing certain buildings threatening to collapse after the bombardment, continued presence of a few score of snipers unable to escape from Grozny and who would therefore stop at nothing, retrieval of corpses buried in the rubble and debris and, lastly, the general lack of drinking water). As far as the journalist Andrei Babitsky was concerned, Mr Yastrzhembsky claimed that he had breached Sections 13 and 15 and other provisions of the Anti-Terrorism Act, which prohibited everyone, including journalists, from making certain contacts with the terrorists in Chechnya. Although Babitsky had published very critical reports with regard to the operations of the Russian federal forces in Chechnya before changing sides of his own accord, the President-in-Office of the Russian Federation, Mr Putin, had given personal instructions to those in authority to trace Babitsky and bring him back safe and sound.

In reply, I stressed the special nature of the Babitsky affair and the fact that fuller access for the media to the no-go areas of Chechnya, and particularly Grozny, would not only promote the exercise of freedom of information, but was also the only way for the media to obtain and circulate full and objective information on the actual situation. At all events, I was undoubtedly delighted to learn on the day after this interview that Babitsky had reappeared in Daghestan and, before my departure, that he had been transferred to Moscow.

The Minister for Foreign Affairs of the Russian Federation, Mr Ivanov, also expressed his apprehension about the development of a sort of anti-Russian media campaign.

Still on the subject of the end and aftermath of the Chechen conflict, all the official spokesmen considered that the military operations as such were likely to come to an end in ten days or so (the last stronghold of the Chechen fighters, Chatoi, was apparently captured yesterday). This was also for the purpose of hastening the end of hostilities and saving the lives of Russian soldiers (a major concern of members of parliament, such as Mr Rogozin, from whose constituencies many conscripts had been drawn) that the State Duma had extended, until 15 May 2000, the legislation embodying an amnesty for Chechen fighters who handed over their weapons. Although the amnesty concerned was not unrestricted, it had apparently been applied between the end of 1999 and the beginning of February 2000 in more than 1 000 cases.

As for the reconstruction of Grozny, the question was still undecided, pending the conclusions of a state commission due to carry out a fact-finding mission in Grozny in the very near future with a view to taking stock of the situation, deciding on whether to demolish or rebuild certain districts of the city and estimating the costs involved.

In reply to various questions I put to him, Mr Ivanov first told me that official authorisation had been granted for my trip with Mr Kalamanov, accompanied by Russian and foreign journalists. We agreed that we would not visit the detention centres and filtration camps since this task was the special responsibility of the Council of Europe's European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) which was already visiting camps in the North Caucasus.

On the other hand, Mr Ivanov agreed in principle to my two proposals currently under consideration: with regard to co-operation with the office of Mr Kalamanov, it would be up to us to agree on the practical arrangements (I will come back to this question at the end of my report) and with regard to my proposal concerning a seminar, it could be held in late May in Makhachkala, provided that only persons prepared to discuss Chechnya's future under the Constitution of the Russian Federation were invited.

Mr Ivanov will officially inform the Secretary General of the Council of Europe of his decision but we could already begin to implement these proposals. Consequently, with a view to expediting the preparation of the seminar, it appears that there is already a Russian group responsible for preparing the seminar composed of four persons and we could, if necessary, invite them to Strasbourg to settle the details of the required decisions. Finally Mr Ivanov will examine my proposal to associate other intergovernmental organisations, such as the OSCE, in the work being carried out by the Office of Mr Kalamánov, as provided for in the latter's mandate, given that this Office will, at all events, have to co-operate closely with NGOs which are particularly active in this field.

On 27 February, in the company of Mr Kalamánov, I visited one of the four camps of displaced persons in Ingushetia (where there is a total of 21 704 displaced persons). This was the Karbulag camp which has been in operation since 24 October 1999 and accommodates 5 250 people, in tents each providing shelter for 17 people. The tent which I visited was well heated and had an electricity supply. Complaints from those I talked to concerned: the shortage of hot food and fresh milk for children; the shortage of medicine, doctors and nurses, particularly as the number of ill persons is rising; no changes of warm clothing; and no identity documents enabling them to travel within the Russian Federation. There was no pressure on them to leave the host country and women visiting Grozny (the last stretch of the journey is 10 km on foot) are free to return to the camp. The atmosphere in the camp became increasingly tense as some people told me of their personal tragedies and of the hatred they harboured against those who had humiliated, tortured and raped them.

Mr Kalamánov immediately promised to make a member of his office permanently available for the registration of their complaints but several people told me they had no confidence in the federal authorities unless foreigners were also informed of their complaints.

We then visited a former industrial cattle-breeding farm (in Plievo) which provides shelter for about eighty-five people, sometimes thirteen to a room. There were no complaints about food shortages or the state of the premises although the building had no windows whatsoever.

In the late afternoon we had a long discussion with General Uksa, from the Ingushetian Ministry of Emergencies. He confirmed his country's policy – namely to accept anyone seeking refuge – without enquiring as to the reasons, and not to force anyone to leave. The main problem for his ministry appeared to be the difficulty of meeting the huge costs resulting from the flow of Chechen refugees: the competent Russian federal authorities often challenged the figures given by Ingushetia so as to reduce their contribution to humanitarian aid, and non-governmental organisations insisted that their contributions were distributed directly to the refugees, with the result that

his government was having to provide an ever-increasing amount of assistance. (This was particularly difficult as there were some 300 to 400 new arrivals every day). He therefore asked me to discuss this problem directly with the Office of the UN High Commissioner for Refugees. Finally, there was no medium-term planning: what was to be done if the displaced persons remained in Ingushetia for much longer than planned (the problem of setting up schools, etc.)?

The aim of my visit to Grozny the following day, in the company of Mr Kalamenov, Mr Yastrzhembsky and a large number of journalists, both foreign and Russian, was to see for myself, in so far as possible, whether reports alleging that the Russian army had set out to completely destroy the town were correct. The military authorities were faithful to the words with which they met me at the airport: "We will show you everything you want to see in Grozny." We were already leaving the town after visiting one district when they did not hesitate to turn about and take me to see another (Minutka Square), despite the fact that one of the soldiers guarding the square had been blown up by a mine only two hours earlier.

My general impression of Grozny and the lost souls wandering about among the debris of what, in 1989, was a town of 480 000 inhabitants, was rather terrifying: all of the main buildings appear to have been destroyed – unlike the small houses in some of the suburbs of Grozny which I believe could be rebuilt without too much difficulty and relatively quickly. The population – meaning those who have remained in Grozny – is estimated at approximately 20 000.

First of all we visited the food distribution centre. The complaints from those to whom we were able to talk, thanks to interpretation by Mr Belyaev, concerned: shortage of everything – beds, blankets, clothes, soap, means of transport, water, gas, electricity and food; bank accounts were blocked and pensions not paid; there were no identity documents and it was forbidden to leave or enter the town; elderly and injured people had difficulty in walking three to four kilometers once a day to fetch their rations, which consisted of a third of a large bowl of hot food and half a loaf of bread per person.

Subsequently, we visited a hospital, or rather an emergency centre apparently set up only a short time ago, which was dealing with some 2 500 cases per month: this centre appeared to have everything it needed – medicine, forty-three doctors and an operating theatre. They said it was possible to take injured persons there from all parts of the town. The problems included elderly people, chronic diseases and the need to return patients and injured persons to hospitals outside Grozny – most of these hospitals were already full to overflowing. In this connection, I insisted on the immediate need to establish safe conditions for the return to Chechnya, and especially Grozny, of the ICRC and national Red Cross organisations as well as international humanitarian organisations.

The military authorities informed us of their plans and the measures they had already introduced with regard to the 20000 people currently under their responsibility: clearing mines, demolishing unsafe buildings, burying corpses, re-establishing water, gas and electricity supplies and a minimum of public transport. There is also the problem not only of co-operation between the soldiers and the interim civil administration but also of how to co-operate with the 20000 people who hope to return to Grozny by the end of May to rebuild their houses. For the time being they were awaiting the conclusions of the aforementioned state commission as to what should be rebuilt and what should be demolished. It should be noted that the military authorities will play a less important role once the planned military operation is completed, in the not too distant future, and that the civilian authorities and the police will not have the same resources at their disposal!

Once we had driven round the Peoples' Friendship Square where executions allegedly took place under sharia law, we made a stop on Minutka Square where fighting had been particularly fierce. We saw a large number of large buildings destroyed not by bombs dropped from the air but by explosions originating in cellars or basements.

I conclude my report with what seems to me to be the most important and urgent follow up to my trip: your decision, Mr Chairman, Deputies, on the arrangements and above all the financing of our co-operation with the office of Mr Kalamenov, appointed on 17 February as Special Representative of the President of the Russian Federation for the protection of human rights and freedoms and citizens' rights in the Chechen Republic. The Russian officials I spoke with felt that this appointment was a personal initiative of Mr Putin, reflecting the awareness of the federal authorities of the need for human rights to be upheld also in Chechnya. While it is true that I myself had made proposals along these lines, I cannot but welcome this initiative by Mr Putin, support it wholeheartedly and do all within my power to ensure that Mr Kalamenov's office begins operating immediately and is able to function effectively. It would be unreasonable for anyone who has seen the faces of the displaced people in Ingushetia, or the people remaining in the ruins of Grozny, and listened to a number of them recount their personal tragedies and misfortunes to claim otherwise: there is an urgent need to give these people a sign that their government, and indeed international public opinion is not indifferent to their plight, that there is hope, no matter how small, and that there are, once again, at least the beginnings of justice. This office is the place to which they will henceforth be able to turn, in order to complain of violations to their most fundamental rights.

Clearly, the question is knowing how and to what extent this office can play an effective mediation role between the Chechen civilian population on one hand and the federal armed forces and the civilian authorities on the other. I think that the mere establishment of this office will already have a consi-

derable preventative effect and that its effective operation will depend in particular on the free co-operation with this office of Russian NGOs and a number of intergovernmental organisations such as the Council of Europe and the OSCE. If foreigners could effectively collaborate, with full authority and recognition, with the Russian officials responsible for registering and processing the complaints received, the value and indeed the credibility of this office would be all the more enhanced, at the very least from the point of view of those bringing to it complaints of all sorts of abuses alleged against members of the armed forces, the police and even the federal civilian administration. This office would be the focus for complaints against what took place under the Chechen regime and in this regard it seems to me to be perfectly appropriate and necessary for collaboration between foreign specialists and Russian officials.

In brief, I propose, with the agreement of Mr Kalamanov of course, that the Council of Europe send, on a temporary basis, two or three staff members to assist Mr Kalamanov's team in their task of receiving and processing complaints of human rights violations in Chechnya, and that our Organisation also contribute, if applicable in co-operation with other intergovernmental organisations such as the OSCE and the EU, to the financing of the infrastructure and logistics of this office to help it get under way more quickly.

In fact, Mr Kalamanov envisages the opening of two offices: one in Moscow to follow up the action taken by the federal authorities with regard to the complaints transmitted – and he would be most happy to have a Council of Europe member of staff there; the other, the main office, in Znamenskoye, in Chechnya (Lower Terek district), near two large camps for displaced persons. This second office would be staffed by some fifteen people: Mr Kalamanov's deputy would be Chechen and two Council of Europe staff members could be part of a team of five human rights specialists. For security reasons, but also from the point of view of comfort, non-Chechen staff would be accommodated in Minvody, a two-hour road journey from the office and one hour from Mozdok airport (North Ossetia). The desired contribution from the Council of Europe for initial investment in such things as technical resources, communication, transport, etc.) would be in the region of US\$300 000. If necessary, Mr Kalamanov could come to Strasbourg after 10 March to discuss the details of our future co-operation and finalise any relevant administrative arrangements.

Ladies and gentlemen, the decision is in your hands, in the light of the urgent needs of the people on the spot and the will of your governments to contribute to ensuring that their fundamental rights are fully upheld.

Visit to Georgia (in particular Abkhazia)¹

1 to 7 July 2000

As I have informed you in my letter of 20 May, I accepted the invitation extended to me on 14 April 2000 by Mr Menagarishvili, Georgian Minister for Foreign Affairs, to visit his country in order to provide the Council of Europe with exhaustive, up-to-date information on the human rights situation in Georgia. The visit took place from 1 to 10 June 2000. I was accompanied by two colleagues: Mr Belyaev, whom I should like to thank for acting as interpreter, and Mr Müller-Rappard, the director of my office.

As you will see, this very comprehensive programme (drawn up by the Georgian Ministry of Foreign Affairs) included not only talks in Tbilisi with all the government authorities directly concerned with respect for human rights, from the President of Georgia, Head of State and of the Executive, to his ministers responsible for justice, for law enforcement agencies and public security and for refugees and prisoners, whose living conditions I had asked to see on the spot, but also meetings with the parliamentary authorities concerned and with representatives of civil society, NGOs and the media. I even met a dozen ambassadors from our member states, whom the Italian Ambassador, Mr Pipan, kindly invited to a meeting specially arranged for me. I was also able to add to my programme, sometimes at the last minute, meetings with the local representatives of the IGOs concerned, such as: the International Committee of the Red Cross (ICRC – Mr Bellon); the United Nations High Commissioner for Refugees (UNHCR – Mr Menemencioglu) and the OSCE (Ambassador Lacombe), and in particular, with the Head of the United Nations Observer Mission in Georgia (Unomig – Ambassador Boden,

1. Report prepared on 13 July 2000.

Special Representative of the UN Secretary General), who was in fact in charge of the programme of my visit to Abkhazia.

I greatly appreciated these IGO representatives' co-operation in facilitating the conduct of my official visit and their willingness to provide me with all sorts of valuable information on their activities and experience on the spot. I equally appreciated the frankness of the Georgian authorities I met and their obvious desire to hide nothing, but show me everything I wanted to see. So I should like to express my gratitude, at the outset, to all those who helped with the preparation and conduct of my visit to Georgia. Although meetings with displaced persons and refugees, and all the more so visits to prisons, are generally rather harrowing, this trip around Georgia was on the whole a most interesting experience, for which I should first and foremost thank the Foreign Affairs Ministry officials who accompanied us during the visit (Mr Jgenti and Mr Kvividze).

I shall not give you a chronological account of what I saw and learned in the course of my visit, nor a summary of my numerous talks, many of which were confidential. As I see my mandate, I am, strictly speaking, neither an "expert rapporteur" nor a "public prosecutor", nor do I have a specific part to play in your monitoring procedure. I shall simply lay before you the six or seven problems, which currently seem to me the most urgent and important from the standpoint of protection of human rights in Georgia. That being so, I also talked about them when I discussed the results of my visit to Georgia with President Shevardnadze at the end of my trip.

I should no doubt emphasise here that what matters to me most in this case – and my Georgian counterparts seem to have accepted this willingly – is to contribute, with a few personal recommendations, to the emergence of several solutions which will effectively allow the Georgian authorities to move towards national reconciliation, reconstruction and democratisation in their country and consequently to establish respect for human rights. This means that they must alter, not to say leave behind, a number of simultaneously clan-based and totalitarian structures and indeed attitudes, and effectively alleviate various ethnic tensions and divisions inherited from the stormy history of the Caucasus and fuelled by the civil wars which broke out shortly before and after the proclamation of Georgia's independence, on 9 April 1991, that is to say around the time when the changeover from the former regime took place and the "Soviet order" was definitively abandoned. Viable long-term solutions will therefore require practical proof of the Georgian authorities' stated "will to respect" everyone within their jurisdiction – irrespective of ethnic origin, language, religious and political beliefs and other factors – the impressive number of human rights safeguarded by the Georgian Constitution of 24 August 1995 (Articles 12 to 47 in particular) and also, at least in part, established by international treaties such as the

European Convention on Human Rights, to which Georgia is a party (see Georgian Constitution Articles 6, 7).

1. The general situation regarding respect for human rights

As part of the process of joining the Council of Europe, among other things, Georgia has undoubtedly made a great effort to adapt its domestic law to European standards. This legislative work – in which the Chair of the Parliamentary Committee on Human Rights, Ms Tevdoradze, appears to have played a particularly decisive and constructive part – is often highly complicated, and is now continuing in the light of the commitments made by Georgia when it joined the Council of Europe on 27 April 1999. The Georgian authorities are keen to comply with these commitments, although the time-limits assigned to them for the purpose seem to present them with quite a few problems (see doc. Monitor/Inf (2000) 3 of 22 May 2000).

By way of example, when we were met at the border post of Larse (we travelled by car from Vladikavkaz to Tbilisi, taking the “military road”), I was informed by the Georgian Deputy Minister for Foreign Affairs, Mr Dogonadze, that his ministry had just sent the ratification instruments for the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (ECPT, of 26 November 1987) to Strasbourg. Then, in the course of my subsequent talks, notably with the Speaker of the Georgian Parliament, Mr Zhvania, I was told that the Parliament’s Legal Affairs Committee was still discussing the definition of a new offence which would meet the relevant provision of the ECPT and would have to be inserted, in order to apply the convention, into the Georgian Criminal Code. To date, only Article 187 of the Criminal Code, on misuse of authority, had been applicable in respect of alleged acts of torture committed against detainees. That is an example of how domestic law is brought into line with an international obligation, which will now be a matter for the ECPT.

As far as monitoring of their legislative efforts is concerned, the Georgian authorities to whom I spoke, almost all admitted, without taking umbrage, that they faced enormous difficulties in securing the widespread application of the new legislation, particularly on human rights. Many of the human rights provisions, such as those concerning arrest and police custody, the length of pre-trial detention and criminal proceedings, the enforcement of court decisions on property rights and privatisation, decisions involving financial awards and other economic consequences, are still not applied, and are indeed impossible to apply, at this stage.

My Georgian talking partners’ frankness on the subject was coupled with the often repeated justification that they were desperately short of funds. I was told that Georgia’s national budget was decreasing in terms of tax rates on the revenue side, whereas expenditure was crushed under the financial burden (estimated at tens of millions of dollars) of about 300000 displaced

persons who had been there for more than seven years and still could not return home. Guaranteeing them a number of economic, social and cultural rights provided for by the constitution (such as in Articles 21, 31, 32, 34, 35, 37) during the current recession and serious economic crisis, was said to be just as “impossible” as paying their wages, pensions, benefits and subsidies of all kinds in the time-limits and at the rates required by law. The same was said to apply to the rest of Georgia’s population: lack of funds, cutbacks on all kinds of social welfare programmes, impoverishment, health problems.

Without wishing or being able to enter into this kind of debate, which mainly raises the question of whether the old maxim *ultra posse nemo obligatur* applies in this case, I have to admit that I was not at all convinced by the “lack of resources” argument. There are in fact all sorts of measures for remedying violations of civil, political and cultural rights and also promoting respect for social and economic rights, which do not cost much but simply call for a great deal of political pressure, the certainty that gratuitous criminal acts will be punished, initiative on the part of the administrative officials concerned. An appeal for community solidarity and for the voluntary involvement of civil society.

I shall return to this, but first, to conclude on the application of the new human rights legislation in Georgia, I must stress that as things stand, the Georgian authorities cannot impose or guarantee the application of this legislation on the part of Georgian territory over which Tbilisi now has very little or no effective control: I am obviously referring to Abkhazia, whose parliament adopted a unilateral declaration of sovereignty on 23 July 1992, then, at the end of November 1994, a new constitution presenting Abkhazia as an independent republic and sovereign state. The same appears to apply to South Ossetia, which we did not visit. South Ossetia used to be an autonomous region of Soviet Georgia, and the Ossetian authorities proclaimed it an independent democratic Soviet republic on 20 September 1990, though they subsequently agreed, notably under the Sotchi agreement of 24 June 1992, to the peaceful settlement of their conflict with the central government in Tbilisi (including the determination of their territorial status, which is at present comparable to *de facto* separation from the rest of Georgia). It may also apply, but to a much lesser extent, to Adjara, one of the two “autonomous republics” of the former Soviet Georgia. Without questioning the fact that it belongs to present-day Georgia, Adjara seems to interpret its current status to mean that it does not automatically have to apply a number of laws and decisions adopted by the central government in Tbilisi, including for example the Georgian President’s decree of 1 October 1999 pardoning, among others, a sentenced prisoner held in Batumi. I was thus asked to bring up the case of the former mayor of Batumi, Mr Asanidze, if I had the opportunity to meet the President of Adjara, Mr Abashidze, in person.

2. Complaints

In view of the considerable amount of information and documentation on these particular problems in Georgia which I had already received in Strasbourg from several quarters before visiting the country, I was obviously keen to talk on the spot to NGOs, the Mediator, Mr Lomsadze (acting Head of the Public Defender Office, who in 1999 had received about 1 200 complaints, most of which were against the prison administration, the police and the prosecuting authorities) and to other persons concerned including Ms Beridze (responsible for human rights on the National Security Council; parliamentarians such as Ms Tevdoradze (Chair of the Parliamentary Committee on Human Rights) and Mr Zhvania (Speaker of the Georgian Parliament) as well as the officials in charge of the departments who all complained about, namely the police (Mr Targamadze, Minister of the Interior), the prosecuting authorities (Mr Babilashvili, Principal State Prosecutor) and the courts (Mr Demetrashvili, President of the Constitutional Court, and Mr Svanidze, Deputy Minister of Justice). It is hardly surprising that I then found all these protagonists agreed on only two points, namely the lack of financial and human resources and the pressing need to finalise and adopt the draft law (which is still before parliament) on the legal profession, including rules on the rights and obligations of, and, more importantly, the fees paid to officially appointed lawyers.

a. Police brutality and arbitrary behaviour

On the subject of the numerous reports, complaints and witnesses' statements to the effect that many police officers carry out arbitrary searches, extort money and commit acts of brutality and, particularly after arrest, acts of torture, despite the relevant provisions of the revised Code of Criminal Procedure 1997, last year nine deaths of persons who had just been arrested were recorded, especially in Isolator 5 in Tbilisi, but also some in Kutaisi – Minister Targamadze emphatically refuted the claim that law enforcement officials under his authority (totalling almost 30 000) enjoyed a sort of general impunity. He produced detailed statistics for the purpose, indicating that from 1996 to 2000 there had been more than 5 200 disciplinary sanctions and almost 2 000 dismissals, together with the "fact" that as a result of the 1 204 cases referred to the prosecuting authorities, 348 police officers had been convicted and 120 were still in pre-trial detention. I neither saw nor obtained statistics on the number of final convictions. (How many of the 348 were acquitted, suspended or received terminations of proceedings – bearing in mind that many of those convicted at first instance must have appealed?) Nor did I receive information on the severity of the sentences imposed, which would obviously have been of interest to me, given the allegations of impunity received by the mediator's office. In any event, Georgia's Ministry of the Interior has established a police inspection department to inspect and clean up what needs it from the inside. It also regrets the fact that public

opinion, NGOs and the media refuse to duly recognise the police force's merits in substantially reducing ordinary crime (claimed to be by more than 40% since 1995) and the corresponding increase in public safety over the past two years. In addition, again according to the minister, police officers are in a position of great insecurity both in terms of their personal safety (more than 400 were killed or injured during the period in question) and in financial terms, having received only one month's salary in six months. More than 1 000 police officers out of a total of 30 000 (including almost 4 000 in the judicial and criminal police) were said to have left the ministry in the first six months of this year. My question as to what the police officers remaining in post survive on, received no official answer, apart from the information given by the Georgian mediator, who said that army personnel stuck in their barracks were much worse off because they did not even receive half of the 59 lari wage they were owed resulting in thousands of desertions each year.

b. The prosecuting authorities' accommodating attitude, which ensures the de facto impunity of certain police officers and influential representatives of economic, social and political circles

The Principal State Prosecutor, Mr Babilashvili, in turn denied the allegation that arbitrary conduct, corruption and inertia on the part of the prosecuting authorities led to impunity for state officials who misused their authority. He emphasised at the outset that there were other authorities in charge of investigations and prosecutions which were outside his control, namely those of the Ministry of the Interior and the Ministry of State Security. According to him, the highly centralised Principal State Prosecutor's Department (constitution, Article 91) closely supervises the activities of the judicial and criminal police who are now deprived of the right to conduct unceremonious "strong-arm" interrogations of persons in police custody. He claimed that these two ministries also supervise the conditions and time-limits of police custody (seventy-two hours); pre-trial detention (a maximum of nine months – see constitution, Article 18); that persons under arrest are immediately informed of their rights and, where necessary, after a maximum delay of three hours, put in touch with officially appointed lawyers; and the prosecuting authorities always complete their investigations before the fateful nine-month deadline. It will be noted, however, that according to the figures given by the mediator, barely one third of the 7 775 criminal cases referred to the courts were tried in 1999, while the remainder, 5 359 cases, were suspended or terminated because of lack of evidence of the offences charged. These ministries were also responsible for checking to see if someone is kept in pre-trial detention beyond that time-limit, is due to the courts' excess caseload; aid failure to enforce a court decision, particularly in terms of its financial aspects. This is not the responsibility of the prosecuting authorities, who cannot intervene in such cases. I admit that these assurances left me rather perplexed and sceptical, especially after everything I had already read (such

as the US State Department, Human Rights Reports for 1999, Georgia, 25 February 2000, Section 1.e, p.7 ff, which covers “denial of fair public trial”), and what I had heard from NGOs, but, above all, what I had seen and heard when I visited prisoners in three prison establishments on the previous day (see below).

c. The malfunctioning of the judiciary

While recognising the merits of the reforms (as seen in Section 47.4 of the Ordinary Courts Act, which also provides for examinations for judges already in post) which were initiated as soon as the Georgian Constitution was adopted in 1985, (with a view to strengthening the courts’ function as guarantors of the human rights listed in Chapter II of the constitution), the Georgian mediator’s 1999 report, like those of various international NGOs, stresses the interdependence between the smooth functioning of the courts (constitution, Articles 82-90) and the existence of an independent and effective bar association, especially in criminal matters. I share this view and am therefore bound to recommend, for my part, that a law regulating the role of defence lawyers above all, be adopted as a matter of urgency. Furthermore, I believe it is essential and entirely in the interests of the credibility of the justice system that the relevant Georgian authorities (in this case the “Justice Council” to which the Ministry of Justice handed over the administration of the courts in 1997) should speedily look into the problem of the failure to enforce many court decisions (about 20% over the past three years). I should have thought such situations were a matter for the prosecuting authorities, in the light of Article 91.1 of the Georgian Constitution, but this does not appear to be the case, at least according to the Principal State Prosecutor. Yet it is essential that the judiciary should be able to rely on the executive to enforce its decisions. If necessary, the matter should be laid before the Constitutional Court (constitution, Article 89), although, judging from the outcome of the 128 appeals lodged so far, the Constitutional Court appears to place a restrictive interpretation on its power under Article 89.f to deal with individual appeals concerning the human rights guaranteed in Chapter II of the constitution, unless the applicant also alleges that a law applied against him or her in the instant case is unconstitutional.

3. Sentenced and remand prisoners’ conditions of detention

In accordance with Georgia’s commitments on joining the Council of Europe, the Prison Administration, including its staff, has meanwhile been placed under the authority of the Ministry of Justice instead of the Ministry of the Interior. Overall, according to the information I received in the course of my talks, this transfer appears to have had a dual impact: contact between prisoners (who number more than 9 100 – 6 500 sentenced and 2 600 remand prisoners – including a hundred or so women and a hundred or so minors, out of a population of 5.5 million) and staff (who number nearly 4 000), and

indeed prisoners' "privileges", referring to their cells and buildings, have substantially improved. On the other hand, the material conditions including the cells in which prisoners are held have clearly deteriorated because, under the 2000 budget, the Ministry of Justice obtained only one third (namely US\$4.5 million) of the appropriations requested (30 million lari) and is receiving for this year a maximum of 40% of the appropriations allocated under the 2000 budget. This amount (less than US\$2 million) was said to be barely sufficient to pay for prisoners' food and half the cost of transporting them to the courts dealing with their cases. Such journeys having become more frequent as a result of more "judicial" procedures than in the past and this would explain the number of cases in which pre-trial detention extends beyond the statutory nine months, because of lack of funds to transport remand prisoners to court for trial. In any event, the Georgian Prison Administration was said to have become much more open, to the extent that foreign visitors, including myself, could be taken without any notice at all, to visit any prison. This was also said to apply to the Georgian mediator, parliamentarians and other personalities concerned, as well as representatives of NGOs enrolled at their own request on the list of visitors authorised by the Prison Administration.

What is there to be said under such circumstances – unless it is to the political leaders who establish national priorities – to the Deputy Minister of Justice (Mr Svanidze) and the Director General (Mr Kvarelashvili), the two officials with prime responsibility for prisons, who explain all this with such engaging frankness?

What is striking, in comparison with the average rate in western Europe, is the high rate of prisoners in relation to Georgia's total population. Would it not therefore be advisable to reinforce the conditions restricting pre-trial detention in order to reduce it, and restrict the application of prison sentences to the most serious cases and reduce the length of prison sentences, while seeking alternatives to imprisonment? On the other hand, the ratio of 1 to 2 (or 2.5) between the total number of prison administration staff and the total number of prisoners in Georgia is bound to surprise all those who have already looked into this problem in western Europe. If it is impossible to reduce the number of prisoners (by convincing judges to give fewer prison sentences), it will be imperative to reduce the number of prison officers. In other words, the alternatives are either to embark on a crime policy of "austerity" or to give higher political priority to funds for the Prison Administration. But in my view, it is not possible to pursue the "basic survival" approach taken by the Georgian Prison Administration (which resulted in the deaths in prison of thirty-four sentenced prisoners last year – or a total of sixty-six including remand prisoners and persons who died after arrest) without committing serious and continuous violations of a whole series of fundamental rights of persons deprived of their liberty, which are safeguarded in the Georgian Constitution (Articles 17, 18 and 39 ff) and in the Prisons

Act of 22 July 1999, as well as in several international treaties to which Georgia is a party.

After visiting Prison Hospital No.5 in Tbilisi with Mr Kvarelashvili, as planned, I made unannounced visits to two prisons, one for remand prisoners in Tbilisi, holding 1 748 people and another, Ortachala Prison "Colony", holding 624 prisoners serving long sentences. In practice, without wishing to list them all, I saw situations and heard complaints which are manifestly incompatible with the Georgian authorities' obligation to respect prisoners' basic rights. Many remand prisoners held for several months had never seen "their" lawyer; many remand prisoners had been in detention for more than nine months because their cases had been postponed by the courts on the grounds that they had failed to appear at the hearing which was due to lack of transport from the prison to the courthouse; dilapidated buildings and cells had not been refurbished for more than sixty years, and had no electricity or running water, but were invariably overcrowded – there was one cell of barely 70 square metres (sq.m.) for forty-six prisoners serving long sentences in the "colony", and another measuring about 18 sq.m. for eleven minors on remand who were compelled to sleep two by two in only five bunks 70 or 80 centimetres wide (the Deputy Minister undertook to remedy this) – yet just near it, in the same wing for minors on remand, a perfectly adequate cell was occupied by four adult remand prisoners from the police force, and there was even a large cell for two adults on remand for financial crimes, who were well fed by their families and cheerfully expecting to be acquitted shortly. The food was apparently appalling, so that prisoners depended for survival on support from their families and friends (though even at a time of economic recession, the Prison Administration is still allocated one if not two lari per day for each prisoner) There was no medical assistance or free medication and basic sanitary conditions were lacking; and there was no opportunity for vocational training, particularly in the form of workshops for some kind of manual work or job (except for a few prisoners devoted to the sacred cause of manual masonry who built splendid churches right in the middle of the prison establishments).

While agreeing with Mr Kvarelashvili that it was hardly possible to change all this from one day to the next, I strongly recommended, and I insist on this point, that he open up his prisons more fully to NGOs volunteering to work there. I was not convinced by his reply that there were no voluntary workers in Georgia or employers commissioning work from his administration and that he had no funds to pay professional trainers from outside. On the basis of long experience in this area, I believe that as long as the prison administration takes the necessary initiatives, and as long as one establishes contact with representatives of civil society, including churches, or even vocational schools seeking practical training courses for their students, and so on, one always finds ways of improving living conditions in prisons. Securing a few building materials or a few pots of paint and brushes free of charge to allow

bored prisoners who want to set about refurbishing and repainting their cells is hardly an impossible task, even in a country undergoing a very serious economic crisis.

It is to be hoped that in the course of a future visit to Georgia the CPT and the prison administration experts co-operating with our Directorate General of Legal Affairs, will be able to propose a few practical measures which would enable the Prison Administration in Georgia to improve prisoners' fairly appalling living conditions without excessive expenditure, before prisons in Georgia blow up. The two million dollars or so required to complete the construction of a new prison which might alleviate the overcrowding of prisons in the Tbilisi region might possibly be made available under the European Union's programmes and projects for Georgia.

Besides conditional release, which is generally very easy to adjust to the specific goals pursued, a highly effective measure against prison overcrowding is a presidential pardon. Article 73.m of the Georgian Constitution provides for this and Georgia's President has exercised his prerogative of mercy on several occasions in response to the proposals of the committee concerned. This was said to have allowed the early release of about 5 000 people (perhaps 5 600 since the adoption of the constitution at the end of August 1995 and, in any case, 3 200 last year), many of whom, including "Zviadists", had been convicted of crimes committed in connection with the violent changeover from the regime of the former President, Zviad Gamsakhurdia (26 May 1991 to 6 January 1992), or with the attempted assassination of the head of state on 29 August 1995. The presidential pardon was also said to have resulted in fifty-four death sentences being commuted to twenty-year prison sentences in 1997.

I asked on several occasions why the President did not pardon the few dozen "political" prisoners still detained in Georgia according to certain sources (such as Amnesty International, Human Rights Watch, the US Department of State report mentioned earlier, p. 9, International Society for Human Rights, Report on Georgia, 1999, p. 4 and others). We met two of them: Mr Gulua at the Tbilisi prison hospital and Dr Gelbakhiani in Ortachala Prison "Colony" about 20 km away. Ms Beridze and other prominent figures with a detailed knowledge of these problems explained to me that all those often described as "political prisoners" had already been convicted of extremely serious crimes such as murder. Public opinion would on no account agree to the President pardoning persons who had committed or taken part in murders, and once the death penalty had been commuted to a prison sentence, the President could not, as stated, pardon the same person again. On the other hand, a new amnesty law, supposedly already adopted by parliament also – supposedly – required the prosecuting authorities to reopen a number of cases, including those of prisoners described as "political" by sections of the media, which might make it possible to take account of such things as pro-

cedural errors which were allegedly ignored at the time when they were convicted. Without knowing the details of these cases or really understanding why, under Georgian law, the courts themselves cannot automatically deal with such cases, unless the convicted persons concerned apply for a retrial, I have to reserve my position on the subject. That being said, during my talks with the Georgian President, I nevertheless took the liberty of insisting on the importance of signals indicating to the international community that national reconciliation was one of his political priorities.

4. Refugees and displaced persons wishing to return to their place of origin

a. Situation of Chechen refugees in the Pankisi Valley

Having arrived in Georgia straight from the Vladikavkaz Conference (30-31 May) and having examined ways of promoting democratic renewal in the Chechen Republic of the Russian Federation, I was obviously interested in verifying a number of reports according to which the Pankisi Valley, inhabited since time immemorial by several thousand Kists of Chechen origin, who essentially live on smuggling and a variety of other questionable trafficking activities, is a lawless territory and thus not really controlled by the Georgian authorities. In addition to several thousand Chechen refugees who have been there since the beginning of the year, there are also some 500 fighters training for an armed return to Chechnya. According to all information obtained on this subject from the Georgian authorities and such international bodies as the OSCE, the UNHCR and the ICRC, but above all judging by what I saw and heard during my visit to this lush, sunny valley, it now seems to me that the Chechen military bases are a legend which has manifestly resulted from a lack of reliable statistics and suspicions which have proved unfounded.

Although I am unable to verify the exact number of Kists present in the Pankisi Valley at the end of the last year (estimated at some 8000 by the Georgian authorities questioned on the subject), during the large-scale arrival at the Shatili border post of persons fleeing the events in Chechnya and brought by helicopter from there to the Pankisi Valley, the statistics given me (notably by the UNHCR) show the following: in early April 2000, of a total of 7030 persons who had arrived since the end of October 1999, 700 (without credible documents) were still being registered, and of the 6330 who had been registered, 2300 had in fact been "returning" Kists who had left the valley several years earlier to seek their fortune, in particular in the petroleum industry around Grozny. As to the composition of the 4000 persons actually registered as Chechen refugees, the statistics provided did not distinguish between them and the Kists who had arrived. As to age and sex, the overall number of men between 18 and 60 years of age was well below one third of the total. I personally saw only one man between 18 and 40 years of

age among the thirteen to fifteen persons encountered during my visits (in the presence of representatives of the Ministry of Refugees and the regional authorities in Akhmeta) to the two population centres in the valley where most of these refugees are, namely Duisi (4 143 refugees) and Jokola (2009), according to the data of the Georgian Registration Office. I have been assured that the figure of 7 or 8% for this category of refugees was a fairly realistic estimate based on the experience of the UNHCR in similar situations. To corroborate my calculations, I of course interviewed several men in this age bracket and then questioned the head doctor at the hospital and visited about the exact number of war wounded, but in vain. In any case, according to my estimates, of the 4000 Chechen refugees currently in the Pankisi Valley, not more than 200 at most, in view of their age, could have actually taken up arms.

Much more important than this personal estimate is the fact that the border between Chechnya and the Pankisi Valley is virtually impassable for a military operation of any size. It is mined and watched over from both sides by Russian and Georgian border guards, flown over in “monitoring” exercises from Shatili to Omalo by military helicopters lent to the OSCE, and, what is more, is located at a distance of several hours of difficult terrain (at least 100 km) that leads through wild mountains which in no way resemble the well-marked Vosges. The most important point is the unambiguous official position of the Georgian authorities on this matter. In view of the fact that more than an estimated 7000 Chechens (including the warlord Shamil Bassaev) were said to have fought on the side of the Abkhazian separatists just seven years earlier, the Georgian authorities, according to concurring assertions that I was given in Tbilisi, had taken in the Chechen refugees unwillingly. But as Georgia had just ratified, on 9 August 1999, the 1951 Geneva Convention relating to the Status of Refugees and its 1967 Protocol, they simply could not have done otherwise. That being said, in addition to the fact that they have little sympathy for the Chechen fighters, they maintained that they did not have the slightest political interest in provoking their powerful neighbour to the north by ignoring or failing to stop the abuse of the status of refugees by Chechen fighters who want to prepare themselves on Georgian territory for further armed interventions in Chechnya. What is more, it was asserted that the Pankisi Valley is too easy to control – and I agree, after what I have seen – for military training camps to be there without being immediately detected.

On the other hand, the consequence (which was not contested by my Georgian hosts in Tbilisi) of the sudden arrival of more than 7000 destitute persons in a valley which had already proved to be too small for all its inhabitants – the numbers of which were more or less the same as the new arrivals – to live decently has been a relative increase in trafficking, which had already been going on for a long time. This is said to concern, in particular, illegal drugs from Afghanistan which transit Daghestan and the Pankisi

Valley on their way to Abkhazia and from there via Turkey to wealthy consumers in western Europe. But it is further asserted that this also involves trafficking in all sorts of light armaments, and such things as cigarettes, petrol, which is financed by Middle Eastern Mafia networks and facilitated by the official sending of "humanitarian relief" to the Chechen refugees by various Islamic groups, including the Wahhabites, who are sympathetic to their plight. That would explain some of the movements in the Pankisi Valley, not in the direction of Chechnya (the Shatili and Omalo passages being closed) but, apparently with the help of substantial bribes at border posts, in the direction of Daghestan, Azerbaijan, Tskhinvali (South Ossetia) and even Tbilisi. The Georgian authorities (including the Minister of State, Mr Arsenishvili, who until recently was the Governor of the region in which Pankisi is located) have assured me that they were determined to restore public order in this valley, which consists of two municipalities. These have been administered until now in a rather autonomous manner by a council of valley inhabitants which, it is said is, of course, very hostile to the intentions of the central power, which is seeking to consolidate its authority by establishing new police stations. The Georgian side says it would be quite prepared to co-operate to this end with the relevant Russian federal authorities, which would allow the latter to come and see the situation in the field.

As to the current living conditions of refugees in the Pankisi Valley (most of whom arrived in late 1999 and early 2000, notably from Grozny and Urus-Martan), their material conditions, including the provision of food, seemed acceptable, and in fact much better than the conditions seen in some camps in Ingushetia and northern Chechnya as well as those of internally displaced persons (IDPs) living in Zugdidi and around Kutaisi (*infra*). However, women in particular, who are sometimes very old, have complained about their dilapidated make-shift shelters, the lack of space, the leaky roofs and the presence of rats and insects. On the other hand, those whom I questioned complained about the lack of specific aid, such as special food and vitamins for infants, the ill and the aged, and above all the lack of medicine for the most common illnesses, such as tuberculosis, bronchitis, diarrhoea, cardiovascular illnesses. One dentist and two doctors are working at the "hospital" in Duisi, without electricity, with minimal medical equipment and without sufficient medicine. They send the most serious cases to the regional hospital in Akhmeta or those in Tbilisi. Not having been able to contact the NGO Médecins Sans Frontières to obtain information on their activities and experiences in the valley, we looked on with admiration at the efforts being made very close to the hospital by another foreign NGO (the Norwegian Refugee Council, NRC) which, making use of the summer school holidays, has begun renovating an old local school building, which is soon to be used to provide a minimum of schooling to 620 of the 1 100 refugee children.

But the most frequent complaint of the refugees in Duisi, which has also been repeated in our interviews with those of Jokola, was that they still could

not return home, not only for financial reasons (the cost of which was US\$ 40 to 50 for transport to the Chechen border, then at least US\$ 100 in “fees” for entry into the Russian Federation), but also, above all, for reasons of security once they crossed the Georgian border. The UNHCR is said to be willing to provide help to returning convoys under certain conditions, but there must really be serious obstacles. Thus, after our return to Tbilisi, a representative of the International Human Rights Committee, which is actually a rather activist Chechen organisation, came, on 9 June, to confirm what had already been reported in the local media, namely that a bus transporting some sixty volunteers returning to Chechnya, was said to have been stopped (7 or 8 June) after crossing the Russian border post into Larse in the republic of North Ossetia. All adult males were said to have been taken away for interrogation to a screening camp and had not been heard from since.

Assuming for a moment that this is true, would it not be possible in such cases, in order to assuage fears of such treatment among young adults who have told me in Pankisi that they had had nothing to do with the armed operations in Chechnya, to conclude an arrangement between the Georgian and Russian authorities. For example, through the intermediary of the Embassy of the Russian Federation in Tbilisi, would it not be possible to issue in Georgia, after an on-site check, a kind of “pass”, guaranteeing those who obtain it that they can return to Chechnya without again being subjected to protracted and arbitrary controls? If the Russian Federation really wants these refugees to return home and if Georgia would really be relieved to be able to get rid of them without exposing itself to any criticism, then imaginative solutions will be needed so that those refugees who want to go home can overcome their fears.

Lastly, for the record, the information given by one Caucasus press agency, according to which I recommended the transfer of Chechen refugees from the Pankisi Valley to Turkey (where there are already quite a few Chechen immigrants) is a complete fabrication. The Ambassador of Turkey, whom I met in Tbilisi, is aware of this and took note of my protests in that regard during my press conference at the end of the stay in Tbilisi.

b. Problems of refugees and deported persons wishing to enter Georgia

Return to South Ossetia

Not having been to South Ossetia, I am not in a position to sort through the mass of detailed notes and often contradictory information or take them all into account. So I can be brief and recall, to begin with, that South Ossetia is now *de facto* separated from the rest of Georgia, but is required and, it would seem, prepared to compromise with the central power in Tbilisi on finding a peaceful solution for its definitive status (*Supra*, II.1, in fine). In so far as Tbilisi no longer exercises effective control over this part of its territory (or does not do so yet), the Georgian authorities themselves cannot decide who

can return to South Ossetia: all those who have left, such as some 10000 Ossetians, for North Ossetia and the Russian Federation, and as many Georgians who have gone to other regions in Georgia, or also the 30000 Ossetians who left the rest of Georgia for North Ossetia? The Tskhinvali authorities clearly favour the return home of all persons of Ossetian ethnic origin, but as the living conditions in South Ossetia are particularly difficult, relatively few Ossetian refugees in the Russian Federation (which may be less than 2000) and displaced Ossetians in Georgia (perhaps 1000) have returned.

According to figures kindly provided by the UNHCR, there are still some 23500 Ossetian refugees in the North Caucasus region, in particular in Vladikavkaz, who are likely to return to the rest of Georgia. I met two such persons at the well-stocked market of Vladikavkaz, who complained of obstacles placed in the way of their return by the Georgian authorities – mainly their refusal to permit them to return to their places of origin without pre-conditions and to obtain, where appropriate, restitution of their belongings and of their property if the latter has since been occupied by Georgians who had no right to do so. Questioned on this matter, the Georgian authorities, including the minister responsible, Mr Vashakidze, said that most of those 23500 persons were “economic refugees” who were much better off living in the Vladikavkaz region than in Georgia and who therefore did not want to return to Georgia for the moment. If they did return (the Georgian authorities would clearly prefer them all to return to South Ossetia), they would be considered full-fledged Georgian citizens and treated like all other citizens, meaning that they would be required to settle in Georgia where there is room for them.

In so far as the Parliamentary Assembly has stressed that Georgia must take legislative and administrative measures providing for restitution of property and of lease rights or compensation for property lost by persons forced to abandon their homes in the conflicts between 1990 and 1994 (see doc. Monitor/Inf (2000) 3, p. 22), that is, in my view, a very wise demand.

Problems relating to the return of the Meskhetians

Much more difficult than the return of the Ossetians is the problem of the future large-scale return of the Meskhetians, approximately 100000 of whom were deported in 1944 under the Stalinist regime from the Samtske-Javakheti region of South Georgia, primarily to Uzbekistan. It is not clear to what extent these persons, who were Soviet citizens at the time, acquired, like Uzbeki citizens, Russian nationality upon the collapse of the Soviet empire and the creation of the Russian Federation, but it appears that there was another deportation of Meskhetians, from Uzbekistan to the neighbouring republics. The exact number of Meskhetians presently living in Uzbekistan and the neighbouring republics of the Russian Federation has

not been established either, although both the Russians and the Georgians generally cite a figure of 275 000. What is lacking above all is information on the approximate number of Meskhetians who really wish to return to Georgia in the near or not-too-distant future, despite the difficult conditions awaiting them.

Already burdened with problems associated with the current presence in Georgia of some 200 000 IDPs after the conflict with Abkhazia (*infra*) and also facing a very difficult economic situation, the Georgian authorities, although they already accept the principle of repatriating the Meskhetians, including the obligation to grant them the right to Georgian citizenship or nationality (see constitution, Article 12), are clearly attempting to restrict and postpone the return of the Meskhetians. They would thus like to begin collecting precise data, with the help of a databank, on the number and identity of Meskhetians actually deported from Georgia, and this would even entail the starting to research and the opening of the relevant archives in Moscow and Uzbekistan. Mr Vashakidze therefore urged me to ask the Council of Europe to provide the funding needed to create such a databank as well as to support his requests for access to all available information on this subject in the Russian Federation.

In fact, according to the guiding principles decided in this context following consultations between the OSCE, the UNHCR and the Council of Europe and apparently already accepted by the Georgian authorities, the officially envisaged approach would be of another nature and would involve starting with a regular census, if necessary under international auspices or else under an appropriate control, to establish (perhaps outside Georgia) the approximate number of Meskhetians wishing to return to Georgia.

Regardless of how it is determined to assess how many Meskhetians want to return to Georgia and are entitled to do so and when they will be able to do so, one question which apparently is even more complicated is that of where they can settle in Georgia. As a large percentage of the Meskhetians are Muslims of Turkish origin (although, according to Mr Vashakidze, the ethnic and religious make-up of those deported is disputed), their large-scale repatriation to their region of origin in Georgia, namely Samtske-Javakheti, might of course create new trouble-spots, because it would automatically upset the ethnic and religious balance in this region which is currently inhabited by a population of Armenian origin, the vast majority of whom are Christians. As I understand it, for this very reason, the Georgian authorities would prefer to disperse the returning Muslim Meskhetians throughout the Georgian territory rather than have them all settle in large numbers in what they claim to be their region of origin or in any other region of Georgia.

This is doubtless a real dilemma with enormous human and above all political implications. As I have argued with my Georgian partners, if for example the principle of “return to one’s place of origin” is not applied here, the

Abkhazian authorities might be tempted to let the same practice serve as a precedent and refuse to allow many Georgian IDPs to return to Abkhazian regions other than that of Gali (*infra*). I was very reassured to learn from the President of Georgia himself that he was very aware of both the complexity of this problem and the importance of finding a solution in an overall national context. A blueprint already exists for such a solution, and, according to President Shevardnadze, it is now important to move forward carefully and pragmatically, since a large-scale return of the Meskhetians is not imminent, given the difficult material conditions in Georgia.

5. Consequences of the Abkhazian conflict

From the point of view of domestic policy and political, social, economic and financial consequences, the solution to their conflict with the Abkhazian authorities constitutes one of the major problems facing the Georgian authorities. However, attempts to find a peaceful settlement to the conflict under the auspices of the UN even before the cease-fire of March 1994 still seem to be deadlocked. This results from the fact that the Sukhumi authorities are basically calling for the independence of Abkhazia or else a status on a par with that of the rest of Georgia in a future confederation, whereas the Tbilisi authorities insist (above all) on a return of Georgians displaced from Abkhazia as the precondition for any real negotiations on the extent of Abkhazia's autonomy within the inviolable national territory. It may be however that the Georgian authorities' attitude has recently evolved on these questions because they stated to us that they currently see the solution of the Abkhazian problem in the granting of a status guaranteeing Abkhazia "the broadest political autonomy". This status would be based on the model of the federal state and work on the drafting of such a status could already have started since the Georgian authorities have requested the Venice Commission to contribute.

The number of victims of the conflict in Abkhazia (in addition to civilians killed which appear to be about twice as many as participants in uniform was estimated to include some 8000 Abkhazian soldiers and 13000 Georgian soldiers or paramilitary fighters. Two committees are co-operating regularly on both sides to locate more than 1000 missing persons. According to Mr Ioseliani (chairman of the relevant Georgian committee), the number and ethnic origin of those who have fled Abkhazia, and have remained or have returned is a highly controversial political issue. According to Georgian estimates (such as in UN doc. E/CN.4/1997/132, p. 34), the population of Abkhazia has declined (from 535000 in 1992 to some 146000 in 1997), in particular following the mass exodus, in the course of the period of ethnic violence, of nearly 390000 persons, in general of ethnic origin other than Abkhazian, including more than 200000 Georgians. According to other figures (provided in part by the OSCE), the population in Abkhazia now stands at some 225000 persons (315000 according to the Abkhazian

authorities), with some 80 to 90 000 Abkhazians (in the past about 18% of the local population), or 35 to 40% of the total. In any case, the “300 000 persons displaced” from Abkhazia and from South Ossetia, who are said to have gone to the rest of Georgia seem very volatile (some 100 000 of them are said to have settled there definitively or to have left for other countries), so that the exact number (173 000 from Abkhazia and some 10 000 from South Ossetia) of those currently entitled to and having obtained the status of internally displaced person (IDPs) is not known. This was confirmed in the 1999 Report of the Georgian ombudsman referred to above, on page 14 in fine. Nor does there seem to be a clear approximation on how many IDPs who would now like to return to Abkhazia and would be willing to settle in the Gali region (somewhere in the range of 60 000 to 130 000). To cite an example, more than 50 000 IDPs were said to have returned *de facto* to Gali, but were driven out again following a renewed explosion of ethnic violence in May 1998. Nevertheless, since then, some 40 000 persons, according to the estimates of several international observers, have again returned clandestinely and even resettled in Gali for all or at least part of the year. In short, as in the case of the Meskhetians (*supra*), there is considerable uncertainty about the actual number of persons prepared to return to Gali immediately. However, reliable data are essential, for example, if it is decided to negotiate the return of IDPs from Abkhazia in stages.

6. Status of displaced persons in Georgia

A rather convincing explanation for this disturbing lack of reliable official figures can be found by analysing more closely not only the political stakes, but also the consequences of granting IDP status. This status automatically entitles the person who has obtained it, by law at any rate, to a whole set of privileges and advantages as well as certain allowances in kind and subsidies, including 12 (maybe 18) *lari* (which is about US\$6) in cash monthly. The minimum monthly wage in the civil services in Georgia is about US\$10. It is thus understandable that those judged eligible for this status have no interest in relinquishing it as long as they remain under Georgian jurisdiction, and both the civil services and non-official bodies have no interest either in reporting a decline in the number of IDPs under their care, because they would then face what would be a virtually automatic reduction in their funds, which are calculated according to the number of IDPs they are looking after. This is all the more valid in that the total funds allocated for refugees in the national budget is said to have increased considerably and even doubled this year to some 100 million *lari* approximately. What was a policy of temporary assistance has now become a policy of economic and social development whose aim is to prevent the IDPs from increasingly becoming second class citizens during the long wait to be able to return home.

Also, by law, the status of IDPs contains a number of restrictions, according to the unofficial conclusions of a study conducted at the end of last year at

the request of the UNHCR by the Georgian Young Lawyers' Association (GYLA) entitled "Monitoring of legal and actual status of internally displaced persons in Georgia". It is only IDPs placed in lodging made available by the state and not those refugees taken in privately, who are protected, at least in theory, against the risk of being evicted. Moreover, IDPs who have financially and officially acquired private housing automatically lose their IDP status (Law on Internally Displaced Persons, Article 6.2, section 3). The ministry responsible for refugees and their housing also maintained that its failure to take initiatives to improve the conditions of public housing for IDPs was due to insufficient funds. Contrary to the legislation specially adopted for this purpose, it is also asserted that the exercise, by the IDPs, of the right to education is hardly fostered in practice by the granting of the relevant allowances, of which most IDPs are not officially informed. The same is said to apply for the exercise, by the IDPs, of their right to free medical care (as above, Article 5) and, where applicable, medical insurance and free medicine, notably for disabled persons, the aged, children and poor families. (On the other hand, it is said that medicine donated by humanitarian organisations which is not given directly to the IDPs finds its way to the market.) Regarding several socio-economic rights granted to IDPs, the relevant special legislation is both unrealistic and faulty because, for example, it provides for the loss of the monthly – but very irregularly paid – cash allowance of perhaps 12 lari when it has not been drawn over a period of three consecutive months; it does not require the authorities concerned to alert the IDPs of the sporadic arrival of certain aid in kind; it gives priority to the hiring of IDPs in the civil service without it being possible to transfer them to other employment when necessary; and it leaves to the discretion of certain local authorities the priority, but temporary, allocation of land suitable for cultivation to IDPs much too destitute to purchase the necessary seed themselves. Legal provisions depriving the IDPs of the right to take part in elections based on a majority vote – as stated in Article 33 of the Parliamentary Elections Act, or even primary municipal elections, as stated in Article 36 of the temporary provisions of the Municipal Elections Act – in Sakrebulo, allegedly constitute particularly serious discrimination against the IDPs (see constitution, Articles 28.2, and 105.2 and 105.4), which the relevant Georgian authorities might remedy at no real financial expense. The same is said to apply to Article 6.2 of the IDP act, which imposes loss of IDP status in the event of permanent residence and registration, although such conditions are required to establish full voting rights.

Given this long and non-exhaustive list of specific allegations concerning the legal status of IDPs and their treatment in practice, I was very interested by the replies of the Tbilisi authorities and those of the regional authorities questioned on this subject in Kutaisi, Tskhaltubo (Imeriti Region) and Zugdidi (Samegrelo-Svaneti Region). Basically, it emerges that the uncontested fact that special legislation for IDPs is not implemented in full, is

supposedly due to the lack of necessary financial resources. On the other hand, the discriminatory effect referred to in many legal provisions for the IDPs is said to exist only on paper. In practice, the IDPs are said to be quite well-informed of their considerable specific rights and know very well, for example, that they will not be held accountable if they do not pay for certain services or even property given them. It is asserted that they are virtually all without financial means and have no desire to settle permanently elsewhere or acquire private housing, and in the exceptional cases where this is not true, they would questionably not lose the IDP status. It is maintained that many IDPs have found work without losing their allowances as IDPs and a large percentage of the others (between 30 to 50%) are still said to be looking for a job – as is the rest of the Georgian population, unemployment being very high. It is asserted that the IDPs have only one wish, namely to return home, and that for this very reason, it appears that they do not really want to become integrated and certainly do not want to take part in municipal elections and in the organisation and functioning of local government. It is also maintained that they would have an impact on parliamentary or presidential elections (their plight often being exploited for political ends), and they are said to be, so to speak, structured and represented through their neighbourhood and district committees, culminating in an “Abkhazian Government in exile” established in Abkhazia in 1993 but now financed by Tbilisi.

My meeting with representatives of the media and civil society of the Imereti Region, an area where there are some 50 000 IDPs in a region of 800 000 inhabitants, including 200 000 in the capital, Kutaisi, where 35 to 40 000 IDPs live, half of them in public housing and the other half in the private sector, did not produce new details on this subject. The exception to this was the prior information from Governor Shashiashvili that payment of salaries by the state was six months late and the allegation by the local NGO representative, that the improvement of the administration of the IDPs had to contend, above all, with a lack of know-how and even corruption in the administration in charge. I thus went to check on conditions of the IDPs on site, beginning in the Restricted Weapons Zone of Zugdidi (48 000 inhabitants, including 27 000 IDPs, the vast majority from the Abkhazian region of Gali) and then in Tskhaltubo, a former health resort some 20 km from Kutaisi, whose buildings (where we spent the night) were overflowing with IDPs.

7. Living conditions of displaced persons in Georgia

It is really difficult to describe coolly and without strong words the dramatic living conditions of those IDPs whom we visited in Zugdidi on 7 June: a former school now housing 120 families who are resisting their eviction; a former factory transformed to house 47 families, in some cases there being 4 or 5 beds for 2 families or 8 people in a single room measuring less than

18 sq.m. without water or heating, with one hour of electricity daily that can be cut without warning; lack of basic hygienic conditions; people desperate and often resigned because of they have become so weak and who recount with difficulty that they have not been paid their official pensions or cash allowances for five to thirteen months and have not even received flour or other "official" food for more than three months; many illnesses among the elderly and infants, their families explaining that this was due to the fact that after the withdrawal of the international humanitarian organisations (ICRC and the UNHCR in 1996/1997), the local replacement organisations had also abandoned them to their fate; "real" medicine is said to have become increasingly rare and unaffordable, medical assistance is insufficient or non-existent, but is always for a fee, and the destitute ill are thus said to be condemned to death because they cannot afford operations, care or appropriate medicine (this is what happened to several persons we saw lying on their beds, unable to move); dilapidated rooms damaged by leaks and the lack of a minimum of materials to repair them, some people having collected wood planks, scrap metal, cables or roofing dozens of kilometres away to repair their "homes".

To survive, these people, who live in frightful poverty, depend entirely on family support, meaning those other courageous family members who infiltrate the Abkhazian border region of Gali at night or, with the help of "gifts", work for a few days or longer in order to make a living and pick up and bring back to Zugdidi whatever they can find for their families. It is said that 7 to 8 000 illegal workers (including more than one quarter of the IDPs registered in Zugdidi) leave and return every week! The "cruel" question here of course has yet to receive an official answer. This will be determined by whether not only the electricity is in the process of being cut, but also food and financial aid to the IDPs near and along the border on the Georgian side in order to prompt them to return sporadically to Abkhazia and to try to ensure their material survival there and thus maintain international political pressure on the Abkhazian authorities. This is the actual opinion of many officials whom we met, who spoke of "attempts to instrumentalise the Georgian IDPs", but I can neither confirm nor invalidate this hypothesis without additional reliable facts on the subject (*infra*).

Although not worse off than those of Zugdidi, the IDPs we met at the former Intourist Hotel (225 inhabitants) of the Tskhaltubo health centre near Kutaisi seemed angrier and had more complaints. They expressed much bitterness about what they consider the abandonment of any protection of their legitimate interests by the international community. There were several explosions of rage at the Georgian administration and many cries of despair about their dire straits. They complained about the very limited supply of electric current and water; continuous deterioration of their overpopulated and dilapidated homes and quarters; intolerable hygienic conditions; medical treatment only if paid for and urgent lack of medicine; lack of sheets,

blankets, clothing and such; the fact that the children no longer have shoes for going to school; there were no prospects of any jobs; no financial subsidies whatsoever (amounting to only about 4 lari monthly in certain cases) for more than three months (for some, for more than six months) and considerable delays in the free distribution of 300 grams of bread daily per person; and the numerous educational and social problems. In view of mounting tension and increasingly threatening remarks, we withdrew, resuming interviews at about 10 p.m. with members of the representative committees of local IDPs, who were physically more at ease and psychologically more in control and politicised than the others. Restating the main difficulties currently facing IDPs (and which incidentally have led to a sharp decline in their birth rate), their spokesmen, including representatives of the “Abkhazian Government in exile”, who, by the way, are paid for the services they render, held the international community and all international organisations responsible for their plight. They say that the sole alternative, which they do not want at present, would be for the IDPs themselves to take up arms again to defend their legitimate interests. Consequently, in a surprisingly well co-ordinated manner, these IDP representatives in Tskhaltubo stressed that the Council of Europe must exert pressure on the Russian Federation to force the current Abkhazian regime, which they say has no outside support, to agree to conditions guaranteeing the safe return of the IDPs. As such conditions do not exist at present, the IDPs are in fact the target of a high level effort to discourage them from attempting any premature, unregulated return to Abkhazia.

To be perfectly frank, during the nightly discussions at the Tskhaltubo Sanatorium, but earlier as well, listening to the officials responsible for refugees in Tbilisi, Kutaisi and even Zugdidi who are all on the whole satisfied with their own efforts to administer the problem during this shortage of appropriate means, I could not help think of the terse words of an old friend, a disillusioned old-timer in the field of humanitarian relief, whom I shall not name and who had warned me long ago. I quote here his cruel words which remain imprinted on my memory:

“You speak of the return of refugees and displaced persons? But my poor friend, you don’t understand anything! Refugees are like orphans, or if you prefer, like prisoners. Above all, they are the reason for being of the administrative bodies that look after them; and, even more importantly, they ensure a more or less decent living for their administrators, in any case one that makes them better off than the refugees. As long as there is no fresh crop – pardon me – as long as there are no new arrivals, the administrators responsible for them will never let their darling children leave. They don’t want to cut the branch on which they are sitting. That would be suicide! They want to keep the status quo as long as they can get away with it”.

At the time, my friend seemed too cynical, but since then, I have been privy to a number of situations in which refugees or displaced persons do in fact seem to be instrumentalised for a wide variety of reasons. Is this not the case now in Georgia? I do not want to make this assertion, but I must say that I was very troubled by the “all or nothing” attitude of some of the Georgian officials I met, including spokesmen for internally displaced persons, who ruled out from the start any pragmatic approach for achieving gradual progress on the return of IDPs to the Gali region (*infra*) or rapidly agreeing on viable compromises on a case-by-case basis. Notwithstanding their extremist attitude, that evening I told these spokesmen what I had already promised a number of IDPs there – namely that I would certainly report on their dramatic situation and on the urgent need for medicine and medical care in my future contacts with the UNHCR and the ICRC (which were informed as soon as I returned to Tbilisi). I also undertook to inquire directly with the Abkhazian authorities about any guarantees for the physical protection of returnees in cases in which the return of IDPs to certain regions of Abkhazia is authorised. When I arrived back in Tbilisi, the new minister responsible for special matters (which apparently include the problems of IDPs), Mr Kakabadze, promised me that he would start an immediate investigation into the reasons for the irregular and late distribution of food relief earmarked for the IDPs. The tons of flour delivered to Kutaisi and destined for distribution to famished IDPs had apparently been awaiting transport to Zugdidi for several months.

8. The problem of those who wish to return to Abkhazia

My visit to Abkhazia (for the organisation of which I wish to thank, once again, the special representative of the UN Secretary General, Ambassador Boden) provided the opportunity for some very interesting meetings. These started with a highly instructive general briefing from Ambassador Boden (who was very concerned that day, 8 June 2000, about the abduction, a few days earlier, of five members of his Unomig mission in the Kodori valley, to which access is rendered difficult by the high altitude, and which is in fact controlled by some 2400 Svan, a tough mountain people who form a buffer between the Georgian and Abkhaz forces).

I subsequently held talks, again in Sukhumi, the capital, with some thirty Abkhaz parliamentarians, including their President, Mr Jinjolia. The main subject of discussion was the traditional issue of the relationship between the exercise of collective rights, in this instance the right to self-determination claimed by the Abkhaz authorities, and the permanent obligation which these authorities have to respect individual fundamental rights, including the human rights of those who are not of Abkhaz ethnic origin. The Abkhaz parliamentarians heavily emphasised the fact that any human rights violations committed on their part in the course of their recent conflicts with the central government in Tbilisi were merely an inevitable direct consequence

of the violation by Georgia of the exercise, on the part of the Abkhaz authorities, of their right to self-determination (leading the Abkhaz Parliament, after the disputed referendum of March 1991, to vote not only in favour of the abolition of the 1987 Georgian Constitution, but also – in response to the moves in Tbilisi towards reducing Abkhazia to its pre-1921 district status – in favour of replacing the 1978 constitution with the relevant provisions of the 1925 Soviet Constitution. This constitution promised Abkhazia, which had been raised to the status of a Soviet Socialist Republic in 1921, an independent or “sovereign” status, making it legally equivalent to that of the other republics, such as Georgia, part of the former USSR. In view of the restoration of this status, it was argued that the Abkhaz Parliament had been right to adopt its unilateral declaration of national sovereignty on 23 July 1992, and then, at the end of November 1994, its new constitution, according to which Abkhazia was an independent republic and a sovereign state. For the same reason, the parliamentary elections held in late 1996 and the local elections held in mid-March 1998, and also the presidential elections held on 3 October 1999, were thought to be perfectly valid, even if these elections were not recognised as such at international level.

I naturally argued against the position of the parliamentarians, who claimed a causal link in order to rule out any responsibility in the matter, by drawing an analogy (drawn from the well-known events which took place in Germany, Italy, Spain or Northern Ireland in the course of the 1960s and 1970s, in particular) with the example of the democratic state, which, in protecting itself against terrorist attacks, cannot use for this purpose the same means of terror as the terrorists themselves. Therefore, even when pursuing perfectly legitimate aims, such as the protection of public security and the realisation of certain collective rights, a state governed by the rule of law – and Abkhazia aspires to this status – cannot disregard its absolute obligation to respect at all times certain fundamental rights of its subjects, such as, in particular, the rights mentioned in Article 3 common to the 1949 humanitarian conventions, which partly overlap with those referred to in Article 15 of the European Convention on Human Rights. I am by no means certain that my political interlocutors were convinced by this “legal” argument.

In fact, I felt a certain amount of doubt as to the validity of my statement that morning presenting the legal view when I held a meeting in the afternoon with some fifteen representatives of local NGOs, several of which put forward a long list of fundamental individual rights which had been seriously endangered following the decision, taken at the Summit of Heads of State of the CIS at the end of October 1995, to impose an economic embargo and close Abkhazia's borders (thus adding to Abkhazia's isolation, which was decided upon by the UN and the OSCE when hostilities ended in March 1994). It was argued that these collective sanctions, which are still in force according to my interlocutors, are apparently regarded by some “international lawyers” as legitimate because they were officially imposed out of a

concern to protect international interests, such as peace and security. The result, however, was a massive violation of the most elementary rights, such as the right to health, the right to a nationality, freedom of movement and information, of all the members of the Abkhaz population affected by these measures, regardless of their opinions and commitment to the Abkhaz cause. Unless we are to allow double standards, we have to choose between two alternatives: either firstly, the exercise of the collective right to international peace and security is legitimate, whatever the consequences in terms of respect for the individual human rights of those living in Abkhazia – in this case the exercise by the Abkhaz people of their right to self-determination to secure national peace and security and thus escape repression by the Georgian invader would also be justified, whatever the human consequences of the ensuing armed conflict; or the imposition of the embargo on Abkhazia and its international isolation are illegal – in this case, according to my interlocutors, I would need to investigate the harmful consequences which these illegal measures have had on respect for human rights in Abkhazia, as well as the consequences of the Abkhaz conflict in 1992 and 1993. In any event, as long as the outside world does not respect the rights of the Abkhaz people as such, it would be particularly difficult for the local NGOs concerned to make ordinary Abkhaz citizens aware of the fact that they themselves actually possess certain fundamental rights of which they could and, if appropriate, should avail themselves vis-à-vis the authorities which govern them. Lastly, regarding the general attitude of the representatives of Abkhaz civil society questioned on this point, there were no objections to the return of the Abkhaz IDPs currently living in other parts of Georgia – provided, however, the pace and scale of their return neither paralyses nor delays the urgently needed improvements in the material living conditions of those who have remained in Abkhazia.

It should be noted that this exchange of views was held, in the company of Ambassador Boden, at the UN/OSCE Human Rights Office in Sukhumi (HROAG), with which the ICRC also co-operates for the purpose of monitoring the situation as regards the rights of detained persons (giving rise to some very sustained and wide-ranging activities, including access to detained persons wherever they might be, as I was assured by the head of the ICRC bureau in Tbilisi, Mr Bellon). The Director of the HROAG, Mr Sytschuk, who, if I am not mistaken, has been seconded to the Unomig mission by the office of the UN High Commissioner for Refugees in Geneva, informed me of a recent memorandum outlining the very important and quite surprising activities of his bureau. For example, it emerges from the memorandum that, in 1999, by approaching the relevant authorities, the HROAG was able to settle more than fifty cases of violations of individual rights relating in particular to personal safety, pensions, housing and property, and that its monitoring of respect for human rights in Abkhazia is currently being extended to the Gali region in “Restricted Weapons and Security Zones”, where HROAG

staff members take part in Unomig military patrols. The office is also involved in a range of activities aimed at promoting human rights and developing the capabilities of local civil society, comprising, for example, the preparation of relevant documentation and the human rights education of judges and members of the police and armed forces and including such things as the human rights education of media representatives.

Apparently, the sensitive issue is whether this office could and should be authorised to set up a kind of permanent branch office in the Gali region in order to monitor and ensure respect for certain rights there, including in particular that of personal safety, should IDPs be willing and able to resettle there. This would operate on the understanding that the Abkhaz authorities have previously undertaken to restore the necessary facilities in Gali, such as public transport, schools, hospitals. This question is of particular interest, not only for the OSCE and the UN (and I personally support them unreservedly in this connection), but also for Tbilisi, because the Georgian authorities, in order to break the long deadlock, currently seem to be in favour of a kind of provisional international administration in the Gali region (perhaps similar to that in Kosovo) and thus seem to regard the setting up this UN/OSCE office in Gali as another step in that direction. In fact, I raised this question, among others, in the context of the guarantees of personal safety for IDPs returning to Abkhazia, in talks lasting over three hours with Mr Ardzinba, former President of the Supreme Soviet of Abkhazia, whom this body elected as first President of the Abkhaz Republic when the Abkhaz Constitution was adopted in November 1994.

Receiving us first of all in his office, in the presence of Mr Shamba (Minister for Foreign Affairs), and Mr Jergenia (Principal State Prosecutor) and then, in the company of Ambassador Boden, at his residence (Stalin's former dacha with a superb view over the Black Sea). President Ardzinba, former professor of philological science, honoured us with a brilliant lecture on the history of Abkhazia and its recent conflicts with Georgia, underlining in particular the following three points:

Firstly, the ancestral independence of Abkhaz territory and the Abkhaz people:

this had fallen victim first of all to the Russians when they arrived in the region in the nineteenth century. This led to waves of emigration of Islamised rural Abkhazians to Turkey and a massive influx of not only Russian but also Georgian and Armenian immigrants. A corresponding demographic marginalisation of the Abkhazians on their own territory resulted. Abkhazia had fallen victim again in 1931, during the Soviet era, when its Soviet Socialist Republic status, dating back to March 1921, was changed and Abkhazia, which, until then had been linked to Georgia by a treaty of military, political and economic union dating back to December 1921, was incorporated into Georgia as an autonomous

socialist republic, which subsequently enabled Georgians, under the protection of Stalin, to “colonise” Abkhaz territory (for example, over the following fifty years, the Abkhaz population had not even doubled, whereas the number of Russians on Abkhaz territory had been multiplied by three, and that of Georgians by four).

Secondly, the justification for the Abkhaz secessionist attitude:

Georgian nationalism, which was as extreme and expansionist as it was threatening for all minorities under Georgian jurisdiction and – after an aborted attempt in 1978 to introduce Georgian as the sole official language in Abkhazia – resolutely hostile, especially from the late 1980s onwards, to any recognition of Abkhazia as a specific entity. The situation had left the Abkhaz authorities, whether they liked it or not, with their backs to the wall, at any rate after the taking of Sukhumi by the Georgian National Guard on 18 August 1992. It clearly demonstrated to the whole world that its cultural, linguistic and political identity could be no salvation for Abkhazia in its autonomous status. In the light of everything that had happened, no-one could in all honesty ask the Abkhazians to submit once again of their own free will to the extreme arbitrariness and opportunism of the Georgian authorities because, whatever the model of federal state devised for this purpose, the Abkhazians would then be living in permanent dread of further bloody repression of any manifestation of their identity and right to be different.

Thirdly, the blindness of the international community, which had relied on the convenient principle of national sovereignty and territorial integrity in order to side unhesitatingly with Georgia:

the Abkhaz victory over the Georgian aggressor, which had been a case of legitimate self-defence and had been secured by arms at the cost of enormous human sacrifices, had been punished by the international community, wrongly and without any legal basis, by international condemnation of the whole of Abkhazia. This went together with further punitive measures which were a *de facto* violation, especially of the elementary rights of the poorest Abkhazians (for example, many vital medicines had become prohibitively expensive as they were only available by means of contraband). Instead of sacrificing human rights on the altar of *raison d'état* by maintaining collective sanctions which were harmful to the rights of the poorest and weakest, the international community should legally recognise the *de facto* independence of Abkhazia and help it to ensure that its citizens were granted minimum rights in the economic and social sphere as well as in the political sphere.

I obviously countered this dogmatic line of argument with the fact that Abkhazia's relentless pursuit of independence was currently leading to the impoverishment of its population and failure to respect many of its

fundamental rights. In addition, recognition of Abkhazia's sovereignty has been rejected and frozen at international level. However, since I do not have a mandate as an advocate of *"realpolitik"* and am not a specialist in the history of Caucasian minorities, I questioned the President mainly about the specific conditions governing the possible return of the Abkhazian IDPs currently living in Georgia. President Ardzinba showed considerable bitterness and annoyance when this subject was raised. He said that there were as many, if not more, Georgians than Abkhazians in Abkhazia, namely between 90 000 and 100 000, and that many Georgians, around 60 000 of them, had returned to the Gali region since the events of May 1998. He said that there were some 30 000 Abkhazian IDPs still in Georgia, who, as he had announced repeatedly, would be able to return to Gali, but the Georgian authorities were still firmly opposed to this. The Georgians were inclined to inflate the number of IDPs in order to obtain, then misappropriate, all kinds of international humanitarian aid for 300 000 people, and by means of terrorist attacks in Gali, which were orchestrated and manipulated from a safe distance, all those who had decided to return to Gali were then driven out again. The IDPs were thus being used against their will as "instruments". In short, again according to President Ardzinba, the Abkhaz authorities were not in a position to guarantee the physical security of IDPs wishing to return from Georgia to Gali – despite the fact that his authorities were prepared to take them in – unless the Georgian authorities, for their part, controlled the activities of the Georgian militias and gangs still operating in Gali, whether they were political agents of all kinds or traffickers and ordinary criminals exploiting the unusual political situation and the lack of national control which were characteristic of this frontier region.

According to the President, the question of the opening in Gali of a new UN/OSCE office responsible for monitoring compliance with human rights, and in particular the right to personal safety of IDPs returning to this region, will be favourably considered by the relevant Abkhaz authorities. In addition, even without international pressure, Article 5 of the newly restored Abkhaz Constitution of 1925 guaranteed the children of these IDPs of Georgian ethnic origin the right to be taught in the Georgian language – the only outstanding question being that of the history textbooks to be used in the schools concerned. If need be, the experience of the Council of Europe's Directorate of Education, Culture and Sport (DECS) in preparing "neutral" or objective history textbooks, and its technical assistance in this field, would indeed be very welcome in Sukhumi.

Lastly, it transpired that, for the time being, President Ardzinba is entertaining a completely different plan, for which he twice requested my personal support and assistance – after having, for his part, rejected my suggestion to him to consider the scope of regional autonomy in Spain and how the system of autonomous regions operates. What he has in mind is a technical, and therefore relatively limited seminar, with a number of foreign experts yet to

be appointed, which would be held in Sukhumi and, if appropriate, partly in Tbilisi. This seminar would be concerned with the exercise of the right to self-determination in the history of international relations, the overall aim being to advance, as it were, the current international negotiations on the future status of Abkhazia. Ambassador Boden, who had attended some of these discussions, seemed at first sight not to rule out the possibility of such a seminar being held with his co-operation at the UN/OSCE office in Sukhumi. For their part, the Georgian authorities, whom I informed, upon my return to Tbilisi, of the main points in my talks with the President of Abkhazia, seemed relatively interested in participating in this initiative. They immediately, however, protested against, and refuted, many of the accusations levelled at them by Mr Ardzimba, particularly those relating to the reasons for, and legality of, the intervention by the Georgian armed forces in Abkhazia (see, for example, the Georgian Constitution of 1995, Article 73.1.*h*), those concerning the exact number of Georgians living in Abkhazia, or having fled from it and the current fate of these IDPs in Georgia. In this regard, the Georgian authorities also obviously referred to the many resolutions and recommendations of the UN and the OSCE strongly condemning the combat of the hostilities and the term taken by the events in Abkhazia including the various measures taken by Abkhazia in order to affirm its de facto secession from Georgia.

Regardless of whether the main protagonists in the Abkhaz conflict are actually willing to attend a technical seminar, my office's operational appropriations for 2000 have been heavily drawn upon – to such an extent that I am scarcely able to go ahead with a meeting of ombudsmen of our west European member states planned for this autumn. The conclusions of the meeting held at the end of June with the ombudsmen of central and east European countries, at our European Youth Centre in Budapest, have already been communicated to you via your chairman. Here, then, is a cast-iron excuse, if one were needed, for not having immediately committed myself to trying to do better than the Friends of the UN Secretary General for Georgia and the OSCE, who, for years, have all been working on the miracle solution to this particular aspect of the status and protection of ethnic minorities in the Caucasus.

9. Conclusions and recommendations

Answering questions from the journalists attending the press conference organised by the Minister for Foreign Affairs in Tbilisi at the end of my visit to Georgia, I said that the situation regarding respect for human rights in Georgia did not seem to me to be at all satisfactory. The Georgian authorities themselves know this full well and acknowledge it, including President Shevardnadze, to whom I had conveyed this impression shortly before my press conference. However, the Georgian authorities underlined the huge efforts they had been making – of which no-one, including myself, has any

doubt – to bring their legislation and practice into conformity with the values and standards of the Council of Europe, in particular. As regards the general practical application of their new legislation, which is in some respects exemplary, the Georgian authorities, conscious of the gulf between law and practice, maintain that they need more time for the transition and that, at present, they are particularly lacking in the appropriate resources, referring to human and above all financial resources, to carry this out.

Taking this into consideration, the main question is to know what can be done in Georgia at present as regards improving respect for human rights, in the absence, or rather despite the absence, of significant resources. In the light of my terms of reference (in particular Article 8.1 of Resolution (99) 50), I have made a number of specific suggestions and recommendations in this connection (and I do not intend to summarise them again here) as it is my opinion that there are always considerable resources available which can be used, without excessive expenditure, to improve certain situations and, thereby, improve respect for human rights, whether the rights of detained persons or those of the many refugees and displaced persons. In the case in point, it seems to me in particular that it is in the interests of the Georgian authorities to give greater attention and political priority to the smooth running of the justice system and, also, of their police forces.

As regards the fate of the many IDPs, I feel that closer monitoring (see Constitution, Article 97.1) of the government bodies and agencies which deal with them is both urgently needed and justified. If Georgia makes the effort, in its national budget, to allocate roughly 1 to 2 lari per day to each IDP (according to my rough calculations regarding the budgetary appropriations available and the potential beneficiaries, the same would apply to detained persons and even police officers and military personnel), the IDPs should be in a far better material situation, provided of course, the government bodies dealing with them do their job properly and efficiently. What seems to me to be equally important is that the Georgian authorities do everything in their power to resume and speed up the negotiations with a view to the return of the IDPs to Abkhazia, even if this would mean discussing, in the first instance, the return of IDPs to Gali only. As I have already emphasised several times, the right of these IDPs to return to Abkhazia will not be called into question by anyone and the exercise of this right will obviously be very much facilitated if their personal safety could be genuinely guaranteed if they return (for example, regarding the particular situation in the Gali region), through the effective supervision of human rights by the competent international organisations.

It is extremely difficult to advocate the solution to the virtually insurmountable difficulties with which the Georgian authorities find themselves confronted. This is due to the presence on their territory of a large number, namely more than 30%, of ethnic (in particular, Armenian, Russian and

Azeri), religious (including 11% Muslims) and linguistic (in particular, Armenian, Azeri and Russian) minorities. Generally speaking, the members of these minorities peacefully coexist both with those of other minorities and with the Georgians, who are thus broadly (65 to 70%) in the majority. Nonetheless some less numerous minorities such as the Abkhazians and the Ossetians (representing respectively 2% and 3% of the total population) have had or have conflicting relationships with the privileged Georgian majority with respect to their language and religion (see constitution, Articles 8 and 9). This explains, at least in part, why some national minorities in Georgia continue to demand greater autonomy and specific rights (see constitution, Articles 38.2 and 44) vis-à-vis the Georgian central authorities. It is my personal, and therefore highly subjective, opinion, because it is based essentially on my experience of post-Franco Spain, that the solution to these complicated and often highly emotional problems would consist in new legislation settling once and for all the rights of persons belonging to national minorities, including the more or less autonomous status of the regions of Georgia (such as Abkhazia, South Ossetia and Adzharia) where these minorities are in the majority. In this connection, however, no one is in a position to “sell” to the Georgians a tried and tested model of a federal state, nor indeed detailed model regulations governing the rights of minorities. It is for the Georgian authorities to take up these issues. The solution to these issues was deferred owing to the lack of a consensus when the 1995 constitution was adopted (as emerges, *inter alia*, from its Articles 2.3, 4.1 and 108) and to find an overall solution to them at national level, taking account of their own traditions, characteristics and national imperatives and without, however, completely overlooking the European standards which already exist in this field. It is reassuring to know that part of this work has already begun (*supra*, III.3, paragraph 1, in fine). To this end, a fertile imagination and constructive proposals will be needed in order to rapidly achieve political compromises which are viable in the long term and which respect the rights of all Georgian citizens and of everyone living in Georgia.

Visit to Moldova

16 to 20 October 2000

1. Introduction

At the repeated request of Moldova's Ministry of Foreign Affairs, I visited Moldova, including the eastern region (Transnistria) of the Republic of Moldova from 16 to 20 October 2000. The programme of this visit is appended to my written report. During my visit, I was accompanied by two colleagues from my Office, Mr Müller-Rappard and Mr Belyaev. We were joined during the trip to Transnistria by Mr Sidoroff, a Finnish member of the OSCE Mission in Moldova, whose knowledge and experience on the ground were particularly valuable. Moreover, I was also accompanied by Ms Gorea-Costin, the Republic of Moldova's Permanent Representative to the Council of Europe, during all my meetings at Chişinău, including those with NGO representatives and the media, and the visit to Cricova prison. I would immediately ask her to transmit my thanks to her authorities for their co-operation in organising my visit.

We have at our disposal in the Council of Europe a considerable body of reference documents on the general situation regarding the respect for human rights in Moldova, which the Committee of Ministers has already examined in part, particularly while carrying out its own monitoring activities (notably as regards freedom of expression and information, the functioning of the justice system and local democracy, and the police and security forces), or when approving various activities concerning Moldova in the context of the Adacs programme. In this connection, the Committee of Ministers has also received information on several recent occasions on all aspects of the situation in Transnistria (see, for example, the exchange of views with Ambassador Hill, Head of the OSCE Mission in Moldova, on 25 October 1999 (GREDS (99) 54 addendum). These included: the mission report by a Secretariat delegation to

Moldova, from 9 to 11 March 2000 (CM/Inf (2000) 19) the report on the Italian Chair's visit to Moldova on 21 and 22 July 2000 (CM/Inf (2000) 49 rev.). In addition, this issue was one of the topics discussed at the Committee of Ministers' 107th Session, on 9 November 2000 in Strasbourg (see, for example, paragraph 6 of the official press release).

For its part, the Parliamentary Assembly, and especially its Monitoring Committee, have also discussed the options for resolving the Transnistrian conflict on several occasions and the question of whether and to what extent Moldova has honoured the commitments it entered into as regards the respect of human rights prior to joining the Council of Europe (see Opinion No. 188 (1995), adopted by the Parliamentary Assembly on 27 June 1995).

In the light of the above, there is currently no need to re-examine in detail a great number of Moldovan problems, either legal or political, that have already been dealt with in the course of the various monitoring activities. Accordingly, whilst I shall refer to some of the problems that have already been analysed, my intention is to present an up-to-date general picture and to indicate, for the relevant Moldovan authorities as much as for you, the main areas of concern as regards respect for human rights in Moldova.

In this regard, I must state at the outset that the current situation in Transnistria, which de facto eludes any control by the Moldovan authorities (for example, non-applicability, *stricto sensu*, of the ECHR and other Council of Europe instruments), is a matter of concern, both with regard to the human rights situation in this region, and in terms of the repercussions this has on the human rights situation in the territory controlled by the Moldovan authorities. Indeed, in all my interviews with the Moldovan authorities, the latter constantly drew my attention to this fact and to the urgent need to expedite resolution of the problem of Transnistria, calling upon the political role which the Council of Europe could play in this respect – although I repeatedly told them that this problem, which is currently within the mandate of the OSCE (see Declaration of the OSCE Summit in Istanbul in September 1999, paragraphs 18 and 19) was primarily a matter for the Council of Europe's political bodies, that I had no role as negotiator or political mediator, and that, under my specific terms of reference, I was essentially interested in the human rights situation in the territory controlled by the Government of the Republic of Moldova.

Naturally, I understand the Moldovan authorities' concerns regarding developments in Transnistria (where the regional authorities continue to consolidate their de facto independence) and the Moldovan desire to win the support of inter-governmental organisations, including the Council of Europe, for the purpose of finding a durable and equitable solution to the transnistrian conflict. Nonetheless, I was rather surprised to read (in translation) certain articles that appeared in the local media regarding my visit to Moldova. Thus, "according to a press release from the President, the head of state said

that there were no serious problems with regard to human rights in Moldova. The President said that such violations had been noted only in Transnistria, where the Tiraspol authorities neglected the rights of a considerable part of the population..." (quoted from the translation of an article in the Moldovan daily newspaper *Jurnalul National*, 19 October 2000). Indeed, I learned of several Moldovan reports contrasting the situation in Moldova, especially as regards civil and political human rights, with that in Transnistria, which the authors of these reports considered to be worse (for example, "Human Rights in the Transdnistrian Region of the Republic of Moldova" by the Moldovan Interdepartmental Commission for co-ordination of state policy in the settlements on the left bank of Nistru river, Chişinău, November 2000). However, in the absence of sufficient relevant information (*infra*), I cannot comment on this question. On the contrary, I have absolutely no doubt that in practice many serious problems still exist in Moldova with regard to respect for human rights, in spite of the relevant Moldovan authorities' appreciable efforts, which I acknowledge, to establish a new legal framework that complies with the European standards in this area.

2. The main problems concerning respect for human rights in Moldova

a. General situation

It emerged from my discussions with representatives of Moldovan Civil Society (NGO), and particularly from those with M Pottinga, Director of the Moldovan Centre for Human Rights and one of the three parliamentary advocates called upon (like an ombudsman) to report to parliament on respect for human rights in Moldova, that "despite a good legislative framework, many of the human rights are violated, often on a large scale and severely", the worst affected being economic and social rights (A. Pottinga, Annual report, 14 January 2000, p. 6). This appears to be chiefly due to the deterioration in the country's socio-economic situation over recent years (as above, p. 3), which has prevented implementation of the measures required to ensure respect for human rights as guaranteed, for example, in Article 47 of the Moldovan Constitution (the right to a decent standard of living, "including food, clothing, housing, medical care, as well as the necessary social services", the right to welfare protection and social security benefits...). The failure to take measures to pay salaries, pensions and various benefits seems to be entirely due to the state's current "complicated socio-economic situation" (as above, p. 3). Accordingly, 80% of the Republic of Moldova's population "lives on daily revenues of under US\$ 1, or even less" and half the population is living below the poverty threshold (employees' average salaries currently "covering just 50% of the needs of the minimum consumption basket" of about 1 000 lei, wages having fallen by 80% since 1990 – as above, p. 4).

This situation, including increased unemployment, not only calls into question the realisation of many social and economic rights, such as welfare protection, medical care, education, and vocational training, but also results in the widespread emergence of transmittable diseases (tuberculosis, AIDS), and other social problems such as alcoholism, drug dependency, prostitution of minors and violence within families, not to mention an increase in serious crime. This has led to a fall in the birth rate and a rise in the death rate (38% and 15% respectively compared to the 1990 rates). Those who are most affected, clearly belong to the most vulnerable social groups, namely pensioners (approximately 750 000 persons, or 22% of the population), invalids and the disabled (approximately 150 000 people), women, children, prisoners and above all, of course, the unemployed (almost 20% of the population, according to the reports, from Mr Potinga and the Helsinki Committee) are also affected. Unemployment in Moldova also explains the high level of illegal emigration, particularly to Italy, by almost 700 000 Moldovans in recent years, which is another reason for the official fall in population. (On the other hand, Moldovan expatriates, who account for a fifth of the adult population, have already sent back US\$56.1 million in the first half of this year, according to published data from the Moldovan National Bank, thus enabling their families, who stayed in Moldova to survive).

Given this situation, it is hardly surprising that among the complaints sent to the Moldovan Centre for Human Rights, almost 70% (from a total of 11368 in 1999 – 990 of which are from Chişinău) were from people belonging to particularly vulnerable social groups (pensioners, prisoners, invalids, unemployed people) and that almost 80% of all plaintiffs allege that there had been violations of their rights to social guarantees, property and free access to justice (as above, pp. 10-12).

According to certain specialists on Moldovan life, the Moldovan “parallel economy” accounts for more than 80% of its official GNP; if the Moldovan government were to succeed in taxing the parallel economy as well as all goods transiting fraudulently between Moldova and Transnistria and/or exported by the latter under the label “Moldova-Transnistria”, such as the steel products exported by Transnistria to the United States, it would obtain well over a billion US dollars additional income. This is more than what is needed to pay off all outstanding salaries and pensions in one fell swoop. I hesitate to endorse this advice for remedying the Moldovan state’s lack of resources – especially since on 19 October 2000 (during my visit), the Moldovan Parliament finally adopted (by 54 votes to 36) legislation on the privatisation of certain sectors of the tobacco and wine industries, which will enable the IMF and the World Bank to re-examine during these days, the question of granting Moldova certain credits that had been previously blocked awaiting these privatisations.

Regardless of this purely financial aspect, I believe it is especially appropriate to recall in this case the opinion expressed on this matter by Mr Potinga, Parliamentary Advocate, in his report to the Moldovan Parliament. I quote in its English translation "... many of the existent problems in this area could be resolved by the local public administration. Moreover, a number of the rights and freedoms would not be violated if the legal illiteracy did not predominate... (that is, through lack of knowledge of both national and international law)... If we add to this indifference, delays in examining complaints and bureaucracy, then it is easy to understand the reason why tens of thousands of citizens annually spend months visiting different institutions in Chişinău, but even here they are confronted with the same indifference, bureaucracy and incompetence" (as above, p. 8, in fine).

Since my meeting with about twenty representatives of Moldovan NGOs took place after the meetings with the Moldovan authorities, I was unable to verify officially some of the allegations made by the former group. These included claims that: NGOs which are too critical of the executive are likely to suffer all sorts of administrative harassment; that a flourishing trade in human organs is taking advantage of the abject misery of some Moldovan citizens; or that compulsory work by prisoners, particularly those institutionalised for alcoholism under the supervision of the Ministry of Health, is underpaid and exploited to the extent that it constitutes forced labour. To a large extent, the complaints raised by these NGO representatives referred to problems already highlighted by the report which Mr Potinga gave me shortly after my arrival in Chişinău (*supra*), particularly the circumstances faced by elderly women, the situation of battered wives, the fatal consequences of the limitations on abortion, the lack of facilities for deaf children, but also the lack of information, structures and assistance for young people, the socially deprived and those likely to suffer deprivation.

On this occasion, the representative for the Moldovan Helsinki Committee for Human Rights described the interdependence between respect for various human rights in Moldova as follows: "Since the overthrow of the previous regime and particularly since Moldova joined the Council of Europe, people have gained as regards civil and political rights, but they have lost as regards economic and social rights in the wake of the ongoing economic and financial crisis. Given that without enjoying a minimum level of economic and social rights it is impossible to enjoy any civil and political rights, and since people no longer have the right to this essential minimum, they have now lost everything..." In support of this view, the consultant to both the Helsinki Committee and the Resource Centre of Moldovan Human Rights NGOs handed over, *inter alia*, two very detailed reports, copies of which will be sent to interested departments within the Secretariat.

One of these reports, apparently co-written by Mr Ostaf, Moldovan Ombudsman for National Minorities, concerns the implementation in

Moldova (including Transnistria) of the Framework Convention for the Protection of National Minorities (report drawn up in application of Article 25, paragraph 1 of this convention). The other report, prepared by the Helsinki Committee, concerns respect for human rights in Moldova in 1999 and provides an exhaustive analysis of whether and to what extent Moldova has fulfilled the obligations entered into prior to its accession to the Council of Europe, recent legislative developments in this connection and specific problems which raise the issue of whether current Moldovan regulations are compatible with the European standards applicable in this field.

I will return to some of these problems below, particularly those that touch on the application of Articles 5 and 6 of the European Convention for Human Rights. However, it should already be noted that, according to the above-mentioned report, there exists a whole range of threats to civil and political rights in Moldova, including freedom of expression, the right to respect for private life, freedom of religion and freedom of assembly, which have no connection with the lack of financial resources for guaranteeing the enjoyment of certain social rights, such as the right to health protection.

Thus, to sum up my evaluation of the general situation regarding respect for human rights in Moldova, it is clear that, in connection with accession to the Council of Europe, the Moldovan authorities (clearly desiring political integration of their country – which is economically highly dependent on its agricultural exports to the Russian Federation – within western Europe) continued to bring their legislation and national practice into line with the requirements of the relevant European rules. However, it is equally clear that several draft legislative reforms, promised as part of Moldova's international commitments, particularly relating to the Council of Europe, have still to be introduced or are to some extent delayed in parliament, which, indeed, is openly in crisis with the executive. Implementation of the legislative reforms already adopted with regard to human rights protection is taking place relatively slowly. This is partly due to the purely technical difficulties inherent in the transition from one legal system to another and the impossibility, especially for civil servants, to change mentalities and approaches from one day to the next. It is also partly due to a shortage of the necessary public funding and staff, since certain reforms, such as that of the justice system and of public administration, require considerable financial and human resources.

Lack of human and financial resources is often the reason for failure to respect a variety of economic and social rights; in their turn, the absence of the enjoyment of these rights, together with the lack of public funding, make it impossible to enjoy fully certain cultural rights, such as the right to education, including language training, and certain political and civil rights, in particular the right of access to justice and to a fair trial (for example, lack of qualified interpreters and officially assigned defence lawyers). Nevertheless, the enjoyment of several civil and political rights, such as freedom of religion

and freedom of expression (see below), is unduly restricted by considerations that cannot be justified by Moldova's current unstable economic and financial situation. The relevant Moldovan authorities would therefore be well advised to focus their efforts on achieving forward-looking reform in these areas in particular.

b. Specific problems with regard to observance of human rights in Moldova

While I am aware that certain problems regarding human rights protection in Moldova have already been examined by either the Committee of Ministers, the Parliamentary Assembly or the Congress of Local and Regional Authorities of Europe during their respective monitoring procedures, I must return, if only in passing, to those problems that I consider to be the most worrying at present. At the same time, I shall deliberately leave aside some other problems that seem sufficiently well known, are less urgent, or that are being settled by one means or another. By this I include such things as the restrictions on religious freedom (the case on the refusal to register the "Metropolitan of Bessarabia" has been submitted to the ECHR); restrictions on freedom of expression, particularly with regard to the press and political parties, arising from the threat of criminal proceedings for defamation, when the information provided cannot be proved to be 100% accurate; the obligation imposed on public and private broadcasters to broadcast in the official language for at least 65% of their total broadcasting time for their own broadcasts and programmes, except in territories "compactly populated by the ethnic minorities", opening the door to arbitrary interventions and sanctions by the Co-ordinating Audiovisual Council, in so far as the criteria and delimitations of these territories are not clearly defined; restrictions on advertising in Russian without translation into Moldovan, even where potential clients are more likely to understand Russian than Moldovan; protection of the right to private life and the secrecy of personal correspondence, given that the legislation does not sufficiently limit the possibilities for derogation in the interests of public order and for the prevention of particularly serious offences, – in particular grants excessive powers to the security and intelligence services which are not subject to judicial supervision (this is also valid with regard to application of the law on operative-search activities); the arbitrary treatment of asylum seekers, refugees, displaced persons and migrants (in the absence of national legislation based on the relevant international texts) and the failure to respect certain human rights, particularly those of military recruits, in the armed forces (see Moldovan Helsinki Committee for Human Rights, 1999 Report, pp. 18-21 ff). Notwithstanding all these problems, which should be resolved sooner or later, and for which the solution, or at least much of it, does not in my opinion really depend on the availability of significant financial resources, the problems briefly explained below are those which I believe to be the most serious at present with regard to respect for human rights in Moldova.

Problems concerning the police, and the administration of justice

During my meetings with the Moldovan authorities, notably with Ms Sterbet, Minister of Justice, and in particular with Mr Turcan, Minister of the Interior, I told them about information I had received to the effect that a substantial proportion of the Moldovan police force was unofficially living from the profits of corruption. This was said to date back to a time when, owing to non-payment of their salaries, the police had begun to be supported, at a rate of around US\$100 per month, by all businesses, shops and individuals who were in need of their services or offices. Be that as it may, this corruption is allegedly continuing today, due to the fact that, objectively speaking, the police cannot survive on their monthly salaries (paid with arrears of “only” 3 months, at a rate of 350 lei for a non-commissioned officer and 600 lei for a police officer), barely 50% of the official subsistence level per person per month (1 000 to 1 200 lei).

Mr Turcan was very aware of this state of affairs, since he had just met with the Budget Committee to discuss his ministry’s budget for 2001, which he had tried to have increased, apparently by arguing that armed men who were not paid enough to live honestly posed a serious danger to the society that they were expected to supervise and even protect. The total number of police was about 23 000, of whom 6 000 to 6 500 municipal police, 8 500 national police and 4 500 constables were paid from the state budget, the remainder being mainly collaborators of the Ministry of the Interior (a criminal investigation department does not yet exist in Moldova).

This suggests that the number of vulnerable people is high, and this explains why many NGO representatives whom we met spoke to me about the large number of flagrant human rights violations by police officers. These included: extortion through arbitrary fines (for example, for driving offences, unauthorised public demonstrations, and all sorts of business activities, – all perfectly legal *per se*); arbitrary arrest followed by ill-treatment, even torture; abuse of the power of arrest (for example, for vagrancy, resistance to the public authorities, or refusal or failure to produce valid identity papers); subsequent prolonged administrative detention (without judicial supervision and with barely any supervision by the prosecutor’s office, traditionally a “friend” of the police) in order to extort confessions for use in subsequent criminal proceedings or simply as a bargaining tool to extort money (for example, in the event of expiry of a residence permit); “cover” and even co-operation with criminal groups involved in smuggling, drug trafficking, prostitution, etc.

In this connection, while acknowledging (as did the Minister of Justice and even the Parliamentary Speaker) that a number of police excesses existed, as they do in all countries, Mr Turcan nonetheless drew attention to the considerable reduction in the number of complaints addressed to the relevant committee on this issue, set up within his own ministry (696 complaints in

1998, 279 in 1999 and only 117 to date for this year). At the same time he pointed out that the fact that the prosecutor's office responsible for police supervision had discarded more than half of the 470 complaints it had examined. In addition, he had ordered that a special telephone number be set up and publicised, allowing people to call him personally and free of charge every Saturday between 10 a.m. and 1 p.m. to inform him of any complaints regarding the behaviour of any person under his authority.

Whatever the relevance of these figures and the accuracy of certain details gathered both from the NGOs and from the Moldovan authorities concerned, it seems clear that the current situation with regard to the Moldovan police and the lack of adequate supervision thereof, particularly by the prosecutor's office, is a source of serious concern. Unless this situation is corrected rapidly, the very basis of democratic order in Moldova is likely to suffer, not to mention the repercussions of this state of affairs on the normal functioning of the administration of justice, including the judicial system. For instance, so long as the centres and procedures for "administrative" detention are not subject to judicial supervision (because they come under the jurisdiction of the Ministry of the Interior) and so long as this detention is abused on a massive scale, only reform of the use and supervision of legal detention will not suffice to ensure observance, for example, of the provisions of Article 5 of the ECHR, on the guarantees applicable to all persons deprived of their liberty. Equally, so long as illegally extracted confessions, (obtained during administrative detention through physical violence in the absence of *ex-officio* defence councils and, if necessary, qualified interpreters) may be used in subsequent criminal proceedings, – in reality without restrictions (according to the Helsinki Committee) – it seems rather academic to examine only whether, in the event of arrest in connection with criminal proceedings, a person in judicial detention is entitled to be assisted by a chosen or court-appointed lawyer and, if necessary, by an interpreter, in accordance with the requirements regarding fair trial as provided for by Article 6 of the ECHR (see, for instance, the above-mentioned report by the Helsinki Committee, pp. 25-27). Moreover, it seems not to be contested that criminal proceedings frequently exceed a reasonable length, that there is a distinct shortage of specialised criminal lawyers and that half the judgments passed in civil cases are simply not executed – which seems equally worrying in light of the criteria for a "state governed by the rule of law".

Prison conditions

In so far as I carried out only one brief visit to a Moldovan prison, namely Cricova, (which was, incidentally, well prepared by the relevant authorities), I am unable to draw general and definitive conclusions regarding the conditions of prisoners in Moldova in terms of respect for human rights. Moreover, it seems that the Directorate General of Legal Affairs already has much of the data required to that effect, in so far as it has been very involved for some

years in numerous co-operation programmes with the Moldovan prison administration (as part of the Adacs programme), particularly as regards staff training, management and improving the conditions of prisoners. Furthermore, having emphasised to the Minister of Justice, now responsible for prison administration, the value of publishing the then-still-confidential CPT report on its visits to prisons and places of detention in Moldova, I was informed prior to my departure that authorisation had been granted, in the interim, for publication of this report, thus enabling the specific opinion of this Committee's specialists on this matter to be known.

With regard to the statistics on the situation in prisons in Moldova at 1 October 2000 (which I obtained from Mr Troenco, Deputy Minister of Justice, on 31 October, being after my visit to Moldova), these coincide for the most part with the statistical data for 1998 and 1999 that I had already consulted (for example, PC-S-ST (99) 8 def., dated 12 October 1999, and PC-CP (2000) 2 def., dated 3 August 2000). In short, the total number of prisoners (9 847) seems to have fallen very slightly, but still represents a very high rate of detention in terms of the overall population (about 270 per 100 000). The percentage of women (about 400), minors (about 200) and foreigners (about 175) is surprisingly small, which is apparently also the case as regards the figures for pre-trial detention (approximately 500 to 700). Most prisoners (5 845) are detained in penal settlements called "colonies", including special institutions and hospitals. The 3 727 persons currently in prison are placed in regimes of varying degrees of severity, with more than 70% being detained in reinforced and severe regimes. Although the percentage of recidivists (about 40%) and individuals sentenced for particularly serious crimes (less than 50%) seems to correspond to the European averages (in so far as such comparisons are feasible), it nonetheless seems that the percentage of prisoners in Moldova serving sentences longer than three years (almost 80%) is particularly high – the majority of prisoners (74%) being aged between 22 and 40 years. The number of deaths in prison, which is also high, is allegedly partly due to the lack of medicines, particularly for the growing number of prisoners suffering from tuberculosis.

As Ms Serbet, Minister of Justice, confirmed, the Moldovan prison administration has been badly affected by the austerity measures adopted by the government in the wake of the country's economic crisis. According to our internal documentation, almost 15% of planned posts are in fact vacant due to a lack of funds. This would doubtless explain the relatively small number of wardens (about 1 200) in comparison with the total number of prisoners, but here it is nevertheless surprising that wardens account for only about 40% of the prison administration's staff, since an approximately equal number are assigned to management and administration tasks only.

If it is correct that the prison administration receives less than half the amount considered essential for carrying out its tasks, this, together with the

dilapidated state of the buildings, would also explain the prisoners' harsh living conditions, including the shortage of sufficient good-quality food, for which (according to the above-mentioned report by the Moldovan Helsinki Committee for Human Rights, p. 28), the state's contribution is 0.43 lei per person per day (approximately US\$ 1 per month). Be that as it may, while it has ceded prison administration to the Ministry of Justice, the Ministry of the Interior has retained some of the buildings and technical equipment, as well as responsibility for and supervision of armed guards outside prison centres, with responsibility for what goes on inside the latter now belonging to a very impoverished ministry.

While paying a rapid visit to some of the buildings in Cricova prison (428 prisoners, 30% of whom are foreigners), located half an hour from the centre of Moldova's capital, Chişinău, I stopped originally in two cells – for 8 and 20 prisoners respectively, – belonging to the general or "light" regime, then afterwards, in a cell with 34 prisoners detained under the "severe" regime. The complaints that I heard from the latter group, who were serving sentences of ten to twenty-five years, generally confirmed both the observations made by Mr Potinga (see above-mentioned report, pp. 21-23) and the allegations by those NGOs, such as the Helsinki Committee (above-mentioned report, pp. 28, 29). These observations and allegations are especially interested in the living conditions of Moldovan prisoners: lack of adequate food and drinks/drinking water the absence of running water, electricity, public telephones and, in winter, heating the dilapidated state of the sanitary facilities, lack of medicines and of effective free care in the event of illness, the absence of family and friends outside who could help provide for certain prisoners' essential needs, and the total absence of any possibility of prison work so as to earn money and buy what is missing. There were also complaints about the lack of follow-up to the complaints sent by various prisoners to the competent institutions outside the prison, such as the Moldovan Centre for Human Rights, the Prosecutor's Office, or even the European Court of Human Rights in Strasbourg. Since the Cricova prison had not paid its bills, it was effectively without electricity during my visit, which naturally reinforced the sinister and dilapidated aspect of this over-populated cell, visited in the late afternoon, and which seemed very worrying, especially from the perspective of this prison's internal security. I made a point of raising this issue at my press conference two hours later, recommending that the responsible Moldovan authorities immediately did everything possible to remedy this completely deplorable situation, which carried serious risks for both the staff and detainees of the prison.

Linguistic problems

Since the existence of certain problems arising, *inter alia*, from the imposition of a linguistic quota in the broadcasting field, has already been noted under the general monitoring of respect for freedom of expression and

information in Moldova, I would prefer not to dwell on specific details (see above, II.B, paragraph 1) I prefer instead to address more generally the use of, albeit discrimination against, minority languages in Moldova, in terms of the teaching of these languages in schools, their use in public or in dealings with public authorities and their use in private and business relationships. Here, I can only endorse – at least as a starting point – the following summary of the scope of European and international regulations in this field, by Mr Lazari, Moldovan Parliamentary Advocate: "... the main consequence of linguistic non-discrimination is the commitment that a policy of official or majority language would not imply interdiction of the use of other languages spoken on the territory of the respective state ..." (*Parliamentary Advocate Newsletter*, April-July 2000, No. 3, vol. 1, p. 4, paragraph 3, in fine). Indeed, to quote Mr Lazari again, "knowledge of the official language, even if it represents an additional difficulty for people speaking other native languages, is reasonable with the condition that the use of other languages is not entirely excluded" (as above, paragraph 3, in fine).

That said, it nevertheless remains difficult to evaluate the linguistic situation in Moldova as regards respect for this general principle, for several reasons. Firstly, the figures provided (for example, by Ms Stoianov, Director General, Department of National Minorities and Functioning of Languages of the Republic of Moldova) on the overall ethnic and linguistic composition of the Moldovan population are not really up to date, and are in any case contested with regard to the current situation in Transnistria (out of a total Moldovan population, estimated in 1995 at almost 4.5 million but which has since fallen by around 200 000 people, if not considerably more, the current ethno-linguistic composition would be equal to the one that was established by the last national population census in 1989, namely 64.5% Romanian, 13.8% Ukrainian, 13% Russian, 3.5% Gagauz, 2% Bulgarian, 3.2% others – Jews, Belarussians, Roma – not recognised as national minorities).

Secondly, (according to the report written *inter alia* by Mr Ostaf, national Ombudsman of Moldova for national minorities), the criteria and geographical boundaries of territories inhabited by a sufficiently large ethnic and linguistic minority (for example, certain urban agglomerations in the south and certain regions in northern Moldova), for making claims to a special linguistic regime, do not yet seem to be clearly established (except for the autonomous region of Gagauz Yeri, where almost 80% of the population is Gagauz, 170 000 people speaking Turkish; Taraclia Judit, where 65% of the population (or 20 000 people) are of Bulgarian origin and speak this language, and Transnistria, with a population of around 700 000 people, 40% Moldovan, 28% Ukrainian and 24% Russian, where the majority of the urban population is Russian-speaking and the majority in the countryside speak Moldovan or Ukrainian – see the above-cited report, Mr Ostaf, pp. 4, 6-7, 12). The situation is all the more complex in that, within a particular region, the majority language used in the cities (usually Russian) is often not the same

as the majority language used in the countryside (frequently Moldovan). In addition, to quote Mr Ostaf, "it is rather incorrect to speak of a Russian speaking minority either in rural or urban areas of Moldova, since almost 90% of Moldova's population speak Russian (...). It is though not true to say that the knowledge of Russian in Moldova's rural areas is comprehensive enough to be admissible for court proceedings, etc. (...) At the same time, the knowledge of Moldovan language among Gagauz, Russians, especially in urban areas, is very low. Ukrainians in rural areas, basically possess Moldovan passively, as well Bulgarians and some Gagauz in rural areas ..." (as above, p. 6).

Thirdly, despite many attempts to obtain and take in certain information provided in response to our repeated questions about the legal situation and especially about current practice both in Transnistria (*infra*) and the rest of Moldova, there remain many unanswered questions, particularly as regards the public authorities' attitude to "private" schools in which language teaching does not correspond to the "official rules" (that is, the procedures and criteria for the registration and authorisation of such schools, recognition of school diplomas awarded by them and, where relevant, "analogous" state subsidies for such schools).

For these different reasons, I am currently unable to give a definitive opinion on this question, although several aspects of Moldova's linguistic problems seem sufficiently clear for an evaluation to be made already with regard to respect for the relevant European standards in this area. In short, Moldova has opted for a single national language, Moldovan (which is virtually the same as Romanian) and its authorities are therefore following a policy of "forced" use of this language, in the sense that they are adopting a number of measures to rapidly establish the dominant position of the Moldovan language in public life, in a role that was previously occupied by Russian, which is now to be relegated to second or even third place. Implementation of this policy is seemingly giving rise to many problems and difficulties, exacerbated by the fact that, even among the ethnic Moldovan adult population, educated in Russian-medium schools in the past, there are still not enough qualified people to teach Moldovan to other adults who are not sufficiently fluent. This is also true with regard to the teaching of Moldovan (a compulsory subject from school-entry age) in schools where teaching is in a native language other than Moldovan. There is also a shortage of qualified interpreters for liaison between those whose Moldovan is not fluent and the public authorities (which are supposed to use Moldovan, knowledge of which is now a precondition for recruitment to the civil service) and especially, it seems in the field of justice. The frequently-heard argument that this shortage of teachers and interpreters speaking Moldovan is due to the unattractive level of the salaries proposed, clearly does not change anything in the fact that the current linguistic legislation in Moldova cannot be applied in practice per se without numerous derogations, unless one accepts certain abuses.

Alongside the mainly practical problems arising from the accelerated teaching of Moldovan to minorities and its intensified public use as the only official language, I believe there are certain problems with regard to the scope of the recognised right for minorities to have schools that teach in their respective languages. There is nothing objectionable in a policy to improve teaching and knowledge of the official language in both primary and secondary schools where teaching is carried out in a native language other than Moldovan. However, I cannot endorse the suggestions (formulated by Mr Lazari, above-mentioned report, p. 5) that training in a minority language is no longer justified beyond secondary school level, on the grounds that post-secondary education is mainly aimed at preparing pupils and students for the labour market, which demands a knowledge of Moldavian. If, for example, in a town or region with a large majority of Russian speakers, Russian-speaking secondary pupils wished to continue their education in a technical college where teaching was in Russian, I personally can see no legitimate reason to refuse them, the only issue being the funding and status of this kind of vocational college. Equally, by dint of no longer permitting local training in the “minority” language, for many specialists and professionals including teachers, the minorities in question will sooner or later be deprived of the opportunity to learn their language or to use it in a practical manner in daily life.

It seems that such a situation exists indeed in Transnistria, which, while officially recognising three national languages, namely Russian, Ukrainian and Moldovan, actually follows a policy of forced education in, and the forced use of Russian, with Moldovan being officially taught only in the Cyrillic script (the Russian alphabet). As a result, the Moldovan University in Tiraspol, has been forced to relocate to the territory controlled by the Republic of Moldova’s authorities, which means that Moldovan-speaking secondary pupils from Transnistria who wish their studies to be carried out via Latin-based Moldovan are obliged to leave their own region for this purpose. In addition, as regards the 50 000 pupils in Transnistria, 10 000 are studying Moldovan using textbooks in the Cyrillic script that date back to the Soviet era: only about 5 000 pupils are able to attend the seven or so schools where Moldovan is officially taught in the Latin script and which are funded for this purpose by the relevant Moldovan authorities. However, these schools, their teachers and pupils, and even the pupils’ parents are allegedly subject to constant harassment and administrative red tape by the Transnistrian authorities, who insist on the legal requirement that all “official” schools teach only in the Cyrillic script, and view any other schools as “private” and therefore subject to a special procedure for registration and authorisation of functioning granted following certain professional and administrative checks (see below).

In conclusion, the implementation in Transnistria of a policy to favour Russian and place obstacles in the path of learning Moldovan in the Latin

script seems at first glance harsher and more discriminatory than the implementation in the rest of Moldova of the policy to establish a predominant role for the sole national language, namely Moldovan. Be that as it may, it seems to me that the Moldovan Parliament would be well advised to adopt as rapidly as possible the “organic law” (revised) on the functioning of languages on the territory of the Republic of Moldova, as provided for in Article 13.4 of the Moldovan Constitution, basing itself on Article 4.2 of the constitution, which provides for the supremacy of international texts in the field of human rights in the event of conflict with Moldovan internal law, and to establish a reasonable balance in this revised law between divergent linguistic interests, whilst also taking account of certain “on-the-ground realities”.

c. Situation with regard to human rights in Transnistria

As already noted, all my Moldovan interlocutors laid great emphasis during the meetings in Chişinău on the alarming situation with regard to a lack of respect for human rights in Transnistria. The voluminous amount of documentation I was given on this issue, aims indeed at justifying such a conclusion (particularly as regards respect for: the right to life and to physical and mental integrity; the right to a fair trial; the right to elect and be elected; freedom of opinion, expression and information; religious freedom; freedom of movement; freedom of association; the right to equal employment opportunities; the right to private property; the right to education; the problem of compulsory military service for all permanent residents of Transnistria). In this connection, it is appropriate to recall that, when depositing its instrument of ratification of the ECHR on 12 September 1997, Moldova formulated a reservation in connection with Article 1 of the ECHR, stating that the Republic of Moldova “will be unable to guarantee compliance with the provisions of the Convention in respect of omissions and acts committed by the organs of the self-proclaimed ‘Transnistrian republic’ within the territory actually controlled by such organs, until the conflict in the region is finally settled”.

This statement notwithstanding, the “Transnistrian” Supreme Soviet decided on 22 September 1992 that some of the most important international human rights instruments, including the ECHR, were also in force in Transnistria: accordingly, the Transnistrian authorities’ obligation to respect certain international human rights standards in their dealings with the persons under their jurisdiction is not open to dispute. However, the question of how such an obligation can currently be imposed and how human rights violations attributable to the Transnistrian authorities can eventually be sanctioned remains unanswered. My intention in visiting Transnistria (on 18 and 19 October 2000) was obviously to assess personally how human rights were being respected on the ground.

Unfortunately, I heard many clichés during my meetings in Tiraspol with representatives of both public authorities and local NGOs (see the appended programme). Since my request to visit a remand centre, or to see the conditions in the prison where Mr Ilascu is detained, was rejected (on the ground that it proved impossible to obtain the necessary authorisation in time from the justice authorities, to whom the internal affairs authorities had just handed over responsibility for prison management), I am not really in a position to assess whether, and to what extent, there has been progress in the area of respect for human rights in Transnistria. The fact remains that if the Tiraspol authorities wish to be viewed (much as any other public administration) as being concerned about the question whether international standards are being complied with in their relations with their subjects, they would be well advised to submit to the same type of investigation and supervision in this matter as do the authorities in the Republic of Moldova.

My visit to School No. 20 in Tiraspol – one of the seven atypical schools teaching Moldovan in the Latin script – was the exception to the rule. As usual, I was accompanied by the OSCE Representative. In addition, a representative from the Transnistrian Education Ministry came, on his own initiative, to my meetings with the school's management. Based on what I discovered on this occasion, or the impressive reference documents previously supplied by the "Tiraspol" authorities (Atlas, Dniester Moldovan Republic, 2000), the current ethnic-linguistic composition of Transnistria's population (a total of 660 000 people, on a territory of approximately 4 000 square kilometres) is as follows: about 63% Russian-speakers (meaning Russians, Ukrainians, Bulgarians and Polish), 33% Moldovan, 2% Turkish-speaking Gagauz, and 2% others. 69% of the population lives in towns: 168 000 in Tiraspol, and 121 000 in Bendery, the neighbouring town. According to the headmistress of the school which we visited (approximately 780 pupils, in a dilapidated rented building) only 17% of Tiraspol's population speak Moldovan; there is a sufficient number of schools (perhaps 33) for children of Moldovan origin, but their native language (Moldovan), one of the three official languages, is taught via the Cyrillic script, using out-of-date Russian textbooks. Schools which did not conform to this rule, using the Latin script (as in Moldova) and other textbooks, were blacklisted (see above, II.B, paragraphs 10 and 13 – in fine). This means not only that such schools, viewed as private, must receive external funding (in this case, from the Moldovan Education Ministry), but also that they are subject to discriminatory and arbitrary local rules with regard to their material survival and short-term operations (after registration, accreditation and receipt of a teaching permit for the proposed curriculum). The representative of the Transnistrian Education Ministry then informed me that, under the relevant law, dated 16 May 1999, almost all of these problems would be null and void – and therefore settled – if the relevant Moldovan authorities were to sign an agreement on this matter with the relevant Transnistrian authorities, as provided for by the above law. However, the

Moldovan authorities were refusing to do this, for fear that signature of such an agreement would contribute to recognition of Transnistrian national sovereignty. The children's interests or rights were frequently invoked, but count for nothing in the political stakes – a statement as saddening as the general atmosphere in this school, forced into illegality.

3. Conclusions and recommendations

In so far as I have already drawn several provisional conclusions and proposed certain recommendations in the course of this report, there is no need to repeat them. In summary, the continued conflict, in the eastern region (Transnistria) of the Republic of Moldova, is having very harmful effects on respect for human rights on both banks of the Dniester, with the left bank currently eluding any mandatory supervision in this regard by the Council of Europe. As regards the right bank, namely the Republic of Moldova, which is subject to this supervision of its own accord, the greatest need is to encourage the relevant Moldovan authorities to pursue their legislative work, beginning with clearer and more realistic legislation on the rights of persons belonging to national minorities and laws on the status of asylum seekers, refugees and displaced persons – but also laws on the administration of justice and the role and obligations of members of the police forces. At the same time, the current lack of public finances and personnel in Moldova cannot be used to cancel out or lessen the obligation on the Moldovan authorities to do everything in their power to improve respect for human rights in Moldova, in line with the relevant European and international standards.

Visit to the Basque country, Spain¹

5 to 8 February 2001

1. Introduction

From 5 to 8 February 2001, on my own initiative, I visited Spain, and in particular Madrid and the Basque Autonomous Community. My visit was prompted by the continuing violations of human rights in this Autonomous Community caused by terrorist action.

In recent months, I have received several complaints concerning the sufferings of citizens throughout Spain, but particularly the residents of the Basque Autonomous Community, as a result of threats and terrorist action, and the urban violence termed *kale borroka*. This situation has deteriorated to such a point that it affects not only the fundamental rights of individuals but also the free exercise of certain civil and political rights which are the basis and foundation of every democracy, as shall be developed below.

As Commissioner for Human Rights, one of my main tasks is to monitor the effective respect and full enjoyment of human rights in member states. I cannot, therefore, ignore such a situation, regardless of the country concerned, so long as that country is a member of the Council of Europe. This is not only a necessary gesture of solidarity with those who, in one way or another, are victims of human rights violations, but also essential to the exercise of my statutory powers which are inescapable obligations, contributing to the defence of democracy, freedom and the rule of law.

It is therefore clear that the exclusive aim of the visit should under no circumstances be misinterpreted as a form of interventionism or political mediation, which would be inappropriate in a member state which has a

1. Report prepared on 9 March 2000.

fully democratic system and which has appropriate institutional mechanisms to determine its political life in peace and freedom.

For this reason, I began by making the appropriate contacts at the Ministry of Foreign Affairs in order to prepare this visit and, once the dates had been decided upon, to draw up, with their help, the schedule of meetings. I would like to record my thanks to the Foreign Ministry for its co-operation. All my requests were taken fully into account and I was provided with the necessary logistical and security support throughout my visit. I would also like to express my particular thanks to Ambassador Kirkpatrick for his invaluable assistance in preparing the trip and for his presence in Madrid during the official talks.

During the visit which took place on 5 and 8 February in Madrid and on 6 and 7 February in the Basque Autonomous Community (the provinces of Guipúzcoa, Vizcaya and Álava), I held talks with the national authorities (the Minister for Foreign Affairs and the Minister for Internal Affairs, the speaker of the Congress of Deputies and the President of the General Council of the Judiciary) and the authorities of the Autonomous Community (the President of the Basque Government, the regional Ministers for Internal Affairs, Culture and Justice), several organisations representing the victims of terrorism and other organisations grouping together citizens whose sole aim is to appeal for peace and denounce terrorism. I also met with organisations representing the families of those imprisoned for terrorist offences.

I was able to speak at length with: the largest trade union in the Basque autonomous police force; representatives of political parties; at their request, the spokespersons of parliamentary groups in both the Congress of Deputies and the Basque parliament; the Bishop of San Sebastián; other entities and persons too numerous to mention here (but who are mentioned in the programme attached to this report).

The meeting with the President of the Basque University was of particular importance because many of his professors and lecturers are subjected to special persecution in the form of threats, physical aggression and even the planting of bombs. In certain cases, this situation has led them to temporarily give up teaching; others have been obliged to move away from the Basque country in order to save their lives.

I was also able to visit, albeit quickly, Basauri prison in Bilbao and to speak with the Ararteko (Ombudsman) of the Basque country, and with the media. This provided me with direct, and I think fairly complete, information on the situation as experienced in this Autonomous Community.

During the visit I was accompanied by Mr Boedeker, whom I wish to thank for his invaluable collaboration.

2. General approach

Having listened during my first evening in Bilbao to a group of people from various backgrounds (university professors, judges, journalists, doctors, municipal councillors, mayors, etc.) and with different ideologies, I was able to become aware of the enormous tension exerted on those who carry out an elective mandate, those who exercise a judicial function, and those who, in private (or even in public) have adopted positions which are favourable to the constitutional order in force, as well as those who have expressed in speech or in writing opinions critical of nationalism or opposed to the terrorist group ETA and especially, of course, those who belong to the state security forces.

All these people agree that the actions taken by the terrorist group ETA (murders, hostage-taking, extortion of shopkeepers and companies) were not the only reason for the human rights violations experienced by a large proportion of the Basque population (more specifically those who do not consider themselves as militant nationalists, that is more than 50% of the population of the Basque country). They said that the violence known as *kale borroka* which is carried out by groups of young people in the streets, was a decisive factor in maintaining the climate of terror to which the population, and in particular academics, officials of non-nationalist parties, civil servants and the state security forces, were subjected. According to the people with whom I spoke, it should also be borne in mind that these acts of aggression are carried out not only against the people accused of being "pro-Spain" or in favour of the current constitution, but also against their families and property. They reported that this violence took place in a climate of almost total impunity, because of the passiveness of the autonomous Basque police force (the Ertzaintza) in containing effectively the action of these groups and carrying out the necessary investigations.

It is most revealing that the majority of people who attended this dinner, a dozen individuals or so, were accompanied by a police escort. Some of them said that they had had to move house in recent months; others had been obliged to stop their lectures at the university. Some of their friends who had been subjected to particular threats had been obliged to move abroad to save their lives. Although nobody mentioned it explicitly, it was obvious that it was essential to keep their names secret.

This dramatic account was rendered by citizens of an Autonomous Community, with a population of 2 098 628, governed by a statute granting autonomy (Law 3/1979 of 18 December). This statute provides for autonomous governmental institutions (the government and parliament of the Autonomous Community), which have a very broad range of exclusive powers (education, health, transport, roads, industry, culture and numerous others which are recognised in the constitution and statute, without forgetting the powers transferred in recent years by means of over ninety decrees).

Moreover, this Autonomous Community, under an agreement with the central government, is authorised to levy its own taxes, have its own Basque autonomous police force, set up to cover all aspects of police work, and Basque public radio and television stations broadcasting in the Basque language, which has the status of an official language. Education is through the medium of Basque and Spanish, although in certain schools, including those which are subsidised, teaching takes place primarily through the medium of Basque. The net result is that this Autonomous Community today has more powers than a German *Land*, to quote just one example of an advanced federal state.

It should also be noted that well-known Basque nationalist militants, who have had important public posts or who are currently occupying such posts, for example the Mayor of Bilbao or the Speaker of the Basque parliament, spoke to me with great clarity of their deep concern about the violence perpetrated in the Basque country and the consequences of such violence. The president of the PNV (Partido Nacionalista Vasco – Basque Nationalist Party) categorically denied the existence of any pact with ETA.

3. On the practical causes of human rights violations in the Basque country

Although it is impossible in this report to deal in depth with all the causes which have led to the current situation of violence prevailing in the Basque country, I think, nevertheless, that it is possible at this stage to identify two major causes which have prompted the current spate of violations of the human rights of the Basque population. These are the direct action taken by the terrorist group ETA and the urban violence carried out by groups of people close to ETA, referred to as *kale borroka*.

There is no doubt that the action taken by ETA is a direct interference with the most fundamental of human rights: the right to life; the right to the freedom and safety of individuals (the criminal kidnappings are pure acts of torture for the victims, their families and their friends); freedom of thought; assembly and association. The attacks on non-nationalist politicians and journalists have made it extremely difficult for those who are not nationalists to carry out political and party action or exercise the right to information, to such an extent that personal police protection is required for journalists under threat in order for them to be able to carry out their profession and for the municipal councillors and members of parliament concerned to fulfil their representative roles.

To give an idea of the extent of ETA terrorist action, according to official statistics, since 1968 and up to late 2000, this organisation has carried out 782 murders and assassinations, 709 of which took place after the adoption of the 1978 constitution (the Association of Victims of Terrorism – Covite – puts

this figure at 719 up to 1998, in the context of 2 789 attacks causing 1 867 casualties), that is since the democratic regime has been re-established, the Autonomous Communities instituted, and, of course, after the amnesty for all political crimes decreed at the advent of the new stage in Spanish democracy.

However, since the beginning of 2000 (according to figures relating to the period from 21 January 2000 to 26 January 2001 supplied by the office of the Regional Minister for Internal Affairs of the Basque Government) the action taken by ETA has, with twenty-five murders (today this has risen to twenty-seven), become more targeted, focusing on elected representatives (municipal councillors and members of parliament of diverse political parties, in particular the People's Party and the Socialist Party), journalists, university professors, newspaper editors, heads of companies who refuse to pay the money demanded of them under threat of death, and of course military personnel, state security forces, and often the Basque autonomous police itself.

Following the murder of José Luis López de Lacalle, a journalist on the daily newspaper *El Mundo*, the organisation "Reporters sans Frontières" carried out a study which stated that in the year 2000, in addition to this murder, threats and attacks had been carried out against nine other journalists throughout Spain and more than 10 newspapers and radio stations. The cruellest and most serious of these was the failed attack against Aurora Intxausti (a journalist with *El País*) and Juan Paloma (of the television channel Antena 3) when a bomb was planted outside their front door. Fortunately, it failed to explode as they were leaving their home to take their 1-year-old son to the nursery.

ETA action has also been directed against academics, professors and lecturers at the Basque University who are considered to be pro-Spanish, even though they have been Basque for several generations, simply because they do not support the radical nationalist and pro-independence (or, according to the term used in certain circles, "pro-sovereignty") ideas. The President of the Basque University, a person of the utmost serenity, despite being under a death threat, acknowledged the difficulty of the situation, particularly after an incident where a bomb had been planted in the lift of the faculty where Professor Edurne Iriarte gives her lectures. Her life was saved thanks to the perceptiveness of her police escort. Following this, other lecturers, also under threat, chose to stop teaching and others have even gone to foreign universities.

When I asked how many lecturers were in this situation and protected by police escorts, he asked me not to publish the figures he gave me. Naturally, I respect this request, understanding perfectly why it was made, although I do wish to underline the profound distress that I perceived when becoming aware of the very harsh reality which is a daily feature of the lives of students, professors and academics who continue to defend their freedom of

thought, despite running this personal risk. I think that the recent act of solidarity by the fifty-two presidents belonging to the Conference of Presidents of Spanish Universities towards their colleagues in the Basque University is also a clear commitment towards defending freedom.

During my talks with officials of both the central state and the autonomous administration, I encountered a complete rejection and categorical condemnation of this terrorist action which is regarded as incomprehensible in a country where all freedoms, particularly the freedom of thought and association, are upheld and defended by the public authorities. In the Basque country, amongst the seven parties represented in parliament, one – Euskal Herritarrok – widely regarded as ETA's political arm – advocates independence for what it calls *Euskal Herria* (a hypothetical territorial entity comprising the whole of the Basque country, the Autonomous Community of Navarra and the French Basque provinces). Its officials and elected representatives (with the very rare individual exception) never condemn any terrorist act, but rather endorse the justification for terrorist action, which they view in terms of a political conflict between the Spanish state and *Euskal Herria*. This party puts itself forward at elections and has representatives both in the Congress of Deputies and in the Basque Parliament, although they have refused to attend the sessions of the legislative chambers.

There is, therefore, no doubt that this terrorist action by ETA is directly and systematically the reason behind the violation of the fundamental rights of the direct victims of its crimes, and of all others who, given the prevailing climate of terror, feel restricted in the exercise of their civil and political rights as citizens of a genuine democracy when they choose not to align themselves with terrorist options. To sum up, ETA deliberately turns to crime or individual extortion, in an attempt to create a general climate of fear, in which part of the population, which is not nationalist, and in particular its representative and academic components, feel threatened to such an extent that they give up exercising their rights and leave the Basque country, or have to rely on police protection with all the difficulties this implies for carrying out political action, not to mention the personal and family anxiety this causes. Nor should it be forgotten that voting for non-nationalist options has become particularly perilous in the small towns where radical nationalists are in control of the municipalities. From this point of view, it is clear that terrorist action is directly targeted against the functioning of the democratic system and citizens' freedom.

However, it is today not enough to lay the blame for the many human rights violations in the Basque country solely at the feet of ETA and its direct action.

Having listened to numerous people, organisations and representatives of the main trade union of the autonomous Basque police force, there is no doubt that the so-called *kale borroka* has also become a direct cause of human rights violations in the Basque country.

Violence in the streets, which ranges from attacks on shops, the burning of buses and street furniture, attacks against municipal councillors, and members of parliament, journalists and their families, (including the putting up in the streets of posters with the names of people denounced as pro-Spain and who, in many cases, have subsequently become victims of attacks, in certain cases fatal), is in itself a key factor for the justified feeling of insecurity in which many directly affected citizens live. (According to local estimates approximately 3 000 people are specifically targeted in this way). In all cases, this violence is also directly responsible for a part of the community being unable to exercise freely its civil and political rights.

The association *Gesto por la Paz* believes that the *kale borroka* violence has moved on from a diffuse phase to a "clear and premeditated strategy of attacks against and persecution of certain people", targeted because of their ideology or the fact that they represent citizens. Consequently, "there is no doubt that we are faced with genuine attacks against political freedom and democracy itself, because it is an attempt to restrict the expression of thought and political action of a certain sector of the community". For that reason, this association describes the *kale borroka* quite simply as "violence of persecution".

The Catholic Church itself, through the very respected voice of Bishop Juan María Uriarte, has warned that "there is a voice that people are trying to stifle and silence through threats and murder. It is the most serious attack possible against the freedom of speech. From all points of view, there can never be any justification for attempting to stifle someone's voice, even if what they say is extreme and prejudiced, by physically eliminating the speaker" (pastoral letter, *Renovarse y pacificar, adviento 2000*, p. 38).

I was thus able to see for myself the reality of urban violence perpetrated for political reasons, to persecute those who are not nationalists. Nobody would now deny that this violence occurs, with the human rights of numerous Basque citizens being flouted on a daily basis. While this in itself is very serious, there is another fact that seems even more serious: I heard intellectuals, teachers, journalists, non-governmental organisations which defend human rights and others which represent victims of terrorism, municipal councillors and other elected representatives from various parties alleging that such acts of violence go virtually unpunished, as the autonomous Basque police force usually takes action belatedly or intervenes only when the violence has already finished. They allegedly make virtually no significant arrests and carry out no thorough investigations into the origins, membership and operation of these violent groups, which clearly complement the activities of ETA, which seems to control or inspire their violence.

It is claimed that this police passivity has worsened during the latest truce declared by ETA, following the famous Lizarra accords or declaration, to which the democratic nationalist parties, together with the radicals and

other nationalist groups, subscribed, some of which have close links with ETA.

The authorities responsible, namely the Regional Minister for Internal Affairs and the *Lehendakari*, and the President of the Basque Government, when I asked them about this, vehemently denied this allegation, reaffirming the commitment of the Basque police to the defence of freedoms.

According to official figures, this self-contained autonomous police force has 7 182 members, of whom 4 323 are engaged in prevention, 1 540 in investigation, 232 in information activities, 71 in ordnance disposal, 524 in personal protection (meaning providing escorts for persons under threat) and 429 in various other duties.

The difficulty of police activity is clear from the figures quoted for 1999 which saw 5 024 demonstrations, and 14 507 during the year 2000. Where incidents of urban violence are concerned, despite the difficulty of drawing up completely reliable statistics, the office of the Regional Minister for Internal Affairs nevertheless acknowledged that some 774 had occurred in 1999, and approximately 893 in 2000. In connection with these *kale borroka* acts, the Ertzainta had detained 97 persons (the municipal police force had detained another 3 and the national police force, which answers to central government, another 18). The office of the Regional Minister for Internal Affairs states that, if “to that number of detentions for sabotage we add those effected by the Ertzainta for other acts covered by the concept of urban violence (threats, joint action, public order offences), the total rises to 203”. Analysis of these latter figures in their context, however, reveals that there are arrests for acts of urban violence not necessarily linked to *kale borroka*.

At all events, it is significant that it is Baltasar Garzon, judge at the National Court, who, with the support of the national police force, conducted the latest operation (on 6 March 2001) to arrest the leaders and officials of a youth organisation known as *Haika*, suspected of instigating or perpetrating urban violence and of acting as a “nursery” for future ETA terrorists.

Erne, the trade union which represents the majority of Ertzainta members, remains highly critical of the force’s leaders, whom it accuses of failing to order action against *kale borroka*, and asserts that most members of the force are engaged in providing personal protection as escorts, while another 3 500 provide on-the-spot protection or give support to their personal protection colleagues; as they also deal with traffic and protection of the public in general, practically no time is spent on investigative action. The union representatives claim to be demoralised by receiving instructions (never in writing) not to play an active part in the action taken against *kale borroka* and say that many members of the force have been disheartened by hearing their

superiors saying, over the past few months, that the important thing is to negotiate. They cite as an example of police inaction the fact that, although an excellent mobile brigade exists with specific training to deal with urban violence, it is allowed to intervene only on direct orders from the Deputy Regional Minister for Internal Affairs, inevitably delaying its action.

The union, in a document addressed specifically to the Commissioner for Human Rights, states that, “in our opinion, the human rights situation in the Basque country is deteriorating considerably”, and that “the Basque institutions’ performance of their task of safeguarding freedoms in the Basque country and protecting persons and property in Basque territory has clearly been ineffective”.

These statements coincide with a complaint made to me by the President of the Basque University, who made a telephone call when violent incidents occurred on the university campus to request Ertzainta intervention. He was told to fax his request, and was then forced to send his fax again after being told that it was “not clearly legible”. When the police arrived, of course, only traces of the violence that had occurred remained.

Although it is very difficult to prove that the lack of police reaction to *kale borroka* activities is premeditated, it is nonetheless true that the complaints that I have received, especially those from persons who have suffered from their effects and those from the Ertzainta’s trade union itself, not forgetting the very low numbers of arrests in proportion to the numbers of public acts of violence, highlight an abnormal failure of the autonomous Basque police force to suppress and investigate such offences, which so seriously impinge on democratic life in the Autonomous Community.

This situation needs to be studied seriously as a matter of urgency by those in charge of the security forces concerned, so that the necessary steps are immediately taken to show the threatened population that the autonomous Basque police is still the efficient force committed to combating this kind of crime that they were – as those in charge of them acknowledge – in the past.

In the light of what has been said above, it is clear that the Basque Government bears some responsibility for the failure to provide sufficient and effective protection of citizens’ fundamental rights, but it must not be forgotten either that, in pursuance of Article 1 of the ECHR, the Spanish state is responsible for securing “to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention”, so it is also under an obligation to adopt or strengthen the measures needed to guarantee the fundamental rights of all Basque citizens.

4. Other issues relating to protection of, and respect for, human rights raised by the organisations representing the families of detainees and prisoners accused in connection with acts of terrorism, and by their legal representatives

Representatives of the organisation known as *Senideak* expressed concern about the treatment of persons detained for terrorist acts or for collaborating with armed groups. These detainees are allegedly subjected to regular torture, against which guarantees are claimed to be inadequate. *Senideak* claims that imprisoned members of ETA should be allowed to serve their sentences in prisons in the Basque country and has called for an end to be put to “administrative handovers” of detainees to the Spanish police by other countries.

It is clear from the preceding part of this report that the true human rights violations in the Basque country stem neither from the terrorists’ detention conditions nor from their being kept in prison, but, in view of the claims made, the representatives have been asked to provide concrete facts and specific information enabling these to be accurately assessed. As of today’s date, neither information nor documentation has reached my office.

During my trip, however, I myself visited the Basauri prison, to evaluate detention conditions there, and I received no complaints of ill-treatment or torture from the detainees I met on that occasion. In contrast, several warders complained of continuous threats from the terrorist organisation and its members within the prison, threats followed by attempts on the lives of staff members, with several officers having been murdered.

Where guarantees during the period of detention are concerned, Articles 520.b and 527 of the Code of Criminal Procedure state that police custody in respect of collaboration with an armed group and of terrorism may (as in other cases) be for up to three days. It is nevertheless able to be extended for up to another two days if a decision giving reasons is issued within the first forty-eight hours. Police custody may be kept secret if the judge so decides, issuing a decision giving reasons within 48 hours. Anyone kept in police custody that is kept secret has the same rights of defence as those provided for other persons in police custody, except that the lawyer (during police custody) is officially assigned, and the detainee is not allowed to have a private conversation with him or her (as other detainees are allowed to do). Nor are the fact or place of detention communicated to a nominated relative or other person. An examination by a forensic medical examiner is provided for in the same conditions as for persons in police custody in general.

The Spanish Constitutional Court has not declared this rule unconstitutional, nor has the European Court of Human Rights issued a judgment against Spain on this matter to date.

For its part, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT/Inf (2000) 5) has examined these matters in depth and found that the 1995 *Ley de Enjuiciamiento Criminal* (Code of Criminal Procedure) “has introduced a more developed framework penalising the offences of torture/ill-treatment and ‘violations of constitutional safeguards’ by an authority or public official”, and that, “in the course of the visit, the CPT’s delegation received no allegations of torture from persons interviewed who were or who had recently been detained by the Spanish law enforcement agencies”. However, certain recommendations are made in this report about the possibility of cutting periods of detention to the minimum strictly necessary for the efficient conduct of the investigations, as well as about the practice of involving forensic medical examiners. These are eminently reasonable, and I back them.

Neither the constitution nor the legislation on the prison system considers the serving of sentences in prisons in the Basque country close to detainees’ homes to be a right, but as an objective of prison policy with a view to promoting the rehabilitation of convicted persons. The Constitutional Court has on several occasions stated this, and the European Court of Human Rights has not interpreted the matter differently to date. Nevertheless, and assuming that this is not a reason for any violation of the rights enshrined in the European Convention on Human Rights (Articles 5, 6 and 7), I believe that, as far as possible, and provided that the rehabilitation process is genuinely advanced as a result, preference must be given to the serving of sentences at establishments offering the most facilities for attaining this target, and in this context, proximity to detainees’ families and places of origin can and must be a factor to be taken into account by the responsible authorities.

Administrative handovers of detainees by other European Union countries to the Spanish authorities without the use of the traditional extradition procedure raise certain questions, which ought to be taken into account.

As a result of the traditional understanding of the sovereignty of states and the characteristics of the international community prior to the process of supranational integration, proceedings against presumed offenders who were outside the borders of the state of the judge or court dealing with the case were effected solely through the extradition procedure. Within the specific legal and political framework of the European Union, however, it is now possible to consider implementing other legal machinery to achieve an efficient solution to this problem, especially when the member states share common constitutional traditions and have all, what is more, ratified the European Convention on Human Rights, and are therefore subject to the jurisdiction of the European Court of Human Rights.

Thus we can now speak of a European area within which the same concept of human rights is applied, with the result that, in pursuance of the provisions of Article 6 of the Convention, the states of the area have in common

not only substantive human rights but also instrumental ones, those which provide the guarantees thanks to which the former are safeguarded. This is why the essential sameness of rights and guarantees is now the distinguishing factor of this area created in Europe, especially the one that exists within the European Union.

However, although, from the aforementioned viewpoint, the administrative handover of a detainee must not cause a substantive change in his or her status, for it neither diminishes his or her legal position, still distinctive through its own substance, nor interrupts the course of the procedure leading to his or her being placed at the disposal of the judge who issued the order by virtue of which he or she was detained where he or she was, I believe that the appropriate solution to the questions referred to about the use of such administrative handovers must be found through appropriate official recording of the legal mechanisms (at least in European Union member states) which are alternatives to the traditional extradition procedure.

One way of reaching this objective as rapidly as possible might be Community regulation of what are known as “European search and arrest warrants” or a similar instrument, especially in respect of the offences listed in Article 29 of the Treaty on European Union (organised crime, terrorism, trafficking in persons, offences against children, illicit drug and arms trafficking, corruption and fraud), and in accordance with Article 34 of the same Treaty, for there is an urgent need to establish a legal means of overcoming the doubts or suspicions which might exist today about respect for detainees’ rights.

5. Final considerations

Although in this, my first, and brief report, I only wished to look at the most serious issues relating to human rights violations as a result of terrorist and urban violence against the Basque population, there is no doubt that, during my visit, I heard and weighed up other information that deserves closer study, as it could underlie a number of manifestations of violence described above.

In practical terms, the use of means of transmitting culture and knowledge to foster in children and young people an approach to knowledge based on a legitimate concept of nationalist positions, but unfortunately involving the option of exclusion and aggression against those who are not nationalists, sometimes borders on the giving of encouragement to racist and xenophobic positions, and this is certainly incompatible with a democratic concept of society and carries within it the seeds of human rights violations.

Although the Basque Government’s Regional Minister for Education personally informed me of the efforts being made and campaigns being

conducted in schools to promote values such as equality, it is nonetheless the case that the content of certain textbooks which are not exactly in line with the aim of promoting mutual understanding and conviviality ought to be examined, and certain programmes shown on Basque public television on which children are allowed to sing songs heaping scorn onto people who are pro-Spain should be dropped.

All these issues are so important that they must be further studied and followed up, something I am not in a position to do with the requisite rigour at the moment, so I have kept to the essential points I have made and the recommendations put forward.

Visit to the Russian Federation (including the Chechen Republic)

25 February to 4 March 2001

1. Introduction

On the request of the Committee of Ministers, the Commissioner for Human Rights travelled to Moscow and then on to the Chechen Republic from 25 February to 4 March 2001. The purpose of the visit was to gain an accurate view of the situation in general and, in particular, of the respect for human rights and the follow up to the commissioner's earlier recommendations resulting from his two previous visits in December 1999 and February 2000 to the Russian Federation, as well as the Vladikavkaz Seminar on 30 May 2000.

I was especially concerned during this visit to acquaint myself directly with the activity of the office of the Special Representative of the Russian Federation, Mr Kalamanov, and to examine the various means of effecting the political, social and economic reconstruction of the region. The examination of the judicial machinery, with a view to addressing the current climate of impunity surrounding crimes committed against the civilian population, was also a primary objective.

In accordance with the programme appended to this report, I held meetings with senior officials of the federal administration, the Duma, the provisional Chechen government and the military authorities as well as with representatives of NGOs.

I would like to thank the Russian authorities for their generous welcome and the full co-operation they extended to me throughout my visit. Thanks to their efforts, I was able to meet with everyone I had hoped to. I am particularly grateful to Mr Kalamanov for his unfailing assistance, the owners of the house in Znamenskoye for our accommodation for two nights, the officials

of the Ministry of Foreign Affairs, who accompanied us throughout my visit and all those who worked to guarantee our security whilst travelling in Chechnya.

I take this opportunity also to acknowledge the contributions of Mr Boedeker and, especially for acting as interpreter, Mr Guessele.

2. The overall situation in Chechnya

Following my third visit to Chechnya in eighteen months I am obliged to remark that the overall situation remains fraught with difficulty and conflict. The fabric of the Chechen society has disintegrated and its primary infrastructure (the provision of gas, electricity, hospitals, schools, etc.), which was largely destroyed during the war, remains unreconstructed, rendering normal life in the republic virtually impossible. Grozny has become a ghost town, its ruins untouched since my last visit and the end of the war. Circulation within Chechnya is severely restricted by the pervasive presence of checkpoints, manned primarily by the army, and public order is a long way from being re-established.

It is to be noted also that the environment around Grozny and the northern regions of the republic is being heavily polluted by leaking oil wells. The effects can already be detected in a number of rivers, in particular the Terek – inevitably contaminating the water supply. Other wells continue to burn without any remedial action being taken.

The large number of civilians who have been forced to evacuate their homes continue to live under extremely difficult conditions in refugee camps both within Chechnya and in the surrounding regions. They are for the most part deprived of any opportunity of work and their well-being is endangered by the lack of adequate health care. Whilst visiting the Severny refugee camp in Znamenskoye, the commanding officer told me that there were more than 180 persons suffering from tuberculosis in the camp and that the medical treatment available was totally inadequate due to the lack of medication.

Access to food represents another serious problem. Food, even when to be found on the open market, in stalls lining the streets of Chechen villages, is exorbitantly priced in relation to the surrounding regions and, obviously, to the average income. This situation is the inevitable result of the near total absence of an organised system of food distribution. Neither local nor federal authorities appear capable of organising deliveries. Individual initiatives are exploiting the gap, bringing in food from the neighbouring areas and profitably lining their pockets in the process. I heard of several cases in which foodstuffs provided for free by the humanitarian assistance groups had appeared on the Chechen markets, which clearly demonstrates the existence of unacceptable trafficking and corruption.

Security also remains a real difficulty in Chechnya. Disappearances constitute a prominent problem. A significant number of people have disappeared without trace, such that, despite the federal army's intervention being at an end, it cannot be said that the Russian authorities are any closer to being able to guarantee the personal safety of the people in Chechnya. According to several reports I heard, the perpetrators of these acts are not just the federal forces, but also Chechen combatants.

On my arrival in Moscow, I held a series of talks with NGOs (Memorial, Glasnost, Human Rights Watch and the Committees of Soldiers' Mothers) all of which spoke of the many personal safety problems prevailing in Chechnya as a result of the continuation of violence directed at the civilian population and disappearances. According to the NGOs, some of the persons reported missing have since been found in mass graves. The NGOs also accused the military forces of a number of other crimes committed against the civilian population, most notably of summary executions, torture, unauthorised detentions, and extortion. The representatives of the NGOs emphasised the fact that none of these offences were being adequately investigated by either the civilian or the military *Prokuratura*, whilst known witnesses were rarely questioned.

It was frequently asserted that the apparent ineffectiveness of both judicial organs has significantly contributed to a sense of impunity within the military and the special forces of the Ministry of the Interior.

The representatives of the Committees of Soldiers' Mothers spoke to me about the *zindans*, or holes dug into the ground in which prisoners are kept and which, they maintain, are also used for the punishment of soldiers. The Committee of Soldiers' Mothers also drew my attention to the number of deaths and suicides of soldiers, as well as the inadequate medical treatment they received. Amongst other things, they requested that future inspections of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) include the inspection of the sites of detention of military personnel, wherever they are based.

It is necessary to mention that on the eve of my arrival in Moscow two developments were made public. These concern, firstly, the revelations of Mrs Politkovskaya, a well-known journalist from the *Novaya Gazeta*. She reported that she had been arrested on the 21 February 2001 in the territory under the control of the 45th regiment of the Russian Army based in Khouttoni, as a result of her investigations in Chechnya. She maintains that she was detained for two days by the military authorities during which she was subjected to harsh treatment and psychological pressures, before being released on 23 February. The second item of news concerned the discovery of a mass grave allegedly containing some 200 bodies, of which a number had, according to NGOs, disappeared as a result of action taken by the federal forces.

In the light of these early interviews, and bearing in mind the conclusions of the Vladikavkaz Seminar there are, I think, at least three main areas that need to be urgently addressed. The first is the material reconstruction of Chechnya, which has been completely destroyed by the war. It will be necessary to concentrate on the provision of housing and the re-establishment of public services, which represents a condition *sine qua non* for the return of refugees. The second priority must be the re-establishment of political and representative institutions, such that a properly democratic system is given a chance to develop. Finally, before either of these tasks can be addressed, it is essential that an end is put to the current climate of impunity surrounding the crimes committed, and that continue to be committed, by both the federal and the Chechen forces.

3. Official programmes for economic regeneration and social reconstruction

In my interview with Mr Yelagin, the minister of the Russian Federation responsible for co-ordination of activities of the federal executive bodies on social and economic development of the Chechen Republic, I was assured of the seriousness with which the Russian government was addressing the reconstruction of Chechnya. According to the minister, the Russian Government is acutely aware that the normalisation of the situation in Chechnya cannot be accomplished without the restoration of ordinary living conditions for those currently residing there and for those who will return from the neighbouring regions as soon as the situation allows.

To this end, the Russian Government adopted the Economic and Social Reconstruction Programme for Chechnya in 2001 (hereafter referred to as “the Programme”) on 9 February 2001.

It is expected that the programme will be implemented in the course of 2001. It is to be financed through the federal budget, special funds and non-governmental donations.

Humanitarian and reconstruction aid

As the social and economic reconstruction of Chechen society cannot be accomplished without the assistance of the international community, it is important that it lends not only its support but also organises a system of co-ordination and supervision of its investments.

In my meetings with Mr Yelagin and Mr Kadyrov, they both insisted on the importance of and the urgent need for international humanitarian aid for the reconstruction of Chechnya. Furthermore, it is widely felt that the time has come for this aid to be directed at Chechnya itself. In short, I believe that it is of the utmost importance that the international community should act to

bring to this devastated area, the population of which has lacked all basic products for so long, as much humanitarian assistance as possible.

A special effort will have to be directed at the reconstruction of housing if refugees are to be encouraged to return. According to the Russian authorities, the aid for the reconstruction of housing will primarily be distributed in the form of materials rather than money. It is hoped that this will ensure that the aid reaches its intended destinations without finding others en route. Aid in the form of ready money will only be used for the payment of the necessary labour.

At the same time, it goes without saying that the effectiveness of all international aid depends on the existence of an effective mechanism capable of guaranteeing donors that their aid will arrive where it is intended. This would require the creation of a body containing international experts responsible for financial co-ordination and the supervision of aid distribution. This body, jointly composed of Russian and international agents, would have to define the investment priorities and act as the auditors of international investments. I was able, towards the end of my visit, to discuss this proposal with Mr McCallin, the UNHCR representative in Moscow, who expressed his approval of this initiative.

Finally, Russia's entry into the Council of Europe Development Bank seems to me to be an effective way of financing the reconstruction of Chechnya by supplementing Russia's own financial resources. This was also suggested by the Parliamentary Assembly during its last session in Recommendation 1499 (2001), 8.q.

4. The restoration of political and administrative institutions

During my visit to Gudermes on 28 February 2001, I met with the head of the Chechen administration, Mr Kadyrov, who shared with me his impressions of the political and economic situation in Chechnya and presented me with his normalisation plan.

This wide-ranging programme includes, *inter alia*, proposals for institutional reconstruction. He envisages, in this regard, the creation of a consultative organ attached to his administration, which would be composed of representatives of the civil society, elders and religious authorities, amongst whose tasks it would be to confer on a future constitution for the republic and to formulate electoral laws.

Regarding the security proposals of his programme, Mr Kadyrov emphasised the importance of creating a new network of agencies for the maintenance of public order deploying, in his plan, Chechen policemen in at least 130 offices in towns and villages throughout Chechnya. His plan envisages a simultaneous significant reduction in the number of federal armed forces remaining in the territory of the republic.

The social and economic components of his plan envisage the formation of a provisional Chechen government responsible for the supervision of the reconstruction of Chechnya. I was informed that Mr Ilyasov, appointed Prime Minister by President Putin on the 19 February 2001, had, by the end of my visit, almost completed the formation of his government.

The implementation of the institutional reconstruction programme

Given that the administration does not operate throughout the Chechen Republic and that there is, in any case, no consensus amongst Chechen citizens as to the future path of their country, the political situation remains fraught. Certainly, as the institutional reconstruction cannot be effected by anyone other than the Chechens themselves, it will be necessary for them to begin to define their priorities themselves. It is essential, therefore, that the Chechen people are given the opportunity to plan their future themselves and that democratic institutions are restored as rapidly as possible.

Recognising this, and taking the work initiated in Vladikavkaz in May 2000 into account, I suggested the organisation of a follow-up seminar directed at the institutional reconstruction of Chechnya. As a means of elaborating on the ideas launched in Vladikavkaz, this seminar would aim to encourage dialogue amongst Chechens on institutional reconstruction and the restoration of democracy. It seems to me that much would be gained from holding this seminar on Chechen soil. It might bring together representatives from all levels of Chechen civil society and international experts from, in particular, the Council of Europe.

5. Impunity and the restoration of the judicial system

I have arrived at a point I consider to be of the utmost importance for the restoration of peace and ordinary living conditions in Chechnya. As I have already suggested, an environment of fear and insecurity reigns throughout the territory of the Chechen Republic. This is attributable to the actions of Chechen combatants as much as it is to those of the federal forces. As investigations into such acts are rarely carried to their proper conclusion, an impression of lawlessness and impunity is increasingly pervasive.

The Parliamentary Assembly made its stance on this matter clear in Recommendation 1498 (2001), in which it requested “that the Committee of Ministers take an active role in ensuring that the Russian authorities – without further delay – hold accountable all those who have severely violated human rights in the Chechen Republic, regardless of their position or nationality. The Assembly encourages the Committee of Ministers to support all efforts aimed at safeguarding human rights in the Chechen Republic”.

Representatives of NGOs and international observers stressed the fact that very little progress had been made in this area. It is notable that although

the office of Mr Kalamanov has received a large number of complaints, very few of these had subsequently been pursued by the organs of the *Prokuratura*.

According to its annual report, Mr Kalamanov's office received more than 12 000 complaints in the year 2000. Of the 585 written complaints filed with his office, 2 097 concerned allegedly illegal acts committed by the Russian Federal forces, 853 alleged a lack of information concerning intercepted or detained parents, 657 related to arrests and/or illegal detentions and 212 complained of violations of freedom of movement and extortion at check-points.

Of all the complaints transmitted to the *Prokuratura* very few have so far received an adequate response. On 28 February the Council of Europe experts in Mr Kalamanov's office reviewed the figures relating to the number of complaints passed on to the military and civil *Prokuratura* in the Chechen Republic. The office had sent a total of 511 complaints to both *Prokuraturas*. The *Prokuraturas* had responded to 172 of them, (that is to say 34%). Of these cases, 429 had been sent to the civil *Prokuratura*, 169 (39%) of which received a response. Of the 82 sent to the military *Prokuratura* only 3 or 4% were acted upon.

Taking these facts into account I managed, for the first time, to arrange direct talks with both the civil and military *Prokuraturas* about their work and the allegations of passivity surrounding their investigations. They supplied me with statistics relating to their work and informed me of the problems with which they were confronted in the exercise of their duties. They reiterated their desire to lift this impression of impunity.

As proof of this General Kislitsin, the Chief Military Prosecutor, suggested that I visit the military base of the 45th regiment in Khouutoni to inspect the sites reported on by the journalist Mrs Politkovskaya. I declined his offer, considering that such an inspection might more appropriately be carried out by the Special Representative of the President of the Russian Federation for Human Rights in Chechnya, Mr Kalamanov.

Mr Kalamanov agreed with me on this matter and subsequently conducted an inspection, which, in so far as I am aware, was the first of its kind to have been made by a civil institution of a military establishment. On top of this, General Kislitsin provided me with information both orally and in writing relating to Mrs Politkovskaya's allegations and the recent discovery of several bodies in a village near Grozny.

He informed me further, that his office had dealt, or was dealing with, some 538 files on criminal offences committed by the military. His *Prokuratura* had received these files through from a number of different sources but notably from the office of Mr Kalamanov. All of the allegations had been investigated and resulted in judicial decisions. Judicial proceedings had been

launched in respect of 58 of these files since August 1999. Of these 58 cases 18 concerned allegations of assassination, 1 murder through excessive self-defence, 12 thefts, 7 traffic offences, 3 alleged acts of hooliganism, 2 violations of regulations concerning the use of arms, 3 kidnappings, 8 deaths in unexplained circumstances and 4 miscellaneous other offences. Having dropped 9 of these cases, the military *Prokuratura* brought 13 to the military courts. These cases alleged offences committed by a total of 18 military personnel. They concerned 4 cases of pre-meditated murder, 4 thefts of destroyed property and 5 other offences. The military courts convicted 7 military officials, amongst them 2 officers, 4 professional soldiers and one conscript. However, 37 cases remain unresolved.

The very small number of cases which have resulted in investigations or judicial proceedings clearly demonstrates the inadequacy of the judicial machinery in Chechnya. Naturally, I insisted on this point in my meetings with representatives of the civil and military *Prokuraturas* both in Znamenskoye and in Moscow. The responses I received highlighted a number of significant problems regarding judicial investigations. Problems of security featured prominently amongst them. Agents of the *Prokuratura* work in threatening conditions. Five of them were killed in the year 2000. Other problems include the very high number of complaints filed and the reluctance of witnesses to testify, fearing reprisals. Whilst maintaining that the conditions of their work were difficult, the prosecutors I spoke to agreed that it was crucial that investigations were conducted thoroughly if the prevailing impression of impunity within the federal forces was to be changed.

During my visit to Chechnya, the Chief Public Prosecutor, Mr Chernov, informed me that investigations were currently being conducted in Zdorovie, following the discovery there of a mass grave. Sixteen bodies have so far been recovered, with more still expected. I insisted that all attention be directed at this matter, from the top down, and that forensic examinations be conducted immediately with a view to establishing the time and cause of the deaths and the identities of the corpses. The relevant authorities assured me of their readiness to carry out such an investigation without delay and to keep me informed of its developments. Ominously, representatives of Memorial have claimed that a number of families of persons detained for many months by the federal forces had already identified their relatives amongst the victims.

I insisted with the organisers of my visit on travelling to the Khankala military base outside Grozny to meet with the Commander of the Federal Military Forces, General Baranov. This meeting proved particularly interesting. In the course of an intense conversation, General Baranov strongly denounced the treatment received by Russian soldiers who fell captive to the Chechen militia. He showed, and subsequently gave me, a video apparently recorded by Chechen militants, in which they were to be seen slitting the throats of Russian soldiers.

I informed the General of my strong conviction that the authors of such crimes must be brought to justice, but insisted that he had to acknowledge that a democratic state adhering to the rule of law (which is what is required from member states of the Council of Europe) cannot use the same methods as criminals. I will add that, as I was sure of his agreement on this point, I requested that he actively co-operate with all investigations into the crimes and human rights violations imputed to the federal forces under his control.

Profiting from the presence of the media, I denounced, at the end of this meeting, the prevailing impunity and, joined by General Baranov and Mr Kalamonov, insisted that justice be done; for, without justice, there will be neither peace nor reconciliation.

On my return to Moscow, Mr Kislitsin disclosed that, in so far he was aware, the journalist Mrs Politkovskaya, had been arrested for a lack of correct accreditation with the military base in Khankala. Her allegations of the use of *zindans* at the military base of the 45th regiment were dismissed as a confusion resulting from holes in the ground serving as waste disposal units; a claim which merits the closest scrutiny.

In response to the Committees of Soldiers' Mothers' allegations that such *zindans* were used not only for Chechen detainees but also for punishments internal to the Russian army, General Kislitsin assured me that he had ordered an inspection of all military bases with a view to terminating this practice.

Given the difficulties faced by the *Prokuratura* and the judicial system in general in the accomplishment of their duties, and the current inability of Mr Kalamonov's office to pursue any further the progress of complaints transferred by it to the *Prokuratura* (due to a lack of competence) I proposed the creation of a collaborative commission composed of representatives from the *Prokuratura* and Mr Kalamonov's office, in which Council of Europe staff are currently active. Such a bi-partite commission could keep track of the progress of transferred files in monthly meetings.

On my return to Moscow, Mr Kislitsin expressed his support for this proposal.

6. Final considerations

Before the close of my visit I met one last time with the representatives of the NGOs I had seen on my arrival. This meeting with the representatives of Memorial, Human Rights Watch and the Committees of Soldiers' Mothers, afforded me the opportunity of sharing with them my impressions of the human rights situation in Chechnya. I informed them, in addition, of the civil and military *Prokuraturas'* willingness to fully investigate crimes committed against the civilian population and to accept and investigate all the complaints they received. Regrettably, representatives of Memorial have

informed me of the very limited means available to the agents of the *Prokuratura* working on the ground.

Even if the situation remains precarious, it is possible none the less to trace a few positive developments. Foremost amongst them is the beginning of the re-establishment of the judiciary. It is important to note, in this regard, that since 27 December 2000, courts have once again been sitting in Chechnya. The Supreme Court has selected new judges and 10 district courts are functioning alongside the Supreme Court. They have already delivered a number of rulings and judgements. I made a point of visiting the Supreme Court of Chechnya in Gudermes to talk with its judges. The process of re-establishing the Chechen judicial system must be encouraged. I hope that it will be provided with sufficient means to satisfy the needs of Chechen citizens.

Moreover, the trial of Colonel Budanov, for which the investigations had been dragging on for many months, has finally opened in Rostov, in a particularly charged atmosphere.

In the course of my meeting of 3 March with Minister for Foreign Affairs, Mr Ivanov, I was able to relate the impressions I had formed during my visit as well as the recommendations and suggestions referred to in this report.

When I insisted on the need for the immediate return of the OSCE assistance group, Mr Ivanov expressed his full agreement. He also expressed an interest in considering another visit by the United Nations High Commissioner for Human Rights.

Towards the close of my meetings with the Minister for Foreign Affairs and following discussions of his own with the President of the Russian Federation, Mr Ivanov assured me of the convergence of my recommendations with the views of the federal authorities.

B. SEMINARS, CONFERENCES, CONCLUSIONS AND SPEECHES

Vladikavkaz Seminar¹

Opening speech by Mr Alvaro Gil-Robles, Commissioner for Human Rights of the Council of Europe

30 May 2000

I first discussed the organisation of this seminar with Mr Chayka, the Russian Minister of Justice, and Mr Koshman, Deputy Prime Minister of the Federal Government and Minister for the Provisional Administration of Chechnya. This meeting took place during my first visit to the North Caucasus region in November last year. We had all hoped that the military operations, then approaching Grozny, would soon be over. We were of the opinion that as soon as these operations were completed, there would be a great need for all sides to come together to discuss the immediate future of the region.

Discussions concerning the return to normality and peace and the restoration of democratic institutions in Chechnya, should not be a matter simply of examining the future status of the Chechen Republic within the Russian Federation. It is primarily a question of bringing together all the interested parties, which is to say, Chechens as well as the central authorities, to discuss the return of all persons, that is Russians and Chechens, displaced by the events in Chechnya, as well as the reconstruction of houses and municipal infrastructures, the re-establishment of public order and all the institutions and administrative agencies provided for by the Russian Constitution.

Alas, six months further on, what I then called “the war” continues, even if its scale and intensity has been significantly reduced.

1. The Vladikavkaz Seminar on “Democracy, Rule of Law and Human Rights” took place on 30 and 31 May 2000.

To be quite frank, I have wondered whether and to what extent we can constructively discuss the role of democratic institutions in this region of Russia, the North Caucasus, when a significant part of it still ravaged by the armed hostilities of both sides. In short, it must be acknowledged that the Chechen Republic is not yet entirely under the control of the Russian federal forces. I feel obliged once more, therefore, to appeal for the cessation of hostilities on all sides. For so long as the violence that has led this Republic into such a mad and disastrous spiral continues all discussions will remain eminently theoretic. And this not only because our analysis and recommendations cannot be applied throughout Chechnya, but also because the situation in Chechnya has significant implications (not least on the deteriorating economic situation) for what happens and can be achieved in the neighbouring republics. To give an example, of the 550 000 people currently living in Ingushetia, some 220 000 have arrived in the last eight months from Chechnya. This sudden influx of IDPs has proved so difficult to manage that, according to the Ingush authorities, their eventual return has almost been forgotten.

The second point I wish to make in this introduction is that if these discussions are to be meaningful and to lead to certain practical conclusions that might be of use to the representatives of the Russian authorities participating in this conference, we will have to keep in mind both what has happened and what is happening now in the Chechen Republic, as well as what is realistically achievable in the other, closely related republics of the North Caucasus. For example, regarding Chechnya, there is no point now (during the first session), rushing to consider all sorts of legal subtleties, such as the redistribution of competences between the federal and regional authorities or the judicial supervision of federal legislation, when there are, as yet, no established “legal culture”, no judicial infrastructure, no investigative bodies and no forces of law and order functioning satisfactorily. It seems to me, moreover, that the Russian Federal Authorities share the view that it will be necessary to remain realistic and pragmatic. This is how I interpret the remarks made by the President of the Federation on 10 May. Mr Putin indicated that the provisional organs of control in the Chechen Republic would continue to function for a further period of one and half to two years, or for such a period as was necessary, in his view, for the re-establishment of “normal” living conditions in the Republic, including notably the restoration of public order, the social services and basic economic activity.

During these discussions on the legal and institutional situation prevailing in the republics of the North Caucasus and on the co-operation between themselves and their relations with the central Russian authorities, it will be necessary to recall that one of these republics, namely Chechnya, continues to be governed more or less directly by the central powers. Our programme does not make such a distinction between the reconstruction of Chechnya and the situation in the neighbouring republics. Rather it invites us to

consider the region as a whole. For my part, I have some hesitations regarding this arrangement; from a legal perspective there are at present too many differences between the Chechen Republic and its neighbouring republics to be able to talk sensibly about the region “as a whole”, despite the geographic integrity and the similarity of social structures and economic challenges.

This leads me to a third point, which is an appeal to the good sense and intellectual modesty of the international experts present, coupled with a call for the attending representatives of the Russian federal authorities to participate actively and honestly. We, the foreigners, could talk all day about the norms, values and rules of the Council of Europe – of which the Russian Federation is a full member. We could discourse at length on the different options that the Council of Europe offers its member states for fulfilling the obligations they commit themselves to following their ratification of various European treaties. But after all this, it would always come down to you, the Russian federal authorities, to decide what you are going to do for and with this region. What matters then, are your unofficial, but real priorities for the North Caucasus and also, the resources, both human and financial, that you are prepared to mobilise to realise these priorities.

It would, to speak bluntly, be perfectly easy for us to preach at length (in the first and third sessions) for example, on autonomy and local competences in the North Caucasus region, with a view to accelerating the economic and social development of the region. This would, however, be futile if the current aim of the federal decision makers in Moscow were to go back on its policy of decentralisation and to reduce – as the press would have us believe – the peripheral authorities so as to strengthen the grip of the Russian Federation on its subjects and to limit, consequently, the competences that several areas of the Federation obtained during the recent transition period. In short, much will depend on the application of the recent Presidential decree No. 849; of 13 May 2000, entitled “On the Plenipotentiary Representative of the President of the Russian Federation in the Federal Districts”. How, for example, will these presidential representatives use their powers to participate in the functioning of regional organs, to demand all sorts of information and to establish consultative organs, etc.?

It would also be futile to argue that regional autonomy is the true foundation of democracy if, either at the federal or regional level, one was not prepared to grant municipalities the necessary resources to exercise their competences.

To sum up, the federal government has the obligation to apply the international treaties it has signed, such as the European Charter on Local Self-government. Nonetheless, we are not here as part of a monitoring exercise, but to work together on a number of available options for ensuring the democratic development of the entire North Caucasus region. In this regard, it seems to be profitable for our discussions and for our recommendations

and conclusions to only consider options that the Russian authorities can realistically take into account. For this reason, it is essential to know the real Russian priorities for the region and to have also an idea of the human and financial resources they are prepared to employ in pursuing them.

It is clear that we all aspire to the normalisation and reconstruction of Chechen Republic. Has the Russian Federal Government already decided on the reconstruction of Grozny? According to an e-mail received in Strasbourg on 22 May from Glasnost, Mr Koshman had announced that Grozny contained a population of 100 000 persons as of 1 June, but that they had neither homes, nor running water, nor electricity. Where, then will those returning to Chechnya be accommodated? And what are the main federal projects for the recreation of “normal” living conditions, to use once more the terminology employed by President Putin on this subject?

In the light of the “Programme for stabilisation and development of the North Caucasus region for the year 2001”, which was presented to us by the Russian authorities prior to this conference, I strongly hope that the federal representatives will (in the fourth session) be able to reply with practical initiatives to these questions, which will surely interest the representatives from the Chechen Republic. Indeed, I noted with considerable interest the conclusions of the seminar on federalism in Pyatigorsk (organised by Mr Vogl of the Directorate of Political Affairs). According to the Chechen representatives, what was most needed in Chechnya – or, the main concern of ordinary Chechens – was the re-establishment of “the basic units of ordinary life, notably of the education system and job opportunities”. The re-establishment of normal living conditions in Chechnya, its stable economic development, the formation of a civil society, new, effective democratic institutions, justice – this is a wonderful vision, I agree, and the approaches suggested seem, moreover, fairly realistic.

My role as Commissioner for Human Rights of the Council of Europe obliges me to make, in this regard, my fourth and final point – on the recurring question of the relation between justice and peace. Is there really a way of restoring social peace in Chechnya – without which there will be neither the reconciliation, nor sufficient solidarity for the reconstruction and economic development hoped for – without ensuring that justice prevails, without prosecuting those responsible for serious human rights violations, be they Chechen extremists or agents of the Russian federal forces? Frankly, it is difficult to reply directly to this question and to propose ready-made solutions. There are several historical precedents showing us that the failure to guarantee justice creates precisely the right conditions for the explosion of new conflicts and that violence will, sooner or later, lead to vengeance. The Chechen representatives to speak on this subject at Pyatigorsk maintained, and I quote: “Over the course of the last ten years of conflict, numerous violations of human rights have been committed by all the parties involved. But

this is not the right moment to begin investigations and to punish those responsible for these acts. Society must first of all seek to overcome the trauma it has suffered and begin to function normally ...” So long as the victims or their surviving relations agree with this approach and have effectively authorised their representatives to this effect, the pursuit of the perpetrators of such acts will not represent a condition for the achievement of peace. Be this as it may, the investigation into the crimes in question, which count amongst the worst there are, is not dependent on the insistence or agreement of the affected parties. It is a matter for the investigative authorities and the law. On this matter, President Putin himself has frequently let it be known that the persons accused of such crimes would be investigated. Mr Ivanov, the Minister for Foreign Affairs of the Russian Federation confirmed this in Strasbourg on the 11 May 2000 in the following terms (which I quote indirectly from memory as confidentiality obliges ...): We have formally declared that all cases of non-respect for human rights and abuses committed during the course of anti-terrorist operation will be minutely investigated regardless of who committed them, and that those found guilty will be punished with the full force of the law.

In my opinion, there exists a very close relationship between the credibility and success of the federal Russian political programme in Chechnya and the effective investigation into and severe punishment of the most serious human rights violations committed there over the last few years. It is not simply a matter of Russia’s international image as a state respecting the rule of law and its human rights obligations. You all know the declarations, resolutions and recommendations that the international governmental organisations concerned, such as the Parliamentary Assembly of the Council of Europe or the Human Rights Commission, have made on this subject and I will not add to them. (I am personally convinced that Russia will do what is necessary and apply its laws even without the international pressure). It is, however, my opinion that the punishment of the most serious crimes committed in Chechnya constitutes an inescapable precondition for any new departure in Chechnya. This would be a step towards more trusting relations (perhaps even “reconciliation”) between Chechnya and the Russian Federation. The emphasis this would place on respect for the law would, furthermore, help to launch the democratic development of the North Caucasus region.

In any case, I will be very interested to hear the addresses tomorrow morning (the second session) on the crucial question of the promotion of human rights in the region. Before then (the first session), we will be able to discuss the general theme of this conference from a perspective other than my own and to shed light on what we understand under “the role of democratic institutions in a civil society”.

Vladikavkaz Seminar

Conclusions by Mr Alvaro Gil-Robles, Commissioner for Human Rights of the Council of Europe

31 May 2000

The Seminar on Democracy, the Rule of Law and Human Rights, which took place in Vladikavkaz in North Ossetia-Alania on 30-31 May 2000, was organised by the Secretariat General of the Council of Europe, the Government of the Russian Federation and the President and the Government of North Ossetia-Alania. It was attended by some 100 participants, including representatives of the Russian executive, legislative and judicial authorities, the authorities of the republics and regions of the North Caucasus, including Chechnya, international organisations (Council of Europe, OSCE, European Union, UNHCR and ICRC) and Russian and international NGOs.

The seminar and the high-level attendance reflected its considerable importance as a landmark in co-operation between the Council of Europe and the Russian Federation with regard to democratic development, the rule of law and respect for human rights in the North Caucasus region. The co-operation of other international organisations with the Council of Europe in this respect was also a particularly positive feature.

Our lecturers virtually submerged us with information and proposals during the two days and our discussions following their reports were very full and interesting. I shall not attempt to summarise everything in a few minutes, for there were differing points of view on many topics. The important thing is that our seminar should not be consigned to history as just another theoretical exercise, but that it should really have a direct, tangible impact on the future of the North Caucasus. May there be a speedy follow-up!

1. Some conclusions offered by all sides

First of all, there really is a manifest interdependence between the republics comprising the North Caucasus region, which is now regarded as one of the seven new federal districts with a plenipotentiary representative of the President of the Russian Federation. (The implementation of the corresponding federal administrative reform will no doubt require a great deal of effort and could possibly benefit from the Council of Europe's expertise.) This interdependence explains why firstly, developments in Chechnya have had direct and often serious consequences for the development of the neighbouring republics and secondly, the stable economic, social, political and institutional development of the North Caucasus Region requires that the situation in Chechnya be re-established and return to "normal".

Although differing points of view were expressed during the seminar as to the approach to be adopted, everyone agreed both on the urgency of normalising the situation in Chechnya, in the interests of the population of both Chechnya and its neighbours, and on the need to reach a political settlement of the Chechen conflict as quickly as possible within the framework of the Russian federal Constitution.

Be that as it may, as long as the armed hostilities continue in Chechnya, complete respect for human rights and, even more so, democratic development will be in doubt, if not impossible to achieve, and the prospects for stable democratic development throughout the North Caucasus region will be in jeopardy.

Everyone agrees that peace must be prepared for in Chechnya and that every effort must be made to win peace, meaning to create the conditions for a return to normal life. This, above all, implies restoring civilian authorities, including the administration of justice, but also the economic infrastructure including job creation, the provision of educational, social and public health services and other public amenities (water, gas, electricity, public transport, etc.).

This faces the federal authorities with specific responsibilities, beginning with the obligation to establish a legal framework for the effective operation of civilian authorities, judicial machinery and a police service, financial institutions and assistance for displaced persons returning home.

The civilian administration in Chechnya provisionally installed by, and reporting directly to, the federal authorities is faced with an enormous task, which includes preparing for the restoration of local government and local elections. It will need the very active co-operation of the entire population. For this purpose, every effort must be made to achieve reconciliation between Chechens and to restore mutual respect and trust between the protagonists of the Chechen tragedy.

I personally believe that it is not possible to ignore the past, to start afresh with a clean sheet in hoping for the best, but that peace must now be founded from the outset on the rule of law and confidence in justice. In this connection, I was pleased to note repeated declarations by the highest Russian federal authorities, including President Putin himself. Mr Chayka again confirmed at the seminar what Mr Ivanov told us recently in Strasbourg: all failures to respect human rights and abuses committed – whomever by – during the anti-terrorist operation are being thoroughly investigated and the culprits will face the full rigour of the law.

2. Main proposals made for future activities

As regards proposals for future activities, in order to speed up democratic development in the North Caucasus, some are concerned with Chechnya in particular and others the whole region. Putting them into effect will inevitably depend on the resources available and priorities will be determined according to the sources of funding. To begin with, I think preference should be given to regional co-operation projects, but programmes designed to restore the Chechen population's ability to take charge of the management of their local and regional affairs should also be envisaged very quickly. The financing and co-financing of such projects by the republics concerned should form a decisive criterion in this respect.

In any event, there was broad consensus on the importance of implementing the following projects, preferably before the end of this year, without prejudice to the speedy implementation of the "Programme for stabilisation and development of the North Caucasus by the year 2001":

- a.* Reform of the judicial system and the prison system and training for the legal professions;
- b.* Assistance in drafting legislation (including citizenship legislation);
- c.* Preventing and combating corruption, organised crime and money-laundering;
- d.* Assistance in strengthening or restoring local authorities, preparing legislation and training staff;
- e.* Expertise concerning restoration of the higher education system, including recognition of previous studies and reconstitution of lost diplomas;
- f.* Programme of psychosocial assistance for children traumatised by armed conflict and/or displacement;
- g.* Programme of medical assistance for displaced persons, paying particular attention to infectious diseases (tuberculosis), assistance in the social re-integration of persons disabled as a result of the armed conflict (network of prosthetic and orthopaedic centres in the North Caucasus and other Council of Europe countries).

Talks with Mr Kalamanov and Ambassador Vdovin during the Vladikavkaz Seminar allowed for some progress on outstanding security issues and hope for an early deployment of the Council of Europe experts in Znamenskoye, Chechnya.

Detailed programme proposals will be submitted separately.

Conclusions of the meeting between the ombudsmen of central and eastern Europe and the Commissioner for Human Rights of the Council of Europe

Budapest, 24 June 2000

The meeting was held on 23 and 24 June 2000 in Budapest on the initiative of Mr Alvaro Gil-Robles, the Commissioner for Human Rights for the Council of Europe. The participants included commissioners and ombudsmen, or their deputies, from eleven central and eastern European countries: Albania, Georgia, Hungary, Lithuania, Moldova, “the former Yugoslav Republic of Macedonia”, Poland, Romania, the Russian Federation, Slovenia and Ukraine.

The participants held an exchange of views on all aspects of their activities and, above all, their co-operation with the Council of Europe Commissioner for Human Rights. This co-operation was based on Articles 3.c, d and 5.1 of Resolution (99) 50 on the Council of Europe Commissioner for Human Rights adopted by the Committee of Ministers on 7 May 1999 at its 104th session in Budapest. In particular, Article 3.d states that the commissioner shall “facilitate the activities of national ombudsmen or similar institutions in the field of human rights”. Article 5.1 provides that the commissioner “may act on any information relevant to the commissioner’s functions” and that this information may be addressed to the commissioner by, among others, “national ombudsmen or similar institutions in the field of human rights”.

The main points to emerge from a general exchange of views were as follows:

It was necessary to encourage the appointment of ombudsmen in those countries or regions and entities of federal states where they did not as yet exist.

The facilities available to existing ombudsmen should be strengthened, in that they should be granted the financial and human resources needed to work in an effective, transparent and rational manner. The appointment of specialised or sectorial ombudsmen, independent of those that already existed, might weaken the position of the latter. In particular, in a period of transition and financial insecurity, it would be more rational to concentrate all available resources on the office of the existing national ombudsman and, where appropriate, appoint deputies to deal with specific issues (children, consumers, military personnel, data protection, and so on).

The participants discussed the ombudsman's role in crisis situations. Regarding economic crises, in other words situations where it was claimed that human rights could not be respected because of a lack of resources and where this pretext was used to infringe or neglect to safeguard them, ombudsmen should play an active role and constantly point out that a lack of resources did not justify the violation of such human rights as the right not to be subjected to torture, the right to freedom and physical safety, the right to freedom of expression and religion and, naturally, the right to life. With regard to the right to life, it was agreed that Protocol No.6 to the European Convention on Human Rights (abolition of the death penalty) should be ratified and applied. The ombudsmen also agreed to pay particular attention to the most vulnerable sections of the population, in particular minorities and persons who did not hold the nationality of the country in which they lived. The same applied to the very worrying problem of the trafficking in women and children for sexual exploitation purposes. As regarded armed conflict, ombudsmen should play a still more active role in defending human rights: they should constantly remind the relevant authorities of their obligation to comply with the rules governing such situations and international humanitarian law and, at the same time, of their obligation to crack down on serious violations of human rights. It was important that ombudsmen and inter-governmental organisations (IGOs) involved with human rights should stand together in such cases.

Discussions on co-operation between ombudsmen and non-governmental organisations (NGOs) and other representatives of civil society were particularly lively. It came to light that there were grounds for encouraging close relations between ombudsmen and NGOs in the form of co-operation based on mutual independence and freedom, with a view to building a democratic and united society. Exchanges of information between ombudsmen and NGOs were always desirable, although ombudsmen had to pay particular attention to issues raised by the NGOs with which they worked. It was hoped that the commissioner would organise a meeting on co-operation between ombudsmen and IGOs and NGOs and contact with the media.

During the discussion on ombudsmen's relations with the judiciary, and in particular public prosecutors' departments and the police, a request was

made for a meeting with judges or experts on the case law of the European Court of Human Rights to acquaint ombudsmen with the general principles laid down by the European Court of Human Rights in this area.

Many of the ombudsmen present asked the commissioner to visit their countries in order to study the general human rights situation and discuss it in detail with their staff and with the authorities. They also all considered that it would be appropriate and useful to hold further multilateral meetings and exchanges of views on a smaller scale. Everyone agreed that it was vitally important that they should keep one another informed by way of regular exchanges of information. This would enable the Council of Europe Commissioner for Human Rights to examine a number of problems of a general character detected by national ombudsmen in compliance with Article 5 of the terms of reference of the Commissioner for Human Rights (Committee of Ministers' Resolution (99) 50, 7 May 1999). Finally, the ombudsmen considered that co-operation with the Commissioner for Human Rights was necessary in the field of further training for their specialised staff, preferably in the form of study visits and workshops.

Speech by Mr Alvaro Gil-Robles, Commissioner for Human Rights of the Council of Europe

Conference on the European contribution to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance¹

Strasbourg, 13 October 2000

1. Introduction

A little less than three days ago, when the Secretary General of the Council of Europe welcomed us to this meeting, he quite rightly pointed out that the walls of our common home, which is that of the Greater Europe and the protection of human rights, were originally built to house a great humanist project, namely the construction of a tolerant and democratic European society based on respect for the equal dignity of human beings. Our conference has been the mirror of this project and it is this prevailing atmosphere that I would like to stress above all here.

The richness of your debates was a clear sign that diversity has something inherently creative about it. This has been the opportunity for Europe to prepare its contribution to the future World Conference against Racism on the basis of its different experiences, which have been regarded not as a burden

1. The meeting concerning the European contribution to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance took place from 11 to 13 October 2000.

but as a major asset. Coming from various backgrounds, representing governments, non-governmental organisations, and national institutions for the protection of human rights, you have shown how constructive and positive pluralism, critical-mindedness and debate can be.

2. Context

First point: acts of racism and racial discrimination are human rights violations. By reminding us that lack of understanding and contempt for human rights have led to acts of barbarism which outrage the human conscience, the Universal Declaration of Human Rights calls on us to respect the equal dignity of all human beings. In its first article it states that all human beings are born free and equal in dignity and rights. In point of fact, racism, xenophobia, anti-Semitism and intolerance pose a mortal danger to human rights. And it is indeed the fundamental rights of victims that are violated. It should also be emphasised that, for the most part, victims undergo double or multiple forms of discrimination.

Second point: the persistence of racism, racial discrimination, xenophobia and intolerance throughout Europe. These problems endure and expand, taking on various forms. They currently range from the monstrous concept of “ethnic cleansing”, and crimes of mass extermination, nothing less than modern-day genocide, to the day-to-day, direct and indirect discrimination which is still the lot of many women and men in Europe, including countries which are proud to call themselves advanced democracies.

Third point: there are areas which are particularly conducive to manifestations of racism and racial discrimination, which might be termed the “grey areas” in the functioning of our democracies. The following are examples:

- The discrepancy between law and practice (between legal instruments and the real-life situation): the failure to apply existing rules against racism and the poor implementation thereof are a constant problem.
- The lack of access to the law: there has been talk of an “unjust justice system”, minorities have a genuine lack of confidence in the functioning of the justice system, which they may perceive as insensitive and inaccessible, and the unique position of the victim in cases of racism is not sufficiently taken into account.
- There is still a latent, creeping racism in too many public institutions and the way they function. In this context, problems linked to the attitudes of civil servants, law enforcement and prison officers and the police in general should be treated much more seriously than is presently the case in our countries. It is undoubtedly important to punish such attitudes and forms of behaviour but training is equally necessary. It is essential that these officials be trained to observe human rights and to respect diffe-

rence, so that they may become, to some extent, effective “human rights protection agents”.

- The use of racist and xenophobic arguments in political debate is a scourge that contributes significantly to a climate of hostility in our societies. The rise of extremism poses a real threat. Even more serious is the fact that this situation meets with indifference and even a certain acceptance, whether in the form of unacceptable political deals or the straightforward incorporation of xenophobic arguments into the positions adopted by democratic political parties. It goes without saying that all this is entirely at odds with the conception of society that we defend: a society based on the principles of justice and solidarity. The opinion leaders concerned are playing a very dangerous game because, by seeking out and pinpointing scapegoats, they fuel hatred of difference and put foreigners, immigrants and refugees in an even more vulnerable position. In some of our countries, political extremism is currently contributing to a resurgence of nationalism that results in exclusion.
- This form of political argument is also rooted in underlying anti-Semitism: there are those who use anti-Semitic prejudice, whether implicitly or openly, to further their political interests. We are all aware of the destructive effect of anti-Semitism on democracy. We cannot divorce the fight against anti-Semitism from the fight against all forms of racism, for it is one and the same struggle.
- Religious discrimination is a factor not properly or fully taken into account in the formulation of policies and strategies in the member states. Here, I should like to add a point too often forgotten – that religion should unite us, not divide us. Ultimately, religion can also help to protect human rights. It should not be a source of confrontation.
- The rising incidence of xenophobic behaviour, discrimination, expressions of racism (including racist violence) and widespread intolerance of migrants, refugees and asylum seekers is certainly a matter of urgent concern. Already in 1993, when the Council of Europe’s first Declaration on Combating Racism, Xenophobia, Anti-Semitism and Intolerance was adopted in Vienna, the Heads of State and Government expressed alarm at the increase in acts of violence, instances of degrading treatment and discriminatory practice towards migrants and members of immigrant communities. Seven years on, it has to be acknowledged that far from showing an improvement, the picture is bleaker.

I should like to recall here the point made by Mary Robinson, the UN High Commissioner for Human Rights, in her admirable opening address, about a “Fortress Europe”. Personally, I am convinced that the fortress mentality is not only intolerable but also non-viable in the medium and long term: it is an absurdity demographically, economically and otherwise. The human rights of migrants, refugees and asylum seekers are of key importance in our

fight against racism and xenophobia. The economic exploitation of migrants, especially undocumented persons, is unacceptable. Families have a basic right to be reunited – this is a matter of respect for human dignity. The point has to be made loudly and clearly that immigration is not a problem; it is the phenomenon of groups of people moving to our countries and helping to enrich them. These people help to create and consolidate our countries' wealth. That fact has to be acknowledged in the interests of justice, respect and solidarity.

Indeed, the Forum of Non-Governmental Organisations, held immediately before the Conference, decided to include a fifth theme on its agenda, in addition to the four conference themes: namely, immigration and asylum. The fight here is for equal rights, above all economic and social rights. It is also about moving toward successful integration involving civil and political rights, including the right of non-nationals resident in a country (whatever their nationality) to vote in local elections.

Final point, a group particularly exposed to racism throughout Europe is the Roma/Gypsies. Their fundamental rights are currently violated or threatened on a regular basis. They are the victims of persistent prejudice and sometimes the target of racist violence. Our duty of memory in Europe also gives us a duty to be vigilant: we must not forget that, in our recent past, many Roma/Gypsies have perished as the result of policies of racist persecution and extermination. Historically there has been systematic discrimination against Roma/Gypsies, and discrimination against them today in many social and economic contexts is driving them into social exclusion. Access to education is vitally important here: it is the key in the Roma/Gypsies' progress towards equality.

3. Solutions – examples of good practice

So what can be done to address the picture I have painted? What are the possible or existing solutions? What types of good practice should be supported and developed?

The conference working groups discussed these questions and came up with ideas, examples and proposals. The rapporteurs outlined these to you yesterday and you will find them in the written reports, already available, which will form an integral part of the European regional contribution to the world conference. I will highlight here only some of the many points made.

First and foremost I want to underline the importance of prevention. I subscribe to the school that prefers prevention to punishment (although, of course, there must also be provision for sanctions to be imposed).

The first point to be made about prevention concerns rules and, in particular, legal and political guarantees. The Conference unequivocally welcomed the latest advances in European law in this respect. The adoption of Protocol No.

12 to the European Convention on Human Rights and the recent Community Directive on equal treatment between persons irrespective of racial or ethnic origin are positive steps. Slowly but surely, Europe is completing the armoury of legal instruments needed to prohibit racial discrimination. Its efforts are, of course, complementary to the worldwide protection machinery. The International Convention on the Elimination of All Forms of Racial Discrimination remains the cornerstone at international level.

Completing anti-discrimination legislation at national level remains a priority. It is incredible – but true – that in the year 2000 not all European countries possess such legislation.

No matter what laws are passed, nothing will change until the law is properly applied and fully enforced. Genuine political will is also required at national and supranational level to turn the letter of the law into a reality that is part of everyone's experience. An example of very good practice that might usefully be followed is the establishment of specialised bodies to combat racism and intolerance at national level. Whether they take the form of a commission, an ombudsman's office or a specialist centre, and whether they focus on racism or form part of larger bodies with a brief to promote and protect human rights, such mechanisms are essential complements to the law and contribute to its implementation.

A final comment on this point: whatever anti-discrimination laws are passed and whatever measures are taken to combat racism, certain negative trends will never be reversed until positive steps are taken to improve the situation of those women and men affected by racial discrimination and/or multiple discrimination.

Particularly important here are: the development and exchange of good practice with regard to combating discrimination in employment and housing; the role of the social partners; and the effective involvement of employers and trade unions in addressing workplace discrimination.

Prevention also works through education. Education for human rights should occupy a much more important place in our education systems. Instead of being treated as a separate minor subject, it should be present right across the curriculum, injecting a human rights component into the teaching of every subject. What society needs is a "human rights culture". Intercultural education, a more thoughtful approach to history teaching and an effort to make schools places of education against racism are all aspects to be studied and reinforced.

Nothing will be accomplished without the involvement of civil society. For that reason, strengthening civil society and supporting the work of non-governmental organisations are basic steps in the fight against racism, racial discrimination, xenophobia and related intolerance.

We heard yesterday that the media play a crucial role in identity building. It is true that they are an integral part of our lives. As such, they are often criticised for certain negative aspects of their operating methods but the media can also make a substantial positive contribution to tackling racism. They are often fundamentally important tools in anti-racist work. New technologies, and particularly the Internet, are powerful forces for cultural *rapprochement* and thus help combat racism. The Internet and other media can also play a negative role, however, when they are used to disseminate racism and hatred. In such cases, we must react and protect ourselves. It is true that there are currently loopholes in the law because technology advances faster than lawyers can deliberate. Given that the problem has to be resolved at global level, we must hope that it is not overlooked at the forthcoming world conference.

I should like to conclude by emphasising how impressed I have been by the depth of the will, at European and international level, to combat racism, racial discrimination, anti-Semitism, xenophobia and related intolerance. Indeed, I wonder whether, on occasion, advances in awareness, law and practice at national and local level are not stimulated “from the top down”. That will has been palpable over the last few days. In recent years it has also brought some important projects to fruition and been responsible for practical achievements including such successful initiatives as the European Union’s Monitoring Centre on Racism and Xenophobia, whose work we appreciate.

Finally, I should like to pay tribute to our own European Commission against Racism and Intolerance (ECRI) for its remarkable work, and urge it to demonstrate that it has the strength of spirit, the will and the determination to go on fighting for justice and equality among all human beings.

In a year’s time, the world conference against racism will be taking place. Our message will not be one of self-satisfaction, but one which recognises our problems. Nor will it be a message of resignation, but one instead of determination to combat racism, racial discrimination, anti-Semitism, xenophobia and related intolerance.

Conclusions to the meeting between the Commissioner for Human Rights and the west European ombudsmen

Paris, 1 December 2000

The Council of Europe Commissioner for Human Rights invited western European ombudsmen to a meeting in Paris, on 1 December 2000. During this meeting, views on activities, competences and challenges faced by national ombudsmen and the Commissioner for Human Rights, as well as possibilities for future co-operation between them, were exchanged. A number of points emerged from this meeting:

1. During the round table discussion, the west European ombudsmen gave a brief summary of their current challenges and problems, including the increasing number of immigrants and asylum seekers, as well as translation and language problems because of increasing international mobility, and the growing complexity and costs for people seeking legal remedies. This was exacerbated by the “explosion” of complaints caused by the use of the Internet, which substantially reduced any threshold previously felt by those addressing themselves to the ombudsmen.
2. The participants agreed that by supporting and promoting ombudsmen institutions in central and eastern Europe, it was possible to contribute to the building up of democracy and to the respect of human rights within these countries. In this respect, the role of the Council of Europe Commissioner for Human Rights to help set up these institutions could be very useful. Acknowledging that this task entailed additional responsibilities and work, the participants expressed their willingness to help the commissioner with their expertise and knowledge. For his part, the commissioner could contribute to the co-ordination of contacts between national ombudsmen from

eastern and western Europe. He was therefore asked to examine, together with the Human Rights Directorate of the Council of Europe, any possibilities of a point of exchange of information within the Council of Europe.

3. A further point of discussion was the question of how the commissioner should handle individual complaints, which concerned national laws and which did not fall under his mandate. A vivid exchange of views on the mechanisms to be deployed in these situations, took place. Some participants considered it to be most efficient to send the individual complaints directly and without prior consultation of the applicant to the national ombudsmen. Prompt measures in dealing with the complaints are often important. Others considered this to be a violation of the latter's rights and thus demanded that the applicant should be informed and consulted first. Most participants, however, considered that to inform the applicant of every stage in the process, could lead to a decline in credibility, since cases could arise where national ombudsmen were also not competent and thus would have to forward the complaint again to another institution. Moreover, doubts were raised that entering into a profound dialogue with the applicant on the procedure to be followed might amount to legal advice by the commissioner and thus would go beyond his terms of reference. Different solutions to this problem were envisaged. For present purposes, a provisional solution was seen by strengthening the personal contacts between the commissioner and national ombudsmen. Hence, when an individual complaint was received by the office of the commissioner, an exchange between the liaison officer to be appointed by the commissioner, and the liaison officer to be appointed by each national ombudsman, would have to take place and both liaison officers should decide together on the further procedure. A network of co-operation between these liaison officers would thus have to be established.

4. A possible problem for future co-operation was seen by some participants in the fact that national laws did not explicitly mention human rights functions of ombudsmen. However, the majority held that ombudsmen in practice did interpret their mandate so as to include human rights issues. One suggestion was that the Council of Europe should initiate a recommendation with a view to clarifying this issue. Also the competence of ombudsmen to act *ex officio* in the field of human rights could allow national ombudsmen to provide the commissioner with relevant information.

5. The commissioner was also invited to inform national ombudsmen about his activities and projects, which might be of interest for, or complementary to their own investigations on specific subjects. More regular information about the Council of Europe's human rights work might also be useful. Furthermore, national ombudsmen could include in their publications some indications provided by the commissioner on the criteria for individuals wishing to supply him with information on human rights matters.

6. Before and during a visit by the commissioner in the different countries, it was suggested, he should have close contacts with the national ombudsmen. This would allow the commissioner to inform himself on the human rights situation in the respective country including shortcomings or issues of special importance to him.

7. It was agreed that any provisional co-operation modalities could usefully be reviewed after one year and that a future meeting to that effect of the Commissioner for Human Rights and the ombudsmen should preferably include central and east European ombudsmen and be combined with some other regular European ombudsmen meetings.

Conclusions of the seminar on "The role of monotheistic religions vis-à-vis armed conflicts"¹

Syracuse, 9 December 2000

1. As followers of the monotheistic religions, we have examined, at the invitation of the Council of Europe Commissioner for Human Rights, the question of the "role of monotheist religions vis-à-vis armed conflicts". We welcome the central role played by the Council of Europe in ensuring respect for human rights, a role which is being strengthened by the work of its Commissioner for Human Rights.
2. While armed conflicts continue to destroy human beings, we wish to emphasise most strongly that religion must not be hijacked to this end by fanaticism of any kind or origin. Fanaticism is a perversion of religion. Religious beliefs must not be used to justify armed conflicts, just as armed conflicts must not be used to suppress the exercise of religious freedom.
3. We vigorously, publicly, and in any circumstance, condemn the use of religious beliefs to stir up rejection and hatred of other people or to foment armed violence, including – and especially – when this occurs within our own religious communities. We have a duty to respond to the search for spiritual values, the lack or weakness of which provides fertile ground for the propagation of fanaticism.
4. We emphasise most strongly that there can be no real peace without respect for the freedom and dignity of individuals and peoples, especially minorities, without truth and justice, and without action to combat the injustices that give rise to violence.

1. The seminar was held from 7 to 9 December 2000.

5. As the suppression of religious beliefs can lead to violence, we call for respect for religious convictions and ideals, for holy places and for the religious lifestyles chosen freely by believers, both at national and at international level.

6. We undertake to continue developing education in mutual respect and human rights, as opposed to the “teaching of contempt”, while also fostering understanding of other people and groups. This is essential in all places of learning wherever they are. We urge the authorities to provide teachers with the means needed for this purpose.

Report of the meeting between the Commissioner for Human Rights and NGOs

Paris, 18 and 19 December 2000

In laying down the functions of the Commissioner for Human Rights, Articles 3.c and 5.1 of Resolution (99) 50 provide that the commissioner “shall, wherever possible, make use of and co-operate with human rights structures in the member states” and may act on any relevant information, including information addressed to him by organisations concerned with the protection of human rights.

In pursuance of his remit, the Commissioner for Human Rights organised a meeting with representatives of non-governmental organisations, principally active in the human rights field, so as to present his activities and discuss the problems currently encountered by those organisations.

From the discussion it was clear that the NGOs represented and the Commissioner for Human Rights could co-operate and provide each other with mutual support for achieving certain shared objectives. It was decided to establish a network of correspondents to liaise between the NGOs and the commissioner's office. The participants also decided to hold an annual meeting for exchanging views and improving the co-ordination of their activities.

The commissioner informed the NGO representatives of his activities during his first year in office, focussing on the key events, which had led him to submit reports to the Committee of Ministers and the Parliamentary Assembly.

The participants welcomed the creation of the office of Commissioner for Human Rights and expressed broad support for the work it entailed. There

was a consensus that the commissioner's role should continue to be that of an institution complementing other Council of Europe bodies, capable of a rapid, public response and able to call member-state authorities to account for blatant violations of human rights.

Armed with the independence conferred on him by his office, the commissioner must make full use of his authority to issue proposals and recommendations in areas where human rights continued to be breached. The participants encouraged him to alert the press whenever human rights were in danger.

There was agreement that the commissioner should continue to visit member states to verify respect for and effective enjoyment of human rights. If necessary, such visits should give rise to reports publicly and forcefully speaking out against violations of human rights. The commissioner and the NGOs would closely monitor action by offending states concerned on the recommendations made in these reports.

The NGO representatives offered the commissioner their assistance. An information and communication network might be set up to provide background information for the commissioner's visits. The NGOs would be consulted by the commissioner's office ahead of visits, and would forward to the commissioner any information which they deemed necessary to clarify the national situation. In addition, at the start of each visit the commissioner would attempt to arrange meetings with local NGOs for a clearer picture of the situation on the spot. Once a report had been published, the commissioner would do his utmost to ensure that it was made available to the NGOs that had helped with preparations for the visit.

For their part, the NGOs could address information to the commissioner at any time, asking him to visit a member state in the event of serious problems or a threat of human rights violations.

The NGO representatives suggested that the commissioner adopt a thematic approach to the work on human rights. Such work might relate to groups of countries and also focus primarily on the countries of western Europe. Topics such as access to the courts, freedom of information, migrant workers' enjoyment of fundamental rights, detention of asylum-seekers by administrative authorities, the right to equal treatment and non-discrimination, and the situation regarding conscientious objectors could be addressed by the commissioner in co-operation with NGOs. It was accordingly agreed to consult on the themes best suited to the commissioner's functions and the means at his disposal.

C. PERSONNEL

As at 1 April 2001

Commissioner for Human Rights	Alvaro Gil-Robles
Director of the office	Ekkehart Müller-Rappard
Personal assistants	Marina Dillon Christine Gigant
Administrators	Mika Boedeker Alexandre Guessel Fernando Mora
Documentalist	Muriel Dabiri
Trainees	John Dalhuisen Gaëlle Pereira Stanislaw Witkowski

D. BUDGET

Budget of expenditure

Financial year 2000

Account	Details	Expenses in €
7401	Emoluments of the Commissioner for Human Rights	167 700
7402	Remuneration of permanent staff	233 200
7404	Remuneration and accessory charges for temporary staff	15 200
7406	Official journeys	83 800
7407	Interpretation	8 100
7408	Translation	44 400
7409	Document production and distribution	17 700
7411	Meeting expenses	22 900
7413	Consultants	15 200
	<i>Total Head 7.4:</i>	608 200

Budget of expenditure

Financial year 2001

Account	Details	Expenses in €
11001	Emoluments of the Commissioner for Human Rights	172 600
11002	Remuneration of permanent staff	418 100
11003	Remuneration and accessory charges for temporary staff	56 500
11005	Official journeys	92 800
11006	Interpretation	16 500
11007	Translation	46 400
11008	Document production and distribution	18 500
11009	Meeting expenses	59 100
11010	Representational expenses	3 600
11011	Consultants	6 800
	<i>Total Head 1.10:</i>	890 900

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Elected in September 1999 as the Council of Europe's first Commissioner for Human Rights, Mr Alvaro Gil-Robles took up his duties on 15 October 1999; this report describes his work and traces his official journeys from that date until 1 April 2001. It also highlights the way in which he has developed essential links with other international organisations, NGOs and key figures, including the United Nations High Commissioner for Human Rights.

Aimed at all those who are interested in human rights and democracy, the report includes information on seminars, conferences and other activities in which the Commissioner has participated, as well as providing detailed descriptions of the eight official journeys undertaken by the Commissioner during this period, including Chechnya, Georgia and the Basque country.



The Council of Europe has forty-three member states, covering virtually the entire continent of Europe. It seeks to develop common democratic and legal principles based on the European Convention on Human Rights and other reference texts on the protection of individuals. Ever since it was founded in 1949, in the aftermath of the second world war, the Council of Europe has symbolised reconciliation.

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