



COMMISSIONER FOR HUMAN RIGHTS

COUNCIL OF EUROPE



Strasbourg, 11 April 2007

CommDH(2007)4

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# **1<sup>ST</sup> QUARTERLY ACTIVITY REPORT 2007**

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Commissioner for Human Rights  
of the Council of Europe**

1<sup>st</sup> January to 31<sup>st</sup> March 2007

Presented to the Committee of Ministers  
and the Parliamentary Assembly

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## **1. Introduction**

This is the first of quarterly reports on the activities of the Office of the Commissioner covering the period from 1<sup>st</sup> January to 31 March 2007. The purpose with this brief overview of the activities is to give some deeper understanding of what the Office is doing on a more daily basis, also as a background for a discussion on how the Office could improve.

In the end of the report the Commissioner summarizes some of the lessons learnt and gives information of activities planned for the forthcoming quarter.

## **2. Overview**

The Commissioner travelled on official missions or visits to Georgia, including Abkhazia and South Ossetia; Russian Federation with focus on Chechnya and to the United Nations in New York to discuss the issue of decertification of Police Officers in Bosnia and Herzegovina.

A follow up visit was made by staff members to Sweden. Much time in the Office was spent on drafting reports from earlier missions and visits.

The preparation of the forthcoming conference in Athens on cooperation between the Commissioner and national human rights structures continued. A preparatory meeting with ombudsmen was held in Berlin.

The Commissioner spoke at international meetings on the death penalty (Paris) and migrant children (Warsaw). He took part in the Council of Europe conference in San Marino on the follow up to the report of the Group of Wise Persons and its recommendations on the future of the Court in Strasbourg.

He took part in the January session of the Parliamentary Assembly and spoke on two issues: children's rights and measures against HIV/AIDS.

Finally, the Office itself started a process of restructuring in order to establish Units. It continued, nevertheless, to suffer from the effects of understaffing.

## **3. Missions and visits**

In Georgia (12-16/2) the Commissioner focused on the "frozen conflicts" in relation to Abkhazia and South Ossetia and visited both these areas where he had discussions with political leaders. He also visited places of detention and other institutions, including schools. In Abkhazia he could secure the release of Levan Mamasikhliasi whose case had been brought to the Strasbourg court. In Tbilisi he met the President, the Foreign Minister, the Minister for Minister of Refugees and Accommodation of Georgia, the Minister of Justice and other leading government representatives. One of the themes for discussion was the situation of displaced persons. The Commissioner also visited penitentiary institutions. The report is now being written.

The Commissioner was in North Ossetia (26/2) and paid tribute to the victims of the terrorist act in Beslan. He visited Chechnya (27/2-1/3) and Moscow (2/3). In Chechnya, he visited a remand detention centre, a police head quarter, a camp for security forces, the forensic medical centre, the central hospital and schools. He gave a lecture at the university and took part in a human rights conference organized by the regional ombudsman. He travelled to the region of Vedeno where he met local authorities, school and health personnel and others. The visit was covered by Russian and international media. In Moscow the Commissioner discussed his conclusions with the deputy Foreign Minister Mr. Alexander Yakovenko and the Prosecutor General Yuri Chaika and gave a widely attended press conference. The report is now being drafted.

While visiting Belfast (9/02) to deliver a lecture on the impact of conflicts on children, the Commissioner met with several independent institutions working for the protection of human rights, NGOs as well as members of the "Bill of Rights" Forum of Northern Ireland.

During the visit in Warsaw (20/3) for a conference the Commissioner also had a meeting with the Polish Foreign Minister for a discussion about European human rights work and also the issue of lustration.

The visit to United Nations in New York was planned as a follow up to the special mission to Sarajevo in December 2006 on the issue of the way the UN conducted the vetting of Police Officers in Bosnia and Herzegovina up until the end of 2002. On this issue the Commissioner is following up a previous work by the Venice Commission (see appendix).

The follow up visit to Sweden was conducted by two staff members and the report is now being finalized for forthcoming submission to the government. For reasons of impartiality and ethics this report is approved by the Director of the Office and not by the Commissioner.

#### **4. Reports**

Assessment and follow-up reports are now under production or have in draft form been submitted to the respective government on (for Assessment Missions) Germany and Ukraine and on (for Follow up visits) Latvia, Lithuania, Estonia, Poland, Sweden and Denmark. The plan is that the exchanges with governments will be finalized in time for all of these reports to have been submitted to the Committee of Ministers before the Summer break.

There have been unfortunate delays in the report writing which the Commissioner is discussing with the Office. The procedure is that respective government has a decent possibility to make comments on draft reports before they are finalized. Governments also have a possibility to add a written comment to the report as an appendix.

While the reports are drafted in a spirit of dialogue and cooperation with the Authorities concerned, they remain nonetheless the expression of the Commissioner's analyses and views.

## 5. Meetings

The consultation with Ombudsmen in Berlin (11/1) was part of the preparation for the major meeting in Athens in April with both Ombudsmen and other national human rights structures. This should also be seen as the Commissioner's contribution to the follow up of the Wise Persons' report on the crisis of the Court.

The Commissioner and two members of the Office took part in the conference in San Marino on that report. Its contribution, which focused on the potential of cooperation with national structures, is published on the web.

## 6. Information Work

The Commissioner's speeches on the death penalty and migrant children are published on the web.

Fortnightly viewpoints have been published on juvenile justice; Islamophobia; impunity and human rights crimes in the past; trafficking of human beings; prison conditions; and problems related to lustration measures.

Public statements were made on women's rights (8/3) and victims of terrorism (11/3).

## 7. Lessons learned

In general, governments have responded very constructively to suggestions and initiatives by the Commissioner. The discussions with government leaders during missions and visits have been serious, concrete and result oriented.

Also, the ongoing consultations with ombudsmen and other national human rights structures are developing in spite of the diversity of mandates and approaches between the various countries. Contacts with NGOs are also very promising and the Commissioner always invites such organizations for discussions during his travels.

The problem is the *follow up*. Report writing has been unacceptably delayed in some cases and momentum has been lost. The Commissioner is also worried that with the very thin staffing the Office has, it may be difficult to maintain the high quality of analysis and recommendations.

For the moment the Commissioner is spending time to improve the management of the Office. However, there is a limit to how much more can be obtained through improving the efficiency of the operations.

Some more gains could be obtained through better cooperation within the Council of Europe itself and with OSCE, UN and the EU human rights structures. Efforts are being made there and, for instance, before the visit to Georgia the Commissioner had very

constructive cooperation with the UN representative on internally displaced persons – which also was helpful for the government.

Still, the conclusion is that there is a wide gap between expectations and ambitions on the one side and concrete resources on the other.

## **8. Next three months**

- The conference with national human rights structures in Athens (12-13/4)
- Launch of a publication of the Viewpoints published during the 1<sup>st</sup> year of the Commissioner's mandate.
- Consultation with inter-governmental and non-governmental top officials in the field of human rights for discussion on strategies for improvements in Europe (17/3).
- Participation in the PACE human rights day (18/4).
- Participation in the PACE Plenary Session – 2nd part (16-20/04)
- CoE conference on cultural/religious dialogue in San Marino (23-24/4).
- Commissioner visit to Brussels (27/4).
- Commissioner visit to an NGO conference in Nicosia, Cyprus (3-4/5).
- 117th Session of the Committee of Ministers – Ministerial meeting (11-12/05)
- Assessment mission Austria (21-25/5).
- CommHR seminar on anti-terrorism measures and data protection (1/6).
- Assessment mission to Bosnia and Herzegovina (4-8/6).
- Participation in CoE Democracy Forum in Stockholm (13-15/6).
- Participation in the PACE Plenary Session – 3rd part (25-29/06)

## Appendix

CommDH/Speech(2006)27

### STATEMENT BY THOMAS HAMMARBERG COUNCIL OF EUROPE COMMISSIONER FOR HUMAN RIGHTS

**Sarajevo, 22 December 2006**

1. I have visited Bosnia and Herzegovina (BiH) for two days in order to assess complaints about the consequences of the UN process of vetting police officers by the International Police Task Force (IPTF) conducted until the end of 2002.
2. During the visit, I had meetings and talks with Mr. Zeljko Komsic and Mr Haris Silajdzic, Members of the BiH Presidency; Mr. Adnan Terzic, Chairman of the BiH Council of Ministers; Mr. Mirsad Kebo, BiH Minister of Human Rights and Refugees, Mr. Mladen Ivanic, BiH Foreign Minister; BiH Constitutional Court; representatives of the two associations representing the decertified police officers, as well as with several representatives of the international community in Sarajevo.
3. Two aspects have been particularly important during my meetings: 1) the protection of rights for individuals, 2) the importance of securing respect for international law, including the authority of the decisions by the UN Security Council.
4. My conclusions coincide largely with the report of the European Commission for Democracy through Law (Venice Commission) of October 2005.
5. The vetting process as such was a consequence of the Dayton Agreement (General Framework Agreement for Peace in Bosnia and Herzegovina – GFAP) which established IPTF. The behaviour of some police officers during the worst period of the conflict in the early nineties had been of major concern and it was essential that criminals and other unsuitable persons would not be a part of the future police forces.
6. The IPTF set out certain positive and negative criteria for the certification of the police officers. When now analysing these criteria, I found them highly relevant and have heard no objection to them.
7. The objections are instead about the process of applying the criteria to the individual cases. I have been presented with information and testimonies which indicate serious shortcomings in relation both to the adopted procedures themselves and to how these were implemented.
8. The main problem relates to the limited possibility for the individual to challenge the decision by the IPTF Commissioner. No independent review was offered. This is how the Venice Commission described the complaints procedure:

*“The procedure was as follows: within eight days of the Commissioner’s decision on non-certification or decertification, an appeal could be lodged before a panel composed of UNMBiH staff members. The application was to be made on the basis of the reasons for*

*the refusal, but without access to the file and the evidence. Neither the applicant nor a representative were allowed to appear before the panel. The panel would make its recommendation to the Commissioner who would then make the final and binding decision.”*

9. In my assessment, these procedures do not fulfil the requirements of the European Convention of Human Rights.
10. This is more serious, as the refusal or removal of certification disbarred the individual from the police profession for life. I have, during my visit, also been informed about social consequences for the decertified police officers, and about the stigma which IPTF decision can cause. A great number of them have remained unemployed.
11. It is the opinion of several of those I have met that some of the police officers who were certified had a criminal background and should be seen as unsuitable for police work. I have not been able to assess this and other examples of alleged obvious mistakes in the process. I have, however, the firm impression that there is a widespread opinion in BiH that a number of the decisions were arbitrary and that the process was therefore flawed. I do not think that the United Nations can ignore this problem.
12. Plans for the closure of the Office of the High Representative with its “Bonn Powers” are now being discussed. It is highly important that the issue of the decertified police officers be clarified before this closure.
13. UN Security Council decisions have to be respected. Domestic courts or other mechanisms in BiH may not, without UN authorisation, take it on themselves to review the IPTF decisions. The solution must come through an additional position or interpretation by the Security Council which would take into account information about problems which have arisen since 31 December 2002.
14. Such an approach would confirm the Security Council position that it is of utmost importance that the United Nations itself act in full compliance with international human rights standards.
15. It is my conviction that it is possible to find a satisfactory solution which would address the legitimate concerns of decertified police officers without undermining the authority of the United Nations or the IPTF vetting process.
16. I shall be sharing my conclusions of this mission with members of the Security Council in New York and am ready to travel there to meet them in order to explain my optimism for a solution.