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# **5th Annual Report**

## **January 2004 to March 2006**

to the Committee of Ministers and the Parliamentary Assembly

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## **PREFACE**

This last annual report has the peculiarity of presenting two years' worth of activity, indeed fractionally more; the reason is simple. I had intended to present a single annual report covering the final 21 months of my mandate (from January 1<sup>st</sup> 2004 to October 15<sup>th</sup> 2005), just as my first annual report had covered the period 15<sup>th</sup> October 1999 to 31<sup>st</sup> December 2000. In between, my mandate was prolonged by 6 months, which enabled my Office to complete a number of activities, which are presented here.

## **A. OVERVIEW OF ACTIVITIES**

The Commissioner for Human Rights' main functions as laid out in resolution 99(50) of the Committee of Ministers are:

1. The promotion of the effective respect for human rights
2. The identification of legislative shortcomings
3. The promotion of education in and awareness of human rights, and,
4. The promotion of effective national institutions for the defence of human rights

The Commissioner's annual report for the year 2003 offered a schematic description of the institution's activity under each of these headings. Since then, the main features of the Office's activity have remained constant, with only one or two new developments, which are described below. The most notable change, the possibility, in the light of Protocol 14 to the European Convention on Human Rights, for the Commissioner to intervene in cases before the ECHR, remains on hold pending its entry into force.

### **1. The promotion of the effective respect for human rights.**

#### *i. Regular Country Reports*

The Commissioner's regular country reports have become the institution's signature activity. These reports present his findings during official visits to member States. These visits combine meetings with national authorities and NGOs with the inspection of sites across the country. Typically the Commissioner will meet with the Ministers of Interior, Justice, Foreign Affairs and Equality / Social Cohesion and, often, with Heads of State and/or Government. Members of Parliament and Regional authorities are also important interlocutors. Meetings with the judiciary, from county court judges to the Presidents of the Supreme and Constitutional Courts are also essential, as are, at the very beginning of all visits, meetings with NGO representatives and National Human Rights Institutions and Ombudsmen. The Commissioner's work on the ground - visiting, for instance, prisons, police stations, holding centres for foreigners and shelters for victims of domestic violence - is essential to obtaining a first-hand understanding of, if not all, then at least the salient human rights challenges facing each country so as to make the recommendations at the end of each report as constructive possible.

Whilst the typical content of the Commissioner's visits has remained the same, their average length during 2004/5 extended significantly to reflect the size of the countries visited. Thus the Commissioner's visit to the Russian Federation lasted four weeks, to France two, and to the United Kingdom and Spain 9 days each. It has also proved necessary to extend visits to sites and cities outside the capital to ensure a representative overview of the human rights situation across each country and to permit the inspection of sites or regions presenting particular human rights challenges (such as, in the course of 2004/5 Ceuta and the Canary Islands in Spain, Lampedusa in Italy, Belfast in the United Kingdom and Chechnya in the Russian Federation).

It was originally intended to present reports on Western Europe's five largest countries. The early Parliamentary elections in Germany unfortunately resulted in the cancellation of the visit scheduled for autumn 2005. Nonetheless, 12 countries were visited in the last two years - 8 in 2004 and a further 4 in 2005 – bringing the total number of country reports presented during the mandate of the first Commissioner to 32.

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

Member States have continued to cooperate completely in the organisation of the Commissioner's visits and have accepted all requests for specific information or to visit particular sites.

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***France (5-21 September 2005)***

During his two week visit, the Commissioner held meetings and visited sites in Marseilles, Aix-en-Provence, Avignon, Strasbourg, Hautes-Pyrennes, Normandy, Corsica, Paris and l'Ile de France. The Commissioner visited 7 detention facilities, 5 police stations, 3 holding centres for irregular immigrants, 2 psychiatric hospitals, centres for victims of domestic violence and regional courts.

The resulting report, published on 15<sup>th</sup> February 2006, focuses particularly on the overcrowding and poor conditions of detention in the French penitentiary system, the inadequate resources and legislative proliferation undermining the work of the judiciary, the limited role of lawyers during police custody, the treatment of arriving foreigners, including the inadequate conditions in holding centres for irregular immigrants and difficulties in accessing the asylum system. The report also examines problems of discrimination and the recent rise in xenophobic violence, and measures to combat domestic violence and trafficking in human beings.

*Italy (10-17 June 2005)*

Over the course of eight days the Commissioner travelled between Rome, Naples, the Veneto region and the island of Lampedusa, where he examined the facilities for the reception of arriving immigrants. Elsewhere, visits were organised to detention centres for minors, prisons, a judicial psychiatric hospital (OPJ), reception centres for asylum seekers and separated minors, holding centres for irregular immigrants, a Roma settlement and a centre for victims of domestic violence.

The resulting report examines shortcomings in the administration of justice, notably the excessive length of judicial proceedings, conditions of detention and the special surveillance regime “41 Bis” for detainees with continuing links to organised crime and the prolonged detention of psychiatrically ill offenders owing to the lack of appropriate facilities to support them on their release.

The report also examines the respect for the rights of irregular immigrants and asylum seekers, notably with regards to the conditions of detention in holding centres for foreigners and the reception of immigrants on the island of Lampedusa. Having identified the lack of transparency of proceedings in the holding centre on the island, and the attendant uncertainty over the ability of arriving immigrants to effectively request asylum, the Commissioner recommended to the Minister of Interior that the UNHCR be authorised to establish a permanent presence on the island with access to the centre at all times. This recommendation was accepted and the UNHCR has permanent observers at holding centre since March 2006.

*Iceland (4-6 July 2005)*

Whilst in Iceland the Commissioner visited the Litla-Hraun prison, a reception centre for asylum seekers, the immigration control centre at Keflavik Airport and a centre for victims of sexual violence, in addition to meetings with members of the Government, the Supreme Court, Parliament and NGO representatives in Reykjavik.

The report questions the independence of the appointment procedure for Supreme Court judges, and examines the procedures for placing persons on remand in isolation and its use for minors, the treatment of asylum seekers, the promotion of gender equality, data protection issues and the protection of victims of domestic violence.

*Spain (10-19 March 2005)*

The Commissioner’s report follows an official visit of nine days, during which the Commissioner travelled to Andalusia, the Basque Country and Catalonia, visiting prisons, holding centres for foreigners, centres for unaccompanied minors, police stations and centres for victims for domestic violence, in addition to holding official meetings with the national authorities in Madrid. In May, members of the Commissioner’s Office visited the Canary Islands and Ceuta to examine the treatment of irregularly arriving immigrants.

The report raises a number of concerns over the treatment of arriving foreigners, particularly in Andalucia, the Canary Islands and Ceuta and Melilla, where there have been a number of allegations of irregular expulsions and violent incidents involving mass arrivals at the fenced frontier. The report also examines the measures introduced to combat ill treatment on the part of police and the isolated incidents that remain. The administration of justice, overcrowding and poor conditions in certain detention facilities, assistance to the victims of terrorism and the situation of the Roma community are also addressed.

*Liechtenstein (9-10 December 2004)*

The report focuses on the rights of foreigners, trafficking in human beings and certain aspects of the criminal justice system. In particular, the Commissioner recommended improvements in the response to domestic violence and further protection for foreign spouses, a review of Liechtenstein's practise of granting visas for 'cabaret artistes' in the context of efforts to combat trafficking in human beings and a greater role for lawyers, and greater access to interpreters, during police custody. Whilst in Liechtenstein, the Commissioner visited the prison of Vaduz, and the reception centre for asylum seekers.

*Switzerland (29 November - 3 December 2004)*

During a visit taking in the Cantons of Vaud, Zurich, Geneva and Tessin, the Commissioner visited two prisons, two police stations, a centre for battered women, a reception and a registration centre for asylum seekers and the 'Special Airport Unit' at Zurich international airport.

The Commissioner's report expresses concern over the procedures permitting the immediate rejection of asylum applications ("NEM") and the consequences of the withdrawal of social assistance to asylum applicants rejected in this manner. Racism and xenophobia, the independence of the judiciary and the response to domestic violence are also examined amongst other issues.

*United Kingdom (4-12 November 2004)*

Over the course of 9 days, the Commissioner travelled to Scotland, visiting Edinburgh Prison and Dungavel removal centre, Belfast, where he visited Castlereagh Police station and Hydebank Wood Young Offender's institute, before arriving in London, for official meetings and visits to the immigration service facilities at Heathrow airport and Belmarsh prison for a meeting with detainees held under Section IV of the Anti-terrorism, Crime and Security Act 2001.

The resulting report raises concerns over the United Kingdom's recent anti-terror legislation, changes to the asylum system, prison conditions, the juvenile justice system and the human rights problems presented by the Anti-Social Behaviour Orders. The Commissioner's views on recent UK anti-terror measures were twice approvingly quoted

in judgments of the House of Lords over the last two years. The House of Lords concurred, firstly, with the Commissioner's view, expressed in his Opinion 1/2002 that the indefinite detention without charge of foreigners suspected of involvement in terrorist activity that cannot be expelled under Section IV of the Anti-terrorism, Crime and Security Act 2001 was discriminatory and disproportionate<sup>1</sup>. The House of Lords also agreed with the Commissioner's view, expressed in his June 2005 report that the reliance on evidence possibly obtained by third parties through torture in the determination of the suspicion of involvement in terrorism-related activity could not be reconciled with absolute nature of the prohibition of torture in Article 3 of the ECHR<sup>2</sup>.

***Russian Federation (15-30 July and 20-29 September 2004)***

Having discussed his intention to prepare a report on the Russian Federation with the President of the Federation in May 2004, and secured the complete cooperation of the Russian authorities, the Commissioner carried out his official visit in two parts over the Summer of 2004. The Commissioner travelled to 6 of the 7 Russian Federal Districts, including visits to the regions of Khabarovsk, Irkutsk and Sverdlovsk, the Republic of Tatarstan, the region of Krasnodar, the Okrug of Khanty-Mansiisk, the region of Stavropol and the Chechen Republic, before concluding with Ministerial meetings in Moscow.

Over four weeks the Commissioner held 48 meetings with representatives of the federal and regional authorities, the judiciary, and the forces of law and order. 39 establishments were visited, including hospitals, schools, courts, military barracks, police stations, orphanages, old people's homes and 11 detention facilities of different types. The Commissioner met with representatives of well over 100 NGOs, in meetings organised in each of the regions visited.

The resulting report analyses the continuing, and often serious, challenges faced in respect of the administration of justice, police behaviour, prison conditions, the respect for human rights within the armed forces, freedom of the press, the rights of national and religious minorities, the fight against racism and xenophobia, the rights of foreigners, the enjoyment of social rights, the activity of NGOs and human rights institutions, the situation of vulnerable groups such as children, women, the elderly and the disabled, and the evolution of the situation, and ongoing human rights violations, in the Chechen Republic.

The Commissioner presented the final report to President Putin in Moscow on 27<sup>th</sup> May 2005.

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<sup>1</sup> [2004] UKHL 56

<sup>2</sup> [2005] UKHL 71



*Croatia (14-16 June 2004)*

Whilst in Croatia, the Commissioner visited Lepoglava prison, a primary school and a Roma community at Čakovec. In Zagreb, the Commissioner met with the Prime Minister and the President of the Republic in addition to several other authorities with whom he primarily discussed issues relating to the administration of justice, the integration of the Roma and the return of refugees and displaced persons. A member of the Office travelled to Knin with the assistance of the UNHCR to assess the problems relating to the return of displaced persons and refugees.

The resulting report expresses concern over the large backlog of cases before the courts and the inadequate provision of legal aid. The need to ensure adequate funding for projects targeting alienated Roma communities and to introduce measures to tackle de facto segregation in schooling was also raised. Lastly, the Commissioner called for faster progress in the restoration of property to minority refugees desiring to return and in the provision of alternative housing solutions to former tenants of social housing from minority communities.

*Sweden (21-23 April 2004)*

The report on Sweden examines the conditions of detention, the treatment of asylum seekers and separated foreign minors, the rights of the Sami, and measures to combat racism and trafficking in human beings. In particular, the Commissioner recommended further measures to limit the application of restrictive pre-trial detention regimes and to combat overcrowding in the prison system, the establishment of an independent authority for examining complaints against the police, allowing appeals against negative asylum decisions before an independent judicial authority, strengthening the guardianship system for unaccompanied foreign minors to prevent disappearances and the speedy resolution of the lands rights of the Sami. Strong concern was also expressed over the practice, to which other member States are increasingly turning, of securing the expulsion of unwanted foreigners to destinations where there is a recognised risk of torture on the basis of diplomatic assurances from the authorities regarding their treatment. Whilst in Sweden the Commissioner visited Mårsta transit and detention centre for asylum-seekers and the Kronoberg detention and remand facility in Stockholm

*Denmark (13-16 April 2004)*

The report on Denmark examines the rights of immigrants and asylum seekers, the fight against racism, certain short-comings in the criminal justice system and the fight against trafficking in human beings and domestic violence. It expresses particular concern over Denmark's family reunification regime, which is considered to give rise to the risk of violating the right to family life guaranteed by the European Convention on Human Rights. The Commissioner also recommends that greater efforts be employed to facilitate the integration of foreigners and combat discrimination and xenophobia. The report also suggests that the issuance of residence permits to foreign women ceasing to co-habit with violent partners and victims of trafficking testifying in criminal cases be facilitated. During his visit the Commissioner visited the Refugee Centre at Sandholm and the Nyborg State Prison

### ***Luxembourg (2-3 February)***

During his visit to Luxembourg, which comprised visits to the Luxembourg Prison and the Schrassig State Socio-Educational Centre (CSEE) for minors, the Commissioner attention focused on the juvenile justice system, the treatment of asylum-seekers and trafficking in human beings. The Commissioner's recommendation that the visa regime for visiting 'cabaret artistes' facilitating the trafficking in human beings be terminated was immediately accepted by the Luxembourg authorities, as were subsequent recommendations calling for the better separation of juvenile offenders from other youths taken into juvenile care centres for social reasons and the construction of a special closed centre for serious juvenile offenders, who were detained in the ordinary prison and not effectively separated from adult detainees. The Luxembourg authorities also doubled the resources of the Justice Ministry department responsible for asylum procedures to deal with the excessive length of asylum procedures identified by the Commissioner as a problem in his report.

### ***Contact Visits***

In addition to official visits the Commissioner has also conducted a number of less formal contact visits, which do not give rise to reports. These may be on the request of the inviting State, or in order to follow up on an issue identified in an earlier report. Over the period 2004/5, the Commissioner travelled to Berlin for meetings with the Secretary of State for Foreign Affairs, the Federal Government Commissioner for Human Rights Policy and Humanitarian Aid at the Ministry of Foreign Affairs of Germany, and the Human Rights Committee of the Bundestag; to Riga, in November 2004 for meetings with the Ministers for Foreign Affairs, Integration and NGOs to discuss the situation of the Russian Speaking minority; and to the Holy See for a meeting with Msgr. Parolin, Undersecretary for Relations with States in June 2005.

### ***ii. Follow-up reports***

The low number of country visits in 2005 owes much to the effort made by the Office to follow-up on the implementation of the recommendations contained in earlier reports and to establish a regular procedure for this purpose. Over the course of the last two years members of the Office visited 11 countries to meet with national authorities and visit relevant sites in preparation of follow-up reports made public at the same time as this report.

They were: Norway, the Slovak Republic, Finland, Bulgaria, Greece, Hungary, Romania, the Czech Republic, Slovenia, Cyprus, and Malta.

### iii. Recommendations

The Commissioner's regular human rights reporting procedure may be supplemented by ad hoc Recommendations addressed to member States on specific issues. For lack of resources, if not for want of urgency, no such recommendations were issued during 2004 or 2005.

### iv. The intervention of the Commissioner in crisis situations

Conflicts, internal territorial divisions and the menace of terrorism continue to afflict to certain member States of the Council of Europe. The Commissioner has sought to address the risks of human rights violations in such situations from the outset of his mandate, visiting the regions concerned and intervening before authorities.

#### ***Georgia (Adjara)***

On the invitation of the Georgian Ministry of Foreign Affairs, and on the request of Mr. Abashidze, Head of the Adjarian Autonomy, the Commissioner travelled to Georgia on 20<sup>th</sup> and 21<sup>st</sup> March 2004 to offer his assistance in resolving the growing tensions between Batoumi and Tbilisi in the run up to the national Parliamentary elections of 27<sup>th</sup> March, which had resulted in the declaration by Mr. Abashidze of a 'state of emergency' and the imposition of restrictions to the free campaigning of opposition parties in Adjara and the temporary military blockade of the region by the central authorities. In lengthy negotiations with Mr. Abashidze, the Commissioner sought to obtain the lifting of the state of emergency and guarantees for free campaigning in the region, as a precursor to a dialogue between the respective authorities on the application - and possible modification - of the Constitutional arrangements governing the region's autonomy. Mr. Abashidze was prepared to make only minor concessions on the organisation of public political meetings and left the country in some haste shortly after the elections.

#### ***Moldova (Transnistria)***

On the request of the Moldovan authorities, the Commissioner travelled between Chisinau and Transnistria on 22<sup>nd</sup>-24<sup>th</sup> March 2004 in an attempt secure an agreement permitting the continued functioning of the seven Moldovan language schools teaching in the latin alphabet in Transnistria, in accordance with the regular Moldovan school curricula, that the self-proclaimed Transnistrian authorities had threatened to close. The Commissioner's negotiations with the Transnistrian authorities permitted the resumption of the suspended dialogue between the authorities on both sides of the Dniester on the registration of schools for the next academic year under the auspices of the OSCE and with the participation of the Council of Europe. Despite renewed tensions in July of 2004 when the Transnistrian authorities occupied and threatened to close down several of the schools, all are currently functioning in accordance with the local registration formula discussed at the time of the Commissioner's visit.

### *The Republic of Chechnya, the Russian Federation*

From the very beginning of his mandate the Commissioner has sought to actively promote the protection of human rights in the conflict-torn Republic of Chechnya. The first and last visits of his mandate, in December 1999 and February 2006, were to the region; with a further four visits in between.

The Commissioner visited the Republic in September 2004 in the course of his official visit to Russia. The visit provided an opportunity to assess the evolving human rights situation in Chechnya and to organise a conference in Grozny bringing together representatives of the local and Federal administration, the army, law enforcement agencies, the judiciary and a broad range of NGOs to publicly discuss the ongoing human rights challenges. The participants adopted a final declaration stressing the importance of the respect for human rights in the reconstruction of the Republic and strongly condemning the violations that continue to take place, notably with respect to forced disappearances and the impunity surrounding such acts. The declaration calls for the consolidation of the role of civil society in the reconstruction of the Republic and the creation of an Ombudsman institution at the level of the Republic.

The Commissioner's activity in Chechnya over the last two years has focused on the three main issues identified in the Grozny Declaration – the creation of an effective Ombudsman institution in the Republic, the promotion of an active civil society, and the fight against disappearances and impunity.

With respect to the first, an interim Ombudsman, Mr. Lema Khasouev, was appointed shortly after the conference by the President of the Republic, Mr. Alkhanov. The Office of the Commissioner proceeded over the course of the next year to provide training to Mr. Khasouev and the staff of his new office, through a series of seminars and study visits to other Russian Regional Ombudsmen pending the creation of a permanent institution in accordance with the Chechen Constitution. In the week before the Commissioner's return to Chechnya for his final visit in February 2006, the newly elected Chechen Parliament voted a law on the Regional Ombudsman as its very first piece of legislation and elected Mr. Nurdi Nukhajiev to the post. This development completed an institutional trajectory that the Commissioner had begun, back in 2000, when his proposal to the Russian authorities to create regional Ombudsmen capable of recording civilian complaints and intervening before law enforcement agencies resulted in the creation of the Office of the Representative of President of the Russian Federation for Human Rights in Chechnya - known to most as the Kalamonov Office - in which Council of Europe experts were for long present. It is clear that this new institution has much to prove if it is to gain the trust of the Chechen population and to fulfil the important tasks expected of it.

The development of an active local civil society is vital to the defence of human rights in the region and, more broadly, to the civil and political reconstruction of shattered Republic. The Office of the Commissioner has sought to encourage this development through the promotion of local NGOs and has invited representatives to seminars in Nazran in July 2005 and Strasbourg in December 2005, for capacity building training and

to provide greater exposure to potential national and international partners. During his visit in February 2006 the Commissioner met with a wide variety of local NGOs in the Office of the Regional Ombudsman; the frankness with which they recounted the daily problems in Chechnya testified to, at least the beginnings, of an active, indigenous civil society in the Republic. They insisted at length on the continuing insecurity in Chechnya and the unresolved disappearances. They also complained of the passivity of the authorities whose task it was to investigate such charges and prosecute those responsible, who were primarily to be found within the local Chechen security forces.

Indeed, disappearances, even if gradually decreasing in number, remain the single greatest human rights concern in the Republic, contributing to a residual insecurity and gravely undermining the construction of an inclusive society governed by the rule of law. Much of the Commissioner's activity in the Republic, and that of the Council of Europe as a whole, has been directed at combating such violations and the impunity frequently surrounding their perpetrators.

In July 2005, the Office of the Commissioner organised a conference in Kislovodsk together with the Council of Europe's Directorates for Human Rights and Legal Affairs to examine ways of strengthening the judicial apparatus in the Republic and combating disappearances. The conference brought together representatives of the Federal and local authorities, the security forces, the judiciary, Chechen and National NGOs and international experts and resulted in a number of initiatives. A consolidated list and database of missing persons is currently being drawn up by Department of the Chechen Presidential Administration for the Protection of Human Rights, which has also instituted bi-monthly meetings of NGOs and law enforcement officials to raise cases of disappearances and other human rights concerns. The Ombudsman's Office together with local NGOs offers legal advice, including in respect of applications to the Court.

An issue of particular importance, first raised by the Chechen President in discussions in Grozny in September 2004, and subsequently repeated in a letter addressed to the Commissioner requesting the assistance of the Council of Europe, is the creation of a forensic laboratory in Grozny to assist in the identification of bodies. The Council of Europe conducted an expert mission to the region in September 2005 to identify the needs of such an operation. It is very encouraging that the Russian authorities and the European Union have agreed on the initial funding (of 1.5 million Euros) of a project creating such an institution and it is to be hoped that progress can rapidly be made in its implementation.

Since April 2005, a member of the Commissioner's Office has been permanently based in Grozny, with the aim of assisting the development of the new Ombudsman institution and local civil society, informing the Commissioner of human rights developments on the ground and assisting in the organisation of Council of Europe activities in the Republic.

## v. Thematic Reports

In February 2006 the Commissioner presented a thematic report on the human rights situation of the Roma, Sinti and Travellers in Europe based on the information and views expressed in his country reports and the responses of national authorities and NGOs to a preliminary version published in 2005.

The report documents the continuing difficulties faced by Roma, Sinti and Travellers in fully enjoying their rights throughout Europe, where discrimination in both the private and the public sphere remain prevalent. While documenting the principal human rights violations the Roma are subjected to, the report also presents a series of recommendations for overcoming discrimination in housing, education, employment and health care as well as the treatment of Roma by public authorities. The report calls for active partnerships of all authorities, institutions and the Roma themselves. The report was timed to coincide with the creation of the European Roma and Travellers' Forum which will have an important role to play in amplifying their voices in European and national decision-making.

The Commissioner's report on the human rights situation of the Roma, Sinti and Travellers in Europe is the first thematic report to have been prepared by the institution since its creation. Such reports ought, however, to constitute an important activity of the Office in the future, as its more frequent country reporting has placed it in an excellent position to identify topical human rights challenges common to all or several member States and to present general recommendations that might feed into the Council of Europe's inter-governmental work. The institutions' ability to expand its activity in this potentially useful area is limited, however, by its current resources.

## **2. The identification of legislative shortcomings**

Whilst legislative shortcomings, as opposed to problems of practise, are also addressed in the Commissioner's regular reports, it remains the case that certain shortcomings are too complex to be analysed in the necessary detail in the context of general reports. Thus the Commissioner may issue Opinions on existing or draft legislation raising a specific human rights concern identified either during an official visit or on the basis of information received. The Commissioner may also issue opinions on the request of Governments or other national instances, such as Parliamentary Committees or human rights institutions.

In 2004 the Commissioner presented opinions on the creation of a national body for counteracting discrimination in Poland and on the procedural safeguards surrounding the authorisation of pre-trial detention in Portugal. No progress has been made in respect of the creation an anti-discrimination body in Poland; indeed, the body originally responsible for drafting the legislation creation such an institution, the Government Plenipotentiary for the Equal Status of Men and Women has since been abolished. A draft law reforming the relevant articles of the Portuguese Code of Criminal Procedure by

strengthening the access of the accused counsel to the prosecution's files for the purposes of contesting the decision to detain pre-trial was prepared by the Ministry of Justice during the course of the year, but has not yet been tabled.

In February 2005 the Commissioner provided an opinion on the then Draft Council of Europe Convention on the Prevention of Terrorism on the invitation of the Committee of Ministers. In order to prepare this opinion the Commissioner organized a written and oral consultation with European National Human Rights Institutions and NGOs competent in this field.

In his opinion, the Commissioner referred to general observations raised in his country reports. The opinion continues with an article-by-article analysis of the draft Convention, suggesting a number of amendments or modifications. The opinion notably recommends the greater precision in the definitions of the crimes contained in the draft Convention, to strengthen the references to the principles of the European Convention on Human Rights and to create a specific section in the text dedicated to the protection of victims of terrorism, guaranteeing their rights to protection and compensation.

### **3. The promotion of education in, and awareness of, human rights**

Throughout his mandate the Commissioner has sought to organise awareness-raising seminars on topical human rights issues and to establish an ongoing dialogue with important actors in the field of human rights, including local and regional authorities, religious communities and the armed forces.

Over the last two years, the Commissioner organised a seminar in Tirana, on Trafficking in Children, a conference on the role of local authorities in the protection of human rights in Barcelona and continued the series of seminars on human rights and religions launched at the very beginning of his mandate with further meetings in Malta and Kazan, Russia. Unfortunately the Commissioner's limited resources did not permit the continuation of the seminars with armed forces, which had focused on human rights education in the army.

#### ***Seminar on "Combating Trafficking of Children in Europe"***

The seminar on "Combating Trafficking of Children in Europe" held in Tirana on 19-20 January 2004, was organised together with the Task Force on Trafficking in Human Beings of the Stability Pact for South Eastern Europe" with the cooperation of the Ministry of Labour and Social Affairs of the Republic of Albania and brought together representatives of both national authorities and experienced NGOs. The detailed conclusions outline the further steps that need to be taken, both nationally and internationally, to effectively combat trafficking in Children. They focus on the legislative and organisational progress that still needs to be made in the fields of the prevention of child trafficking, the protection of its victims and the prosecution of its agents.

### ***Seminar on “Human Rights and Regional and Local Authorities”***

The seminar on “Human Rights and Regional and Local Authorities” held in Barcelona on 5-6 July 2004 was organized together with the Council of Europe’s Congress of Regional and Local Authorities, in cooperation with the 2004 Universal Cultural Forum in Barcelona. During his visits the Commissioner has frequently had occasion to observe the importance of local authorities in the respect for human rights in the day-to-day lives of citizens and residents, given that it is at this level that they have the most direct contact with administrative services and structures. The discussions and conclusions focused on the legal status of local authorities’ human rights obligations, the impact of local health, housing and education policies on the enjoyment of fundamental rights, and the important role of local authorities vis-à-vis minority and immigrant communities in terms of combating discrimination, respecting minority rights and furthering integration.

### ***Seminars on Human Rights and Religious Communities***

The engagement of religious leaders in a constructive dialogue on the important role of religious communities in the promotion of human rights and democratic values has been a priority for the Commissioner from the very outset of his mandate. The Commissioner has organised a series of almost annual meetings between religious leaders from the main monotheistic faiths in Europe (Protestant, Catholic, Orthodox, Jewish and Muslim) and national authorities to discuss a variety of issues ranging from the role of religions in the prevention of armed conflict, church-state relations and the practical and conceptual relationship between human rights and religious commitments.

The last two seminars, held in Malta in May 2004 and Kazan, the capital of Tatarstan, Russia, in February 2006, focused on the need to combat the ignorance of the beliefs, practices and traditions of different religious communities that is often at the root of intolerance and violence. The Malta conference examined the importance of the teaching of religious facts and cultures within the state education system and concluded with the idea of creating an European institute, within the context of the Council of Europe, for the promotion religious tolerance and respect through education that would provide a focal point for dialogue, research and the training in the teachers in this area. The Kazan meeting examined this idea in greater in detail and concluded with the strong support of the participating religious authorities for the creation of such an institute and suggestions for how the Council of Europe might take this proposal forward.

The Kazan seminar also examined ways of strengthening relations between religious faiths and communities and the Council of Europe as a neutral forum for the promotion of inter-cultural and inter-religious dialogue and a point of contact between religious leaders and national authorities for the discussion of issues of common concern for the promotion of human rights and democratic values in Europe. The participants concluded that further consideration should be given to the creation of an advisory body representing the main religious communities in Europe to work with the Council of Europe.



#### **4. The promotion of national institutions for the defence of human rights**

National ombudsmen and human rights institutions play an important role in the promotion and protection of human rights at the national level and are essential partners in the Commissioner's work. The Commissioner is mandated to promote their creation where they do not exist, and their effective functioning where they do. National Ombudsmen and Human Rights Institutions are also vital sources of information on the human rights situation in member states and constitute, as a result, vital reference points for the Commissioner. The Commissioner is grateful for the assistance he has always received from these institutions.

##### *i. The promotion of the Institution of the Ombudsman*

Over the last two years, the Commissioner has developed or collaborated in a number of projects to promote the creation and effective functioning of National and Regional Ombudsman. The Commissioner has also had occasion to raise issues relating to the creation or functioning of Ombudsman institutions in his country reports.

Over the last two years, newly created national Ombudsman institutions started working in Luxembourg and Bulgaria, bringing the number Council of Europe member States national Ombudsmen to 37. With respect to the countries still lacking such an institution, the Commissioner encouraged its creation during his visits to, and in his reports on, Italy, Liechtenstein and Switzerland. The Commissioner organised a round-table together with the Turkish Parliament on the creation of a national Ombudsman in Turkey in Kayseri, in May 2004, but progress in the adoption of legislation on the institution has since been slow, despite the enthusiasm of many within the Turkish Government and Parliament.

In addition to his support to individual institutions the Commissioner seeks to address issues of common interest to all Ombudsmen. The primary channel for this co-operation and reflection is the biennial Council of Europe Round-Table of National Ombudsmen organised by the Commissioner's Office. The 9th Round Table of European National Ombudspersons was held in Copenhagen on 31<sup>st</sup> March – 1<sup>st</sup> April in Copenhagen and was organised together with the Danish Ombudsman, Hans Gammeltoft-Hansen, to coincide with the institutions' 50<sup>th</sup> anniversary celebration. The Round-table provided an opportunity to discuss the evolving role of national ombudspersons in Europe, their responsibilities regarding the protection of the right to privacy and the treatment of difficult prisoners.

The Commissioner has also sought to promote the institution of the regional Ombudsman. To this end the Commissioner organised the first Roundtable of European Regional Ombudsman in July 2004 together with the Catalan Ombudsman and with the cooperation of the Council of Europe's Congress of Local and Regional Authorities. More than a hundred regional Ombudsmen from across Europe discussed the division of competences between national and regional Ombudsmen and their role in enforcing the rights to housing and a healthy environment. It is intended that the Roundtables of European Regional Ombudsman should be held, as for their national counterparts, on a biennial basis.

Specific attention was paid to the further creation and strengthening of regional ombudsman institutions in the Cantons of Switzerland and the regions of Italy in the Commissioner's reports in these countries. The Commissioner's Office prepared a joint opinion with the Venice Commission and the Directorate General for Human Rights of the Council of Europe on the draft law for a Serbian Ombudsman institution in 2004, resulting in several changes in the adopted Act.

Over the last two years, the Office of the Commissioner has engaged in two specific projects for the promotion of the Ombudsman institution. For the promotion of the Ombudsman institution in South-Eastern Europe, the Commissioner has received generous support from the "Eunomia" Project, which is sponsored by the Greek Government. Activities under the project are approved of and monitored by a Steering Committee composed of the Commissioner for Human Rights, the European Ombudsman and the Greek Ombudsman and implemented under the auspices of the Commissioner for Human Rights by the Office of the Greek Ombudsman. Activities over the course of 2004/5 have included technical co-operation and legal advice for the drafting of a law on the Ombudsman in Turkey, mutual study visits for staff of Ombudsman offices in Greece, Albania, Vojvodina (Serbia), Montenegro (Serbia & Montenegro), FYROM, Bulgaria, Catalonia (Spain) and Kazakhstan, a meeting of the ombudspersons for Children's Rights in South-eastern Europe in Thessaloniki and a conference on trafficking of children in the region in Tirana. A programme of peer evaluation of ombudsman offices within the region has also been started, under which a senior staff member will be invited for one month to another Ombudsman's office and then send a report to the Office of the Commissioner for Human Rights for review.

In 2003 the Commissioner initiated a special programme for the promotion of Regional Ombudsmen in the Russian Federation, for which funding has been received from the European Union. The programme aims to develop and enhance the existing legislative framework, to promote the regional ombudsman institution in regions where it does not yet exist and to strengthen the independence and effective functioning of existing institutions.

Over the course of 2004/5 seminars bringing together senior local authorities, existing regional ombudsmen and civil society representatives to discuss the introduction and development of the regional ombudsman institution in different subjects of the Russian Federation were held in Irkutsk, Briansk, Kazan, Novosibirsk and Tver. A further seminar, uniting all the existing regional Ombudsmen was held in Strasbourg in March 2004, during which reforms to the Federal legislative framework to define the competences and status of Regional Ombudsmen and impose a statutory obligation on each region to introduce an Ombudsman institution were discussed. A Joint Working Group, presided by the Federal Ombudsman, Mr. Lukin was created, to further this reflection.

A Provisional Ombudsman institution was created in Chechnya on the Commissioner's recommendation in October 2004 pending the Parliamentary elections in the Republic. Several training seminars for the staff of this institution were organised through the Commissioner's programme for the Russian Federation. All the staff members were invited to St. Petersburg in February 2005 for an induction course before being sent in groups to the Regional Ombudsman institutions of Smolensk, Ekaterinburg, Kaliningrad and Kazan for further weeklong training sessions. The Chechen Parliament adopted a law on and elected a Regional Ombudsman in February 2006. A member of the Office of the Commissioner for Human Rights has been working from the Office of the Provisional Chechen Ombudsman in Grozny since April 2005 and will continue to offer assistance to the new institution and coordinate the Commissioner's activities in the region.

During the last two years 10 new regional Ombudsmen have been established, bringing the total to 33 out of 89 subjects of the Federation, whilst the institution of the regional Ombudsman has continued to grow in terms of prestige, independence and effectiveness in the majority of regions where it exists. The expansion of the institution continues, however, to be driven by individual regions as there has not been much progress in the reform of the Federal legislation on the Regional Ombudsman.

#### *ii. The promotion of National Human Rights Institutions*

There are far fewer National Human Rights Institutions (NHRIs) than Ombudsmen proper, even if a distinction is sometimes hard to make. Indeed, only a third of Council of Europe member States can be considered to an NHRI according to the Paris Principles. NHRIs have a vital role to play in the promotion of human rights, however, and their number is consequently growing.

Initially limited, the Commissioner's cooperation with NHRIs has grown considerably over the last two years and currently constitutes an important part of the Office's work. In November 2004, the Commissioner organised the Third Roundtable for European NHRIs in Berlin together with the German Institute for Human Rights. This Roundtable, the first to be held under the auspices of the Commissioner for Human Rights, resulted in the adoption of a Declaration defining the future cooperation between the Commissioner and NHRIs.

It was agreed that the Commissioner and the existing NHRIs should combine their efforts to promote the creation of independent NHRIs respecting the Paris Principles in all the member States of the Council of Europe and to protect existing institutions from threats to their independence, mandates and budget. The Commissioner was also requested to facilitate the engagement of NHRIs in relevant Council of Europe activity.

The important support of NHRIs to the Commissioner's work in member States was also acknowledged, with the NHRIs committing themselves to assisting the Commissioner in the preparation of his country visits and reports, and, subsequently, their dissemination and monitoring. The possibility for NHRIs to request formal Opinions from the

Commissioner on national legislative developments and to bring to his attention possible cases before the European Court of Human Rights in which he might usefully intervene pursuant to Article 13 of Protocol 14 to the European Convention on Human Rights was also encouraged.

In the light of these commitments the Commissioner set up the programme JOIN, standing for Joint Operations for Independent National Institutions for Promotion and Protection of Human Rights, together with the French Presidency of the European Group of NHRIs. The programme, finalised in February 2006, seeks to coordinate the activities of the Office of the Council of Europe Commissioner for Human Rights, the Office of the United Nations High Commissioner for Human Rights and NHRIs in three areas - assisting states in the creation of new institutions respecting the Paris Principles, the strengthening of the mandates and effectiveness of existing institutions and the collective defence of threatened institutions.

The promotion of NHRIs has come to feature prominently in the Commissioner's visits and country reports. In the last two years the Commissioner has addressed issues relating to the creation or strengthening of NHRIs in Italy, the United Kingdom, Russia, Switzerland and Iceland.

## **B. INSTITUTIONAL RELATIONS**

### **1. The Committee of Ministers**

During the course of 2004/5, the Committee of Ministers continued to closely follow and support the activity of the institution. In particular, the Action Plan adopted at the Warsaw Summit of Council of Europe Heads of State and Government approved the institution's development in the first 5 years of its existence and declared the strengthening of its resources to be a priority.

Individual member States continued to offer their assistance and cooperation in the organisation of the Commissioner's visits and to respond all his requests for information. All the institution's reports over the period were presented and debated during meetings of the Minister's Deputies.

In February 2005 the Committee of Ministers invited the Commissioner to provide an opinion on the Draft Council of Europe Convention on the Prevention of Terrorism.

### **2. The Parliamentary Assembly**

The Commissioner presented his Third Annual Report, covering the year 2002, to the Plenary of the Parliamentary Assembly during the January session in 2004, following which the Assembly adopted Recommendation 1640 (2004). This Recommendation called for the strengthening of the Commissioner's mandate, an increase in the institution's resources and greater cooperation between the Assembly – and its Committees - and the Commissioner. The Recommendation also encouraged the Commissioner to inform the Assembly of his own reports and recommendations.

Recommendation 1640 was certainly promising and the cooperation between the Commissioner and the Assembly has evolved over the last two years. One might refer to the references to the Commissioner's work, and calls for specific action on his part made in the Assembly's adopted texts over this period; 7 Resolutions, 5 Recommendations and 2 Opinions referred to the Commissioner in 2004/5<sup>3</sup>.

There have also been other positive examples of cooperation between the Commissioner and the Assembly. In 2004, for instance, a member of the Commissioner's Office accompanied the Assembly's Rapporteur to the Balkans to assist in the preparation of his report for the Committee on Migration, Refugees and Population on the issue of missing persons in Balkans, in respect of which the Commissioner had for some time been active and calling for greater action<sup>4</sup>. The Commissioner is also pleased to note the fact that the

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<sup>3</sup> 3 of the texts adopted in 2004/5 referred to institutional questions relating to the institution's powers and resources, 4 called for the implementation of recommendations made by the Commissioner, 5 for specific action on his part and 2 took note of his activity.

<sup>4</sup> Doc 10251.

Assembly followed up on the Commissioner's intervention before the Committee on Culture, Science and Education, by supporting his call for the creation of a European institute for promotion of religious tolerance and respect through education in its 2005 Recommendation on Religion and Education<sup>5</sup>. During the course of 2004 and 2005, the Assembly also continued to call for an increase in the institution's resources<sup>6</sup>.

In addition to appearances before the Migration and Culture Commissions on the issues raised above, the Commissioner made three further interventions before Assembly's Commissions during 2004 and 2005. He twice addressed the Commission on Legal Questions and Human Rights - on the situation in Kosovo, in March 2004, and on the issue of extraordinary renditions in Europe in December 2005 - and spoke again before the Migration Commission in March 2005 on the integration of women migrants in Europe. The Commissioner intervened before the Plenary on a further two occasions - to present his 3<sup>rd</sup> Annual Report in January 2004, and during a debate on the human rights situation in Chechnya in October 2004.

Not all has been so positive however. Indeed, despite the contacts, the exchanges and the fulfilment of its requests, the Assembly has not always given a particularly visible response to the Commissioner's own findings and recommendation in its own activity and positions.

In June 2004, for instance, the Commissioner organised a hearing in Strasbourg on the protection of unaccompanied immigrant minors during the Assembly session in response to the Assembly's request in Recommendation 1596 (2003), that the Commissioner "...conduct an investigation on the situation of separated children in Council of Europe member states." Neither this event, nor the detailed information and recommendations on this issue are contained in 4 of the Commissioner's recent country reports are referred to in Recommendation 1703 (2005) on the Protection and assistance for separated children seeking asylum.

The same can be said for the Commissioner's report on the situation of persons displaced from Kosovo and the human rights situation in the region, which was prepared on the specific request of the Assembly in 2002. The Commissioner presented this report to the Committee on Migration, Refugees and Population in 2002 and attended a hearing on these issues organised by the Committee on Legal Affairs in 2004. Nonetheless, not a single text adopted by the Assembly subsequently refers to the Commissioner's work in this area, despite the adoption of 5 subsequent resolutions or recommendations on Kosovo<sup>7</sup> and a further resolution on Population displacement in South-eastern Europe in 2005<sup>8</sup>.

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<sup>5</sup> Recommendation 1720 (2005) on Education and Religion. See Doc 10673

<sup>6</sup> Opinion No. 248 (2004) Budgets of the Council of Europe for the financial year 2005, and Doc. 10602 on the Follow Up to the Third Summit.

<sup>7</sup> Resolutions 1375, 1417, 1453 and Recommendations 1588 and 1691

<sup>8</sup> Recommendation 1588 (2003)<sup>8</sup> on Population displacement in South-eastern Europe: trends, problems, solutions

During 2004/5 the Assembly adopted further Recommendations and Resolutions on such as issues as accelerated asylum procedures, mental health needs in Europe, campaigns to combat domestic violence, the situation in Chechnya and the challenge of terrorism, without referring to the work of the Commissioner on a single occasion despite the Office's considerable experience and output in these areas.

It is also regrettable that the Commissioner should not have been able to present his fourth Annual Report, covering the year 2003, to the Plenary of the Assembly that elected him. The report remains to this day entirely without response.

### **3. The Congress of Local and Regional Authorities**

In the course of the last two years the Commissioner's cooperation with the Congress of Local and Regional authorities developed significantly, notably through the joint organisation in Barcelona, in July 2004, of a seminar on the role of local authorities in the promotion and protection of human rights and the first Roundtable of Regional Ombudsman. Relations with the Congress have since focused on these two areas.

### **4. The European Court of Human Rights**

On 14 May 2004, Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the Control System of the Convention, was opened for signature. The Protocol foresees that "in all cases before a Chamber or the Grand Chamber, the Council of Europe Commissioner for Human Rights may submit written comments and take part in hearings<sup>9</sup>," and considerably strengthens the institution's ties with the Court. The Protocol has not yet entered into force, however, and criteria for the Commissioner's intervention have not yet been elaborated.

Pending its entry into force, the Commissioner's involvement in the Court's proceedings has been extremely limited. The Commissioner may, however, on occasion play a useful role in certain of its activities. Thus the Court may request the Commissioner for Human Rights to intervene in pending cases. This happened in January 2004, when the Commissioner accepted the Court's request to facilitate "within the limit of his competences" the application of Article 39 of the Rules of Court (interim measures) in order to protect the health of an applicant detained in Tiraspol<sup>10</sup>.

### **5. The European Union**

As the institution of the Commissioner for Human Rights has evolved and developed over the years, it has had increasing cause and opportunity to engage EU institutions on human rights concerns both within the Union, in areas falling under its competence, and, beyond the Union, with respect to its candidate countries, to those falling within its neighbourhood policy and to other members of the Council of Europe.

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<sup>9</sup> New article 36 § 3 of the ECHR.

<sup>10</sup> Ilaşcu, Ivantoc, Lesco and Petrov-Popa v. Moldova and Russia. Case no. 48787/99

In 2005 the Commissioner appeared before the COSCE and the COPS on the invitation of the Luxembourg presidency and met twice with the EU High Representative for the European Security and Defence Policy, Mr. Javier Solana. The Commissioner welcomes the appointment of Mr. Michael Matthiessen as the Personal Representative of the SG/HR for Human Rights in January 2005 with whom regular and extremely useful contact has since been maintained.

Over the course of the last two years the Commissioner met four times with Mrs. Benita Ferrero-Waldner, Commissioner for External Relations, to discuss developments and coordinate activities in the Union's Neighbourhood Policy region and in the Russian Federation. The support of the Commission for the activity of the Commissioner in the region has been particularly important. The Commission has been funding the Commissioner's programme for the development of regional ombudspersons in the Russian Federation with financial assistance secured through the EU-Council of Europe joint programme. The Commissioner particularly welcomes the adoption of a 20 million Euro European Union reconstruction and assistance programme for the Northern Caucasus, and the inclusion in the programme of funding for the creation of a forensic laboratory in the Chechen Republic.

Issues on which contacts have been maintained with the Commission's Directorate-General for Justice, Freedom and Security include the proposed creation of an EU Fundamental Rights Agency and the ongoing elaboration of asylum directives. Indeed the Commissioner has been able to witness the urgent need for a coherent immigration policy and uniform asylum norms at the EU level in the course of recent visits to EU member States, and notably those, like Spain, Malta, Italy and Cyprus, at its Southern extremity.

The Commissioner believes that a gap in the framework of European Human Rights institutions exists at the level of the European Union and that an EU institution mandated to advise EU institutions on human rights developments falling within their competence would greatly contribute to the promotion of human rights if well coordinated with the Council of Europe in general and the Commissioner for Human Rights in particular.

Contacts with the European Parliament have continued to grow over the last 2 years, with the Commissioner increasingly frequently being seized by its members. The Commissioner met with Mr. Josep Borrell, President of the European Parliament, in December 2005 to discuss cooperation between the institutions and topical human rights concerns. The Commission has twice been invited to attend meetings of the European Parliament's Foreign Affairs Human Rights Sub-Committee in the last year, the first time, in November 2004 to present his activities in general and the second, in October 2005, to present his views on the respect for human rights in the Russian Federation. The Justice and Civil Liberties Commission invited the Commissioner to address a public seminar on "Promoting EU Fundamental Rights Policy" in April 2005 and to present his recent EU related activity to the Commission in March 2006.



The Commissioner also maintains close ties with the European Ombudsman and his Office, with whom he co-operates in the promotion and the establishment of national ombudspersons in EU and candidate Member States.

## **6. International Organisations**

Cooperation with other international organizations and institutions active in the field of human rights has inevitably grown in importance and frequency during the course of the Commissioner's mandate, even if the Office's resources remain inadequate to the task of consistently informing and following the activities of all relevant institutions.

During the course of 2004/5 the Commissioner has continued to enjoy close cooperation with the United Nations High Commissioner for Human Rights, with whom the Commissioner has held annual meetings to discuss issues of mutual concern and coordinate their activities in Europe. Regular institutional cooperation has been established with the Office of the UNHCHR's National Institutions Unit, which is a founding member of the JOIN programme, which coordinates the efforts of the Commissioner, the UNHCHR and existing National Human Rights Institutions to promote their creation in the Council Europe member States in which they are lacking. During the last two years, the Commissioner has also variously met with special procedure post holders, including the UN Special Rapporteur on Torture, Mr. Manfred Nowak, the Representative of the Secretary General on the human rights of internally displaced persons, Mr. Walter Kälin and the Independent Expert on Violence against Children, Paulo Sérgio Pinheiro. Though cited for the first time in a decision of the Committee Against Torture in 2005<sup>11</sup>, the Commissioner continues to have little connection with the various United Nations Human Rights Treaty Bodies, and none at all with the Commission.

Cooperation with the United Nations High Commissioner for Refugees continued to be both frequent and extremely useful in 2004/5, thanks in large measure to its excellent representation in Strasbourg. The Commissioner raised issues relating to the protection of refugees in all the countries visited over the last two years and is grateful for the cooperation provided by its delegates, whom the Commissioner has met wherever the UNHCR has a permanent presence. With the exception of Russia and Croatia, in which the questions relating to the return and living conditions of refugees and IDPs continue to arise, the Commissioner's visits during 2004 and 2005 were to Western European countries receiving asylum seekers. All of the Commissioner's reports on these countries express concern over the erosion of the right to asylum and the views and experience of the UNHCR have been vital to obtaining an accurate picture of the situation. The UNHCR is an invaluable monitor of national asylum systems and its presence and involvement in asylum proceedings in many countries is an important safeguard. The Commissioner is particularly glad, therefore, to have been able to assist the UNHCR to establish a permanent presence on the island of Lampedusa during his official visit to Italy in July 2005 and welcomes the Italian authorities commitment to ensuring the transparency of proceedings on the island.

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<sup>11</sup> Decision of 20 May 2005 concerning communication No 233/2003 (CAT/C/34/D/233/2003)

The Commissioner's relations with the OSCE have primarily focused on its specialized institutions, such as the ODIHR, which the Commissioner visited in February 2004 to discuss cooperation, and the High Commissioner for National Minorities, with whom the Commissioner has maintained particular contact on the issues relating to the Russian speaking minorities in the Baltic States. Contacts with OSCE Heads of Mission have also been important for the Commissioner's interventions in 2004 in Adjara, Georgia and on the issue of the closure of Moldovan language schools in Transnistria. Indeed, the very purpose of the Commissioner's involvement in the latter case was to relaunch stalling negotiations already initiated by the OSCE. The Commissioner organized a seminar on "Combating Trafficking of Children in Europe" in Tirana on 19-20 January 2004, together with the Task Force on Trafficking in Human Beings of the Stability Pact for South Eastern Europe.

During the last two years the Commissioner has twice met with Mr. Jakob Kellenberger, President of the International Committee of the Red Cross to discuss issues of shared concern. These have primarily concerned the situation of displaced, detained and missing persons in the Balkans and the Caucasus, and in the Republic of Chechnya in particular. The ICRC and the Office of the Commissioner for Human Rights accompanied the Council of Europe Parliamentary Assembly rapporteur to the former Serbia & Montenegro, Bosnia & Herzegovina and Kosovo in order to assist in the preparation of an Assembly recommendation on missing persons in the Balkans.

## **7. Non-Governmental Organisations**

NGOs are essential partners for the Commissioner for Human Rights. NGO representatives are always the first points of contact for the Commissioner during his evaluation visits and it is through them that the Commissioner is able to obtain an initial picture of the human rights situation prior to his site visits and meetings with national authorities. NGOs contribute not only to the identification of the concerns addressed in the Commissioner's reports, recommendations and opinions, but also keep the Commissioner abreast of subsequent developments and fresh concerns. An effort has also been made to take the views of the NGOs into account when commenting on the Council of Europe's own intergovernmental activity – NGOs were, therefore, consulted at a meeting in Paris, to assist the Commissioner in the preparation of his Opinion on the Draft Convention on the Prevention of Terrorism. The Commissioner ought not, however, to develop into a conduit or filter for NGO views in the drafting process of Council of Europe instruments. NGOs ought, rather, to be afforded the maximum opportunity to express their own views to drafting bodies directly.

The Commissioner has frequently examined issues relating to the functioning of NGOs in his visit reports. During his visits to Western European Countries in 2004/5, the Commissioner has been able to witness the vital work of NGOs on the ground. They provide, often of in the absence of State infrastructure, essential services in, to list only some areas, the protection of victims of trafficking and domestic violence, assistance to asylum seekers and immigrants, activities in prisons and the reinsertion of released prisoners. In

his reports on these countries the Commissioner has, moreover, frequently had cause to regret the reduction of funding to such associations, without any other public alternative being foreseen. The Commissioner has also called in many countries for the greater access of NGOs, as monitors, but also as essential service providers, to holding centres for foreigners.

There are still member States of the Council of Europe, however, in which the very enjoyment of the freedom of association is restricted and in which threats to human rights defenders are recorded. In his report on the Russian Federation, the Commissioner examined the development of civil society. Having met with representatives of well over 100 NGOs across 6 Federal Districts, the Commissioner was well placed to review, in his report, the encouragement received, the difficulties they still often face. Since the presentation of the Commissioner's report, a new NGO law was been adopted in December 2005. In addition to the Council of Europe Opinion requested by the Russian authorities, the Commissioner raised a number of concerns about the draft law with the Minister of Justice. Following its adoption, and several important modifications, the Commissioner again discussed remaining shortcomings with the Minister of Justice and insisted on the importance of clear implementing regulations and guidelines to remove residual ambiguities in the law. The development and defence of NGOs in the Republic of Chechnya has also been a priority during 2004/5; training seminars were organised for local Chechen human rights NGOs in Nazran and Strasbourg in August and December 2005.

Within the limits of a mandate officially preventing the involvement in individual cases, the Commissioner has also variously intervened informally before national authorities in respect of individuals and organisations he has worked with directly. Consideration might be given, however, to possibility of granting the Commissioner more formal means of intervening in the defence of human rights defenders.

## **C. STAFF AND BUDGET**

The financial and human resources of the Commissioner's Office continued their gradual but insufficient progression over the last two years. The Commissioner's regular budget for 2003 was 896 205 euros. This expanded to 956,800 euros in 2004 and 1,179,600 for 2005.

The addition in 2005 of one further administrator and in 2004, of one further assistant brought the number of permanent Council of Europe staff to 7 – the Director, the Deputy to the Director, 2 administrators and 2 assistants and a documentalist – with a further assistant employed on a temporary basis

With such limited human and financial resources provided by the Council of Europe budget, the Commissioner has continued to rely on seconded staff and voluntary contributions to conduct and finance much of the Office's activity.

The United Kingdom, Finland, Luxembourg, Spain, Switzerland, Belgium and France have made voluntary contributions for temporary recruitments or seconded civil servants for all or part of the last two years. The Commissioner has also been able to finance the placement of a member of his Office as his representative in the Office of the Chechen Ombudsman in Grozny since April 2005 through the transfer of funds from the Council of Europe's budget for programmes in the Chechen Republic. This funding has unfortunately not been renewed for 2006.

On the last day of the Commissioner's mandate the Office consisted of a total of 4 permanent administrators, 3 seconded administrators, 1 temporary administrator, 4 assistants and 2 part-time temporary administrators; a total, therefore, of 14 persons.

The Commissioner's regular operational budget was in fact reduced from 246,600 euros in 2003 to 223,000 euros in 2004 before rising to 252,200 euros in 2005. This situation has again resulted in the Commissioner's having to rely on the contributions of individual member States. During 2004/5, the Commissioner received further financial contributions from Finland, Luxembourg, Spain and Cyprus.

Whilst the Commissioner is extremely grateful for the assistance of individual member States, which has accounted for over half the Office's real resources in the last few years, it is essential that the institutions regular budget be increased.

Following the priority attached to the institution at the Warsaw Summit of Heads of State, the Commissioner's regular budget for 2006 makes provisions for 3 more permanent administrators and 2 further assistants. Even if the operational budget has increased by only 30,000 euros this nonetheless represents welcome progress and the beginning, it is to be hoped, of a serious attempt to provide the institution with the necessary resources to fulfil its mandate effectively.

## MEMBERS OF THE OFFICE

### **1. PERMANENT AND TEMPORARY STAFF**

#### **Director of the Office**

Mr. Manuel LEZERTUA *as from 07/2004*  
Mr. Christos GIAKOUMOPOULOS *up till 06/2004*

#### **Deputy to the Director**

Mr Markus JAEGER

#### **Administrators**

Mr. Alexandre GUESSEL

Mr. Lauri SIVONEN *as from 01.01.2005*

#### **Documentalist**

Mrs Muriel DABIRI

#### **Personal Assistant**

Ms. Sandra FERREIRA *as from 12/2005*  
Ms. Fiona MYLES *up till 10/2005*

#### **Assistant**

Ms. Mila SMELIKOVA

#### **Temporary Staff**

Mr. Mamed MADAEV  
Special representative of CHR in Chechnya *as from 04. 2005*

Ms. Margaret ASANTE, Personal Assistant *as from 10/2005*  
Ms. Christine GIGANT, Personal Assistant *up till 09/2005*

### **Part-time Temporary Staff**

Mrs. Rachael KONDAK  
Temporary Agent *as from 09/2005*

Ms. Aurélie CAMPANA  
Temporary Agent *as from 10/2004*

Ms. Yasmine CARLET  
Web Assistant *as from 01/2006*

### **2. SECONDED STAFF**

Mr. John DALHUISEN  
Special Adviser to the Commissioner  
Financed by voluntary contribution of United Kingdom Government

Mr. Julien ATTUIL  
Administrator  
Financed by voluntary contribution of Luxembourg Government

Ms. Sirpa RAUTIO  
Administrator *as from 01.02.2005*  
Seconded by the Finnish Government

### **3. PREVIOUS SECONDED STAFF**

Mr. Ignacio PEREZ CALDENTEY *up till 08/2005*  
Seconded by the Spanish Government

Mr. Javier CABRERA *up till 03/2005*  
Seconded by the Swiss Government

Ms. Satu SUIKKARI *up till 07/2004*  
Seconded by the Finnish Government

Mr. Gregory MATHIEU *up till 03/2004*  
Seconded by the Belgium Government

Mr. Nicolas WEVELSIEP, Assistant *up until 12/2004*  
Voluntary Contribution by the French Government

### **Previous temporary Staff**

Mr. Brecht VANDENBERG *10/2005 to 31/01/2006*  
Mr. Ali GÜDER *06/2004 to 31/03/2005*

## ORDINARY BUDGET 2004

<b>Article</b>	<b>Budget</b>
Remuneration of permanent staff	476 200,00
Remuneration of temporary staff	19 100,00
Emoluments of the Commissioner for Human Rights	180 700,00
Official journeys	103 500,00
Interpretation	29 100,00
Translation	12 300,00
Document production and distribution	4 000,00
Expert Consultant	7 000,00
Representational expenses	3 600,00
Meeting expenses	62 900,00
Various expenses	2 000,00
Roundtable, National Ombudsmen	27 000,00
<b>TOTAL</b>	<b>927 400,00</b>

## ORDINARY BUDGET 2005

<b>Article</b>	<b>Budget</b>
Remuneration of permanent staff	601 802,39
Remuneration of temporary staff	106 181,00
Emoluments of the Commissioner for Human Rights	202 315,00
Interpretation	30 400,00
Translation	27 500,00
Document production and distribution	7 100,00
The Promotion of the effective respect for human rights	133 003,02
Human rights awareness raising	70 000,00
Legal advice and mediation	8 100,00
Support and Coordination of Ombudsman & National Human Rights Institutions	44 700,00
<b>TOTAL</b>	<b>1 231 102,39</b>