

**THE COMMISSIONER  
FOR HUMAN RIGHTS**

**LE COMMISSAIRE  
AUX DROITS DE L'HOMME**



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**Comments by Mr. Thomas HAMMARBERG,  
Commissioner for Human Rights,  
on the interim report of the Group of Wise Persons  
to the Committee of Ministers**

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<sup>1</sup> This document was linguistically revised on 19 June 2006.

1. On 19 May 2006, Mr. Gil Carlos Rodriguez Iglesias, Chair of the Group of Wise Persons, invited Mr. Thomas Hammarberg, Commissioner for Human Rights, to submit comments in writing on the interim report, which the Group of Wise Persons had addressed to the Committee of Ministers on 10 May 2006 (doc. CM(2006)88). The Commissioner welcomed this first opportunity to make his preliminary views known to the Group of Wise Persons. He expresses the hope that he will be provided with an additional opportunity to present his views before the adoption of the Wise Persons' final report<sup>2</sup>.
2. The Commissioner submits herewith three series of comments and reflexions: (I) On the proposals made in the interim report of the Group of Wise Persons with respect to the Commissioner's functions, (II) on additional possibilities of the Commissioner's involvement in the procedures under the European Convention on Human Rights and (III) on certain preconditions for any extension of the Commissioner's involvement in efforts to preserve the long-term effectiveness of the Convention control mechanism.

#### **I. On proposals made in the interim report with respect to the Commissioner's functions**

3. Paragraphs 43 and 46 to 48 of the Group of Wise Persons' interim report suggest that the Commissioner, "*alone or in co-operation with European and national non-judicial bodies*" should "*play a more active role in the Convention's control system*". The Commissioner takes note with satisfaction of these proposals.
4. As the interim report points out, the Commissioner - in close co-operation with **national, regional and local ombudspersons** (whether with a general or with thematic competence) - would in principle be in a position to play a most helpful role with respect to litigation before the Court. For example, the ombudspersons could assist in avoiding or bringing to an end practices which would later result in cases brought before their national courts and, eventually, before the Court. They could inform the Court, through the Commissioner, of whether or not an individual case reflects a widespread situation in one or several member States.<sup>3</sup> They could also provide significant assistance in reaching friendly settlements, out of the Strasbourg Court, including for large numbers of claimants. Finally, they could report back to the Court as to whether or not practices or situations declared in breach of the Convention by the Court persist or have actually been stopped – and, as a result, whether the relevant Court judgment has been effectively implemented. In addition to the aforesaid, ombudspersons, in cooperation with the Commissioner, are indeed in a position to convincingly informing the public about the Court's mandate and competence and about the admission criteria contained in the Convention, as they often enjoy significant public trust and confidence in most countries.
5. The Group of Wise Persons is right in pointing out that some Ombudspersons do not have formal competences to deal with Convention rights. The Commissioner would like to add to this that some member-States have not even set up the institution of Ombudsperson (national, regional, local, general or thematic). Finally, there are

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<sup>2</sup> Especially the reflexions and suggestions of the Wise Persons regarding « alternative methods of resolving conflicts brought before the Court » (Cf. third indent of paragraph 74 of the Interim report – CM(2006)88) are likely to be of interest to the Commissioner.

<sup>3</sup> Cf. also paragraph 50 of the Wise Persons' interim report, on "judgments of principle". It seems to the Commissioner that ombudspersons can contribute to addressing the concern expressed there.

cases where the Ombudsperson institution exists and is empowered to deal with allegations of breach of Convention rights but such powers may not be used fully and effectively.

6. The Commissioner has an explicit mandate to promote the institution and the efficient work of “*human rights structures*” in member States (cf. Article 3 of the Commissioner’s mandate as set out in Committee of Ministers Resolution (99)50). In this connection, the Commissioner may address specific recommendations to countries which do not have Ombuds institutions to set up such. He may provide technical and political assistance to member States which are drafting laws on Ombudsperson<sup>4</sup> and assist Ombudspersons in developing joint work and a European network<sup>5</sup>. Thus, the Commissioner supports actively the Wise Persons’ proposal to address specific recommendations to member States on the desired competences and means of Ombudspersons which might also have the consequence of relieving the Court.
7. The Commissioner is bound to insist, however, on the need to respect fully the independence of Ombudspersons. This should apply not only to national authorities but also to the Council of Europe, including the Commissioner himself. The Commissioner is in favor of the adoption of rules or laws empowering Ombudspersons to act in such a manner that it would contribute actively to the safeguarding of the Court. However, the Commissioner considers that the decision to intervene and the manner of the intervention should remain in the hands of each individual Ombudsperson. The latter should not be directed to use their powers in a certain case or in a certain manner. For example, other priorities or shortage of means may cause an Ombudsperson to refrain from intervening in certain types of cases.
8. Much of the above applies also to **National Human Rights Institutions** whose mandate, independence and pluralistic composition make them national “human rights structures” which can help avoiding the adoption of or putting an end to legislation or practices that are considered in breach of the Convention and likely to lead to cases before the Court. The Commissioner will try to promote National Human Rights Institutions vigorously with the help of a new tool<sup>6</sup>. Specific political support by the Committee of Ministers and the Assembly would be welcome.
9. The Group of Wise Persons considers in the interim report that, “*in co-operation with the Court Registry, the Commissioner could encourage each member State to establish the necessary facilities to enable alleged victims of violations of the Convention to reach friendly settlements of their cases through mediation provided by experienced mediators.*”<sup>7</sup> This idea finds the Commissioner’s support but requires, in his view, further clarification. It is not entirely clear, in particular, whether this proposal refers to new instances to be set up in member States, alongside with ombudspersons who are, precisely, in charge of making

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<sup>4</sup> Together with the Venice Commission or the Directorate General of Human Rights as well as with outside partners, where this is possible.

<sup>5</sup> Through the Eunomia Project run by the Greek Ombudsman under the Commissioner’s auspices and through the Commissioner’s Round Tables with European Ombudspersons, as well as other seminars or meetings, etc.

<sup>6</sup> A few months ago, the Commissioner has launched together with the European Group of National Human Rights Institutions and the United Nations High Commissioner for Human Rights the so-called JOIN Programme aimed at setting-up, promoting and defending independent, meaningful National Human Rights Institutions in Council of Europe member States.

<sup>7</sup> Paragraph 49 of the interim report.

recommendations to public authorities with a view to settling cases of maladministration/ breach of the citizen's fundamental rights.

10. Moreover, the Wise Persons' interim report puts forward the idea that the Commissioner's "...mandate could [...] be extended to cover **co-ordination of the activities of the various Council of Europe bodies competent in human rights matters. He could inform them of human rights violations identified by the Court and of the allegations contained in applications (including those declared inadmissible). These bodies could thus act to resolve the difficulties identified, which would prevent further applications from being submitted.**"<sup>8</sup>The Commissioner understands his role as a general one and as complementary of that of the different Council of Europe's control mechanisms. He intends to act, on the basis of the latter's findings, in his dialogue with national authorities. The Commissioner has publicly announced his intention to maintain an active co-ordination and dialogue with the said control mechanisms. Therefore, insofar as it proclaims the role of the Commissioner as a general Human Rights institution, which builds upon the work done sector by sector by the different control mechanisms, the Wise Persons' proposal goes in the right direction. However, its present formulation might lead to certain confusion. Indeed information about the results of the work of the Court belongs to the Court itself. Moreover, co-ordination of the various Council of Europe bodies belongs to the Secretary General of the Organisation, unless these bodies are independent. However, the idea of systematic concertation between the different Human Rights bodies of the Organisation, whether independent or not, is, in the Commissioner's view, certainly sound. Fine-tuning of standpoints taken and action envisaged as well as offering support for the concerns of other human rights bodies would add to their collective force and can only help reduce the number of abuses that end up before the Court.
11. The Wise Persons also offer the idea that the Commissioner could help choosing the locations of **decentralised offices providing information and advice** and assess their functioning in the course of his or her visits. Without rejecting the idea at this stage, the Commissioner would like to express some hesitation in relation with this proposal of vetting somehow the quality and functioning of these Offices. He wonders, in particular, if the Court, its Registry, or the Directorate General of Human Rights would not be better suited to perform these tasks. For the time being the Commissioner would like to reserves his final position on this.

## II. On additional possibilities of the Commissioner's involvement for the benefit of the Court

12. The Commissioner notes that the Group of Wise Persons attaches great importance to the procedure of **pilot judgments** and to the execution of the Court's decisions in these cases. In the Commissioner's view this is indeed a key area. An area where the interaction between the Court, the Commissioner and the Committee of Ministers could prove very fruitful. In its Rules for supervision of the execution of judgments<sup>9</sup>, the Committee of Ministers has already stated that it will give priority to the judgments in which the Court has identified a systemic problem (Rule 4§1). The Commissioner further recalls that in its Resolution (2004)3,<sup>10</sup> the Committee of Ministers had already requested that the Court identify in its judgments the

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<sup>8</sup> *Ibid.*

<sup>9</sup> Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements, adopted by the Committee of Ministers on 10 May 2006 at the 964<sup>th</sup> meeting of the Ministers' Deputies, CM(2006)90, 12 May 2006.

<sup>10</sup> Resolution Res(2004)3 on judgments revealing an underlying systemic problem.

underlying systemic problems and notify these judgments not only to the States concerned and the Committee of Ministers but also to the Parliamentary Assembly, the Secretary General and to the Commissioner.

13. The details of the Commissioner's participation in procedures on pilot cases will need to be worked out. In particular the rules of procedure should determine at what stage in the procedure the Commissioner is to become involved in dealing with the general problem, practice or legal gap in question. In any case, once in possession of the information about the general problem raised by the case, the Commissioner could offer his good offices to the Member State(s) concerned, either specifically or in the course of his visits, bilateral contacts or via his privileged relations with national Ombudspersons and/or National Human Rights Institutions. The idea is, basically, that the systemic problem should become a priority in the continuous dialogue between the Commissioner and the member State concerned by the pilot procedure or judgment. The Commissioner could, in particular, suggest or validate the means proposed to redress the systemic defect. Of course, the Commissioner would report back to the Court and the Committee of Ministers on the results of this dialogue.
14. These last remarks would not appear to be restricted to the execution of pilot judgments but would seem applicable to the **execution of judgments in general**. The Commissioner could be involved in the relevant procedure by providing information and offering his good offices to the Committee of Ministers in accordance with the Declaration of 19 May 2006<sup>11</sup>, providing for a framework of institutional relations between both. This could be useful in order to prevent infringement proceedings<sup>12</sup>.
15. **Verification of the compatibility of draft laws, existing laws and administrative practices with the standards laid down in the European Convention on Human Rights** is deemed to constitute one of the main remedies of the Court's excessive workload. Established by Committee of Ministers Recommendation (2004)5<sup>13</sup> this objective was reiterated in the Committee of Ministers' Declaration of 19 May 2006<sup>14</sup>. The Commissioner should like to recall that he has already carried out compatibility exercises via Recommendations and Opinions<sup>15</sup>. Provided that relevant information is given to him by the Court and the Committee of Ministers, the Commissioner could enhance his activities and direct involvement in this field, in close cooperation with National Human Rights Institutions and Ombudspersons (see also above).

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<sup>11</sup> Declaration of the Committee of Ministers on sustained action to ensure the effectiveness of the implementation of the European Convention on Human Rights at national and European levels adopted on 19 May 2006, point X§c.

<sup>12</sup> Rule 11 of Rules of the Committee of Ministers for the supervision of the execution of judgments and of the terms of friendly settlements, adopted by the Committee of Ministers on 10 May 2006 at the 964<sup>th</sup> meeting of the Ministers' Deputies, CM(2006)90, 12 May 2006; Article 46§4 of the Convention after the entry into force of Protocol No. 14.

<sup>13</sup> Recommendation Rec(2004)5 on the verification of the compatibility of draft laws, existing laws and administrative practice with the standards laid down in the European Convention on Human Rights.

<sup>14</sup> Points X§ f and g.

<sup>15</sup> Final Report of Mr. Alvaro Gil-Robles, Council of Europe Commissioner for Human Rights (October 1999-March 2006) for the attention of the Committee of Ministers and the Parliamentary Assembly, 29 March 2006, CommDH (2006)17, p. 10-11.

**III. On preconditions for any extension of the Commissioner's involvement in efforts to preserve the long-term effectiveness of the ECHR control mechanism**

16. In the paragraphs above the Commissioner has signaled his unambiguous willingness to contribute with resolve to the preservation of the Court's effectiveness in the long run. He has made comments and suggestions on the proposals contained in the Group of Wise Persons' interim report and suggested, in a non-exhaustive manner, some additional avenues worth exploring to achieve this result, whilst respecting the Commissioner's mandate and structure. However, the Commissioner is bound to underline that **financial investment in his institution will be an absolute pre-condition** if the Commissioner is to play a significant role in contributing to a meaningful reduction of the Court's workload and to the preservation of the viability of the system as a whole. It should be crystal clear to everyone that with the resources currently at the disposal of his Office, the Commissioner is not even in a position to deal appropriately with its present tasks, let alone with additional ones. In a situation where it is already difficult for him to meet the great expectations placed in the ability of his Office to fulfil his present mandate, no additional task or responsibility can be taken on board without the corresponding budgetary means being put at the Commissioner's disposal. In sum, additional resources will be required to meet additional objectives in the area covered by the current document.