



COMMISSIONER FOR HUMAN RIGHTS

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THE PRACTICE OF THE COMMISSIONER FOR HUMAN RIGHTS ON HUMAN RIGHTS DEFENDERS

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Introduction

This document reports on the practice of the Council of Europe Commissioner for Human Rights regarding NGOs and human rights defenders (HRDs) during the terms of office of the current Commissioner Mr. Thomas Hammarberg, and the first Commissioner Mr. Alvaro Gil-Robles. In the first part, the document lists some of the relevant activities carried out by the current Commissioner. The second part includes extracts from the Final Report as well as from the annual Reports of Commissioner Alvaro Gil-Robles. In special situations, including of a humanitarian and urgent nature where a rapid response is necessary, the Commissioner may use discrete diplomacy and confidential demarches. This document does not make reference to any such initiatives.

The protection of human rights defenders and their work, as well as the development of an enabling environment for their activities are part of the terms of reference given to the Commissioner for Human Rights. HRDs are amongst the main actors contributing to the effective observance and full enjoyment of human rights in the Council of Europe member States. Therefore, any action by the Commissioner aiming at their protection can be justified as a contribution to an effective national system of protection of human rights.

The Commissioner's definition of "human rights defenders" and related scope of work are as broad as to include not only reactions deemed necessary when individual HRD's rights are offended but also the relations with national human rights structures and ombudspersons.

HRDs and their work are included in the programme of country visits and are part of the continuous dialogue on Human Rights with national authorities. During country visits, the Commissioner regularly meets with NGO representatives and human rights defenders in order to discuss the human rights situation in the country undergoing the assessment process. The Commissioner may also raise with the national authorities concerns regarding obstacles faced by HRDs and their work. In several countries, the Commissioner has paid attention to freedom of association and expression; addressed the functioning of NGOs and access to funding; called for access to information and sites necessary for the work of NGOs and HRDs; moreover, he has asked for consultation of NGOs regarding relevant legislation and human rights' policy.

Additionally, HRDs and their work are part of the thematic monitoring conducted by the Office of the Commissioner. In order to promote awareness about the need to avoid interfering in the work of HRDs and human rights NGOs, various seminars and conferences have been organised by the Office of the Commissioner, for example in Turkey, Russia and in France.

I. Term of office of current Commissioner for Human Rights, Mr. Thomas Hammarberg

During 2006, the Commissioner for Human Rights, Mr. Thomas Hammarberg, undertook several initiatives in support of human rights defenders, notably:

- On 13-14 November, a Colloquy on Human Rights Defenders was held in Strasbourg, jointly organised by the Office of the Commissioner for Human Rights and the Directorate General of Human Rights, which discussed the situation of human rights defenders in Europe. Bringing together over a hundred participants, the colloquy examined the challenges faced by HRDs in 46 Council of Europe member states, and sought to identify measures to support and protect them. The Commissioner expressed his willingness to work in close co-operation and in complementary manner with other intergovernmental organisations, in particular the OSCE/ODIHR Focal Point for Human Rights Defenders, the European Union and the United Nations, notably through the UN Secretary General's Special Representative on Human Rights Defenders. At the close of the Colloquy, the Commissioner issued an important set of Conclusions.¹
- The publication of the Viewpoint "*Human Rights Defenders must be able to criticize*", on 13 November 2006.²
- During a contact visit to Georgia in July 2006, the Commissioner considered an appeal made by a local NGO against the 30-day detention of five NGO activists for holding a protest demonstration in front of a court house.³
- The address to the European Union NGO Forum held in Helsinki on the 7,8 December, focused on Women Human Rights Defenders.
- The letter to Turkish-Armenian newspaper Agos following the murder of its editor, Mr. Hrant Dink.⁴
- The press statement deploring the murder of the Russian journalist Ms. Anna Politkovskaya ⁵
- Meetings with NGOs and human rights defenders during country visits, namely to Armenia, Azerbaijan, Bosnia and Herzegovina, Denmark, Estonia, Georgia, Germany, Latvia, Lithuania, Poland, Russia, Sweden, Turkey and Ukraine.
- Furthermore, the Commissioner held discussions with various NGO representatives in the Council of Europe headquarters in Strasbourg.

¹ Doc. CommDH/Speech(2006)26 and Doc. CommDH(2006)19.

² Viewpoint available in: http://www.coe.int/t/commissioner/Viewpoints/061113_en.asp

³ Press release "Commissioner for Human Rights concludes Georgia visit",

12 July 2006. http://www.coe.int/t/commissioner/Activities/news2006/060712Georgia_en.asp

⁴ Press release "Commissioner sends his condolences to Turkish newspaper Agos" 22 January 2007.

⁵ Press release – 568(2006) "Commissioner Hammarberg deplores murder of Russian journalist Anna Politkovskaya", 7 October 2006.

II. Terms of Office of the 1st Commissioner for Human Rights, Mr. Alvaro Gil-Robles

Throughout his mandate, the first Commissioner for Human Rights Mr. Alvaro Gil-Robles, paid significant attention to the work of NGOs and HRDs in Europe, as illustrated by his reports. In his Final Activity Report covering the period October 1999-March 2006, Commissioner Gil-Robles made the following analysis:⁶

- “The importance for the Commissioner’s work of constant contact with NGOs cannot be overestimated. Without them, the Commissioner would often be both blind and mute, not to mention alone. NGOs are always the first point of contact during my country visits and the information they have provided me both then and in Strasbourg has been essential to gaining an understanding of the human rights challenges in each country. More often than not, it was NGOs that alerted me to problems and that recommended places to visit. NGOs have also played a key role in the dissemination of my reports and in calling for the implementation of my recommendations.
- No doubt, I have not been able to act on all the requests for intervention, nor meet the expectations of each. Judgments and criteria, have occasionally differed. The Commissioner cannot, after all, take up every baton and the nature of his work – which is to seek to constructively engage national authorities in the resolution of human rights problems – does not always suit. I have, however, always tried to ensure that my Office remained open to all organisations wishing to bring matters to my attention and to carefully consider criticism when voiced. On the whole, though, I can only express my gratitude for the support and cooperation that I have received.
- I have tried, for my part, to support the activities of NGOs and defend the freedom of association and expression in the countries of the Council of Europe where they are not yet fully respected. Even in the Council of Europe’s older members I have cause to call for greater cooperation with NGOs so that they can work effectively in the areas and places in which their activity greatly contributes to the respect for human rights.
- At the international level, the cooperation of Human Rights Watch, the International Federation for Human Rights and Amnesty International has been of inestimable value. I am grateful to all of them for their support and the respect that they have always shown for this young institution, whose special role and methods I think they have appreciated.”

The five Annual Reports issued by Commissioner Gil-Robles during his term of office identify various Commissioner’s activities, which aimed specifically at supporting NGOs, HRDs and their work.

The first Annual Report, covering the period October 1999 to April 2001, refers to the meeting between the Commissioner for Human Rights and NGOs, held in Paris, on 18-19 December 2000,⁷ as follows:

⁶ The Commissioner - CommDH(2006)17 / 29 March 2006 - Final report of Mr Alvaro Gil-Robles, Council of Europe Commissioner for Human Rights, October 1999-March 2006, pp26.

⁷ The Commissioner - CommDH(2001)9 23 April 2001. Annual Report, October 15th 1999 to April 1st 2001, to the Committee of Ministers and the Parliamentary Assembly, pp. 125, 126.

- “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.(...)
- (2) (...) 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.(...)
- (7) The NGO representatives suggested that the Commissioner adopt a thematic approach to the work on human rights.”

The second Annual Report, referring to events in 2001⁸, notes that the Commissioner:

- ‘s ties with leading NGOs were consequently reinforced, notably with Amnesty International, Human Rights Watch, the International Federation for Human Rights and Memorial.⁹
- Organised a seminar on human rights standards and the treatment of aliens, in Strasbourg on 20-22 June 2001. Following an invitation by the Commissioner, the Grouping of Human Rights NGOs submitted a number of proposals in the form of a summary report. ¹⁰
- Encouraged NGO participation at different events, such as the seminar on human rights of elderly people, held in Neuchâtel (Switzerland) at the end of October, and the seminar on the respect for human rights in Chechnya, held in Strasbourg at the end of November.¹¹
- Participated directly or indirectly, through members of his office at conferences and meetings organised by NGOs, for instance. The annual general meeting of the International Helsinki Federation in Zagreb in October, where a member of the Office presented the Commissioner’s activities to this NGO’s 41 national committees or those more specifically devoted to the granting of legal or humanitarian assistance to aliens arriving at the borders of member states.¹²

On individual communications, the 2nd annual report highlighted the following:

- “It might happen, however, that an individual complaint corroborates information concerning the general human rights situation in a given country, in which case the Commissioner treats the communication as information within the meaning of Article 5 of his terms of reference. It should be mentioned also that, when the problem raised falls with the competence of a national Ombudsman to address, the Commissioner will advise the person, in accordance with Article 3 c) of his terms of reference, to apply to that institution.”¹³

⁸ The Commissioner - CommDH(2002)2 15 May 2002 - 2nd Annual Report of the Council of Europe Commissioner for Human Rights, April 2001 - December 2001.

⁹ Idem, § 90, pp. 24.

¹⁰ Idem, § 95, pp. 25.

¹¹ Idem, § 97, pp. 25.

¹² Idem, § 98, pp. 25.

¹³ Idem, § 110, pp 27.

The Third Annual Report, which provides an account of events in 2002, notes that:¹⁴

- During his first visit to *Turkey* in 2001, the Commissioner noticed the frequently fraught relations between human rights NGOs and national authorities. Thus, the Commissioner organised a meeting in Ankara in 2002 between NGOs and government officials to discuss how their relations might be improved and the important role of NGOs accommodated and encouraged. At the close of the seminar, the Commissioner presented to the participants his conclusions, which included invitations to:¹⁵

1. Multiply the positive experiences of co-operation;
2. Associate NGOs with the preparation of legislation in their sectors of interest, at both the governmental and parliamentary levels. While it is natural and normal in a democratic society to require a degree of transparency in the functioning and activities of NGOs, this requirement must not result in heavy-handed supervision and disproportionate sanctions that would totally impede their functioning. Constructive co-operation requires mutual transparency: NGOs must:
 - have access to information (eg draft legislation, reports, etc),
 - be able to participate in drawing up agendas for meetings between the authorities and NGOs,
 - be consulted before decisions are taken,
 - be informed of the action taken on decisions made at meetings with the authorities.These are measures that should dispel suspicion and mistrust.
3. Implement these measures very rapidly; (...)
4. Promote the will to co-operate on both sides, and this at every level of public life. To foster real understanding of this will to co-operate at all levels, it is essential:
 - that the highest authorities of the state proclaim loud and clear their real determination to practise co-operation.
 - that any illegal pressures that might impede the smooth functioning of civil society be punished. The credibility of the authorities' commitment is at stake here. Impunity is the sign of sick societies, and without an incontrovertible determination to eradicate it, the signals perceived by civil society and NGOs will be negative and mistrust will persist;
 - that NGOs undertake to participate in such forums as the authorities open to them. Condemnation and reaction must give way to constructive criticism, proposals and dialogue.
5. Do everything, finally, to establish new means of communication between civil society and the authorities. In this connection, the European experience with Ombudsmen is an alternative that has proved its worth and that might be explored.”

¹⁴ The Commissioner - CommDH(2003)7 19 June 2003 : Commissioner for Human Rights - 3rd Annual Report January to December 2002, to the Committee of Ministers and the Parliamentary Assembly, pp. 17

¹⁵ The Commissioner - CommDh(2002)4 / 14 May 2002 : Excerpts of the Conclusions of the seminar on the role of civil society in the consolidation of modern democracy, Ankara, Turkey, 6-7 May 2002.

On freedom of association and expression:

- “The promotion of the activity of NGOs requires a number of conditions to be met. The respect for the rights to freedom of association and expression is the most obvious. This is to be achieved not merely through the absence of persecution for the expression of contrary views but also, more positively, through a legal framework providing for the establishment of NGOs and the prevention of state interference in their internal organisation and legal activity. Such a framework ought to provide for the possibility of establishing legal personality and raising funds. Indeed, a well-defined framework will encourage more responsible organisations operating with the requisite transparency and accountability. The absence of such a framework, will by contrast, push organisations underground breeding dissent and yet greater antagonisms.”¹⁶

On enabling a working environment:

- “The positive and constructive engagement of NGOs will also be facilitated by greater openness and transparency on the part of state authorities. At the practical level, this ought to include the possibility for appropriate NGOs to visit such sites as detention facilities, asylum centres, psychiatric establishments and other institutions where persons may be exposed to human rights abuses.”¹⁷

On consultation:

- “The constructive criticism of NGOs also requires access to information regarding legislative and policy initiatives. Consultation procedures between public authorities will facilitate co-operation, encourage responsibility and permit the timely voicing of concerns by those with practical experience of the likely impact of proposed initiatives or problems inherent in existing practices. In this connection, close ties between independent national institutions, such as Ombudsmen, human rights institutions or equality commissions, can provide an excellent forum for the airing and analysis of the concerns of civil society, and a conduit to executive and legislative authorities.”¹⁸

In his 2003 Activity report, the Commissioner for Human Rights¹⁹:

- Was “particularly concerned during his visits to encourage authorities to consult and co-operate closely with NGOs. The Commissioner’s 2003 reports on *Turkey* and *Chechnya* both identify difficulties faced by NGOs and make recommendations for their free and effective functioning”.
- In October 2003, the Commissioner organised a *seminar in Strasbourg* on the relations between human rights institutions and NGOs.

¹⁶The Commissioner - CommDH(2003)7 19 June 2003 : Commissioner for Human Rights - 3rd Annual Report January to December 2002, to the Committee of Ministers and the Parliamentary Assembly, pp 18.

¹⁷ Idem.

¹⁸ Idem.

¹⁹ The Commissioner - CommDH(2004)10 15 December 2004: 4th Annual Report January to December 2003, to the Committee of Ministers and the Parliamentary Assembly, pp. 20.

In the 5th Annual Report, covering the period January 2004 - March 2006²⁰, Commissioner Alvaro Gil-Robles made the following comments:

On consultations:

- “(...) 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.”

On the functioning of NGOs and freedom of association:

- “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 was able to witness the vital work of NGOs on the ground. (...) 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.”²¹

On individual cases:

- “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 the possibility of granting the Commissioner more formal means of intervening in the defence of human rights defenders.”

²⁰ 5th Annual Report of the Council of Europe Commissioner for Human Rights, January 2004 - March 2006, pp. 26-27.

²¹ Mr Thomas Hammarberg, at that time new Commissioner elect, also participated at this latter training seminar.