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COMMISSAIRE AUX DROITS DE L'HOMME



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HUMAN RIGHTS DEFENDERS IN THE COUNCIL OF EUROPE AREA

Round-Table organised by the Office of the Commissioner for Human Rights of the Council of Europe
Strasbourg, 27-28 October 2011

REPORT

Introduction

1. The Office of the Commissioner for Human Rights of the Council of Europe (the Commissioner) organised a Round-Table on Human Rights Defenders in the Council of Europe area on 27-28 October 2011 in Strasbourg, France.
2. The Round-Table brought together representatives of international inter-governmental organisations and non-governmental organisations (NGOs), as well as over 30 national human rights defenders including members of human rights NGOs, journalists, lawyers and independent experts from several countries across the Council of Europe area.
3. The event, which was chaired by the Commissioner, provided an opportunity for participants to exchange information on the situation of human rights defenders and their working environment. Specific themes discussed included: hindrances to the work of human rights defenders and possible solutions; access to human rights protection mechanisms; and the effective participation of human rights defenders in public consultation and decision-making processes.
4. The Commissioner would like to express his sincere gratitude to those who participated in the Round-Table in Strasbourg and who gave valuable contributions from both their personal and professional experiences.

Opening remarks

5. The Commissioner underlined that the present Round-Table represented an important occasion for human rights defenders to share views both with each other and with international organisations providing mechanisms or programmes to support their work. He noted that the Round-Table is the fourth in a series of consultations with human rights defenders which was initiated during his mandate. Three similar events were previously organised by the Office of the Commissioner: the November 2008 Round-Table in Strasbourg on the situation of human rights defenders in the member states of the Council of Europe; the September 2009 Round-Table in Kyiv on the situation of human rights defenders which focused on countries of the former Soviet Union; and the December 2010 Round-Table in Sarajevo on the situation of human rights defenders in South East Europe.
6. The Commissioner recalled the fruitful discussions during each of the previous Round-Tables, which were extremely helpful for the Office in setting its priorities and its activities for supporting the work of human rights defenders. He expressed his hope that through a similar process of inclusive and action-oriented discussions, participants would be able to propose a body of recommendations for future action.
7. In reference to the three Round-Table sessions, the Commissioner explained that the first one would be dedicated to hindrances to the work of human rights defenders and possible solutions. Threats to the personal safety of defenders and obstacles affecting the work of human rights actors continue to raise concern. Strategies to protect the physical integrity of individuals and to support human rights work should be devised. The second session would discuss access to human rights protection mechanisms for human rights defenders. The Round-Table will consider how National human rights structures (NHRs) - namely Ombudspersons and equality bodies - can be established and strengthened in order to increase their effectiveness and better complement and support the work of defenders. The third session would look into the effective participation of human rights defenders in public consultation and decision-making processes. Frequently human rights defenders are marginalised in the formal process of dialogue both at the national and international level. In this context, the Commissioner suggested that discussions could also encompass how defenders might make better use of the European Court of Human Rights (ECtHR) and of the various UN treaty body mechanisms.
8. The Commissioner provided an update on the work of the Office on several human rights issues which are cross-cutting in nature and may be of interest to defenders: the protection of journalists; the promotion of the rights of Roma, persons with disabilities (with a focus on mental health),

lesbian, gay, bisexual and transgender (LGBT) persons and migrants. The Commissioner informed the participants about the major work conducted by his Office on the issue of media and human rights, including through the publication of substantive materials such as the 2011 collection of texts entitled '[Human rights and a changing media landscape](#)'. The Commissioner also referred to the report '[Discrimination on the grounds of sexual orientation and gender identity in Europe](#)' published in 2011. The functioning of the judicial system and human rights issues in the administration of justice are important themes that the Commissioner assessed in recent country visits. Freedoms of assembly, association and expression should be secured and are under constant scrutiny by the Office.

9. The Commissioner stressed that this Round-Table will be the last during his term of office, which ends on 31 March 2012. He stated that the process of selecting a new Commissioner is ongoing and the successful candidate will assume his/her duties on 1 April 2012¹.

I. Hindrances to the work of human rights defenders and possible solutions

10. Participants were invited to identify and analyse hindrances that human rights defenders face in the Council of Europe area, as well as positive developments, good practices and possible solutions to overcome the challenges encountered. Recommendations might explore what states, international organisations and NGOs, as well as defenders themselves, can do to improve the situation.
11. Participants indicated that human rights defenders continue to face hindrances throughout the Council of Europe area in carrying out their work for the defence and promotion of human rights. It was also acknowledged that the nature and level of the obstacles faced vary greatly from country to country and region to region.
12. Attention was immediately drawn to the very difficult situation which human rights defenders in some countries of the former Soviet Union continue to face, including regular and severe threats and attacks against their personal security as well as administrative and legal obstacles. Both individuals and organisations can be targeted. In order to mobilise public support for some of their actions, states often engage in defamation campaigns against these individuals and organisations. Defenders are accused of spying, being "enemies of the state", getting support from outside forces due to their reliance on foreign funding or helping "criminals" and "deviants". Sometimes defamation and libel suits are launched against defenders.
13. Defenders have little recourse against such accusations, especially in situations where the media is heavily controlled or influenced by the state. This can have a negative effect on relations between defenders and the public and can, as a result, impede human rights protection work. Investigations to determine the instigators, planners and perpetrators of attacks against defenders are for the most part ineffective and superficial. Other obstacles take the form of abuse of anti-terrorist legislation, blacklisting of defenders, travel restrictions inside or outside the country and excessive control over the internet.
14. Participants from the Russian Federation, Azerbaijan and Belarus described instances in which defenders have been the targets of killings, disappearances, torture, the destruction of personal property, imprisonment, harassment and intimidation by the authorities. Participants from Ukraine and Georgia also gave accounts of intimidation.
15. Participants underlined the particular situation in the North Caucasus, where the work environment remains difficult for human rights defenders and organisations. Defenders may not face obstacles in the financial and administrative field as is the case in other parts of Russia, but they face more serious threats, such as abductions, disappearances, murders and physical attacks. The absence of effective investigations into gross violations of human rights, including against defenders, is a major problem.

¹ Mr Nils Muižnieks of Latvia was elected third Commissioner by the Parliamentary Assembly of the Council of Europe on 24 January 2012.

16. In Azerbaijan, human rights violations are in general on the rise, as are violations against defenders attempting to expose these crimes, or against civil society actors critical of the authorities. A culture of effective impunity for the perpetrators, including members of law enforcement bodies, prevails.
17. In Belarus, the situation of human rights defenders has seriously worsened in the recent period. Defenders are subjected to a highly restrictive legal and administrative environment governing procedures for registration, financing and organising events. Members of unregistered organisations are obliged to cease their activities or risk being accused of working outside the law. Defenders and lawyers who provide legal assistance to critics of the authorities and independent media are also targeted. Given these challenges, defenders emphasised the importance of continued solidarity among themselves and with international partners.
18. The Commissioner stated that impunity for human rights violations against defenders poses a major concern. The investigations into these cases are neither effective nor adequate. At best the direct perpetrator has been identified, while the instigators, planners and others responsible remain untouched.

The changing face of threats and attacks against human rights defenders

19. Participants acknowledged that even in states where there has been an improvement in the human rights record, hindrances to the work of defenders persist in a more nuanced form. While there may no longer be an immediate threat to the personal security of individuals, there is instead a complex and often contradictory set of conditions. Defenders dealing with the rights of LGBT persons, Roma, migrants and refugees are in a particularly vulnerable position given the “unpopularity” of such issues in many societies. Defenders criticising the national human rights record or taking cases to international institutions can be marginalised or isolated in certain countries.
20. Several participants – mainly from Central and South East Europe – observed that while fatal attacks against individuals are rare, more subtle and sophisticated strategies have been put in place to deter those criticising the human rights record of the authorities. The possibility of actually challenging mainstream policies and established practices does exist but remains fraught with difficulties, not least with the risk of legal, administrative, or other consequences.
21. For instance, in Turkey, defenders no longer seem to face the threat of extrajudicial killings or disappearances, but they are still experiencing unjustified deprivation of liberty and harassment. Limitations on freedom of expression, the fragile situation of the media, and the broad application of anti-terrorism legislation combine to deter defenders and reduce the impact of their efforts. Threats and obstacles to the work of defenders and their personal safety originate from different sources, including authorities, media, GONGOs (the informal term for government-established or affiliated non-governmental organisations) and radical movements.
22. The recognition and investigation of past crimes are essential in combating the impunity of perpetrators, fostering accountability of the public authorities and preventing future human rights violations. In Croatia, some progress can be noted as public opinion and the media are more inclined than previously to condemn human rights abuses and attacks against defenders. However, those attempting to criticise individuals convicted or accused of war crimes can still face strong populist opposition ranging from defamation to death threats.
23. Human rights defenders in Georgia face marginalisation and smear campaigns when they are critical of the authorities and present different views. This, combined with the high level of state control over the national media, does not create a favourable working environment for defenders. Another example concerns civil society groups and human rights defenders raising the issue of human rights violations in the armed forces in Armenia who recently experienced verbal threats from officials and were impeded in exercising their right to freedom of peaceful assembly on this issue.

24. Several participants from countries in the Balkan region also pointed to a stagnation - or even a decrease in some respects - in the interest for human rights displayed by civil society, states and even the international community. In Albania, there is a confusing situation whereby an apparent improvement in the respect by the state for human rights has led to a weakened civil society which fails to identify ongoing and new challenges and to cultivate a space for partnership. Similar sentiments were echoed by a participant from Serbia, where women defenders and LGBT rights activists, as well as those working for greater accountability for war crimes, are especially vulnerable to attacks. The number of defenders is decreasing as individuals become tired and disillusioned with the slow pace of progress and limited impact of their action. The view was also expressed that law enforcement bodies, including prosecutors and the judiciary, do not give adequate follow-up to cases of threats and violence against human rights defenders. In “the former Yugoslav Republic of Macedonia”, funding, including from the EU, for civil society initiatives has decreased, as direct budget support to government structures increases – a policy which does not favour human rights NGOs, as they are unlikely to win subsequent government-led tenders for projects and service delivery. The issue of the sustainability, including from a financial perspective, of human rights organisations was raised on several occasions.
25. Participants from Western European and EU countries spoke of the exploitation of existing racist sentiments or tendencies among certain segments of the population which can lead to threats and attacks on defenders. In Greece, individuals from minority groups or individuals representing minorities frequently face obstacles from nationalistic state and non-state actors. Hate speech has been used to target defenders during demonstrations and on social network sites. In France, organisations or individuals defending the rights of migrants encounter legal and administrative challenges as legislation becomes increasingly restrictive and foresees harsher penalties. In Hungary and Romania, defenders working on Roma-related issues are regularly the targets of hostile public opinion which is legitimised and fuelled by state-led campaigns which play upon stereotypes. The work of defenders is affected by an increasingly restrictive legal framework in Hungary.

The dangers posed by non-state actors to human rights defenders

26. Participants agreed on the increasing importance of non-state actors in deciding the fate of defenders and the impact of their work. The media was repeatedly cited as the most influential of these actors, and it was noted that in many states the media hinders rather than complements the work of defenders. Participants expressed the view that human rights issues are not sufficiently or adequately covered in the media, and that the lack of independence and plurality of the media is problematic. The majority of participants complained that the media is seldom receptive to human rights defenders or inclined to communicate their message favourably. Several participants mentioned occasions on which the media actually sided with the perpetrators of attacks on human rights defenders. It was emphasised that whereas social media can be a tool used *by* defenders, it can also serve as a tool *against* defenders. Several participants from across Council of Europe member states recalled instances in which they received online threats.
27. Civil society, as a non-state actor, is not a homogenous entity. Some elements of “civil society” may be highly opposed to defenders and can actually impede their work. For instance, in Georgia, the emergence of GONGOs (loyal to the government) has created serious rifts within the NGO community and the spread of misinformation has threatened the legitimacy of defenders engaged in human rights protection work.
28. A representative of the International Federation for Human Rights (FIDH) highlighted the significant role of certain private companies in aiding and abetting human rights violations, including against defenders.

Proposals

29. It was stressed that defenders should equip themselves to work in hostile environments by developing and updating individual and organisational protection strategies and mechanisms.

Considering a practice adopted by the Joint Mobile Groups of the Committee Against Torture in the Russian Federation (Chechen Republic), defenders at risk are encouraged to explore the possibility of adopting strategies which avoid placing one individual as the organisation's public figurehead. It is hoped that in allowing the organisation to remain faceless, de-personalising its interventions, and having its members operate and rotate in relative anonymity, the opportunity for state and non-state actors to direct threats and attacks at specific individuals will be decreased.

30. Participants also suggested that defenders should try to find "allies" among state authorities, where it is possible to identify well-disposed individuals and institutions with whom to work. Some human rights NGOs working in the Chechen Republic (Russian Federation) have established constructive and fruitful relations with relevant structures dealing with investigations into human rights violations.
31. Another point made was that international organisations should not underestimate the importance of adequate and timely legal, moral, political, technical or financial support in responding to violations perpetrated against defenders. Different actors are encouraged to co-ordinate their interventions where possible to complement one another and avoid gaps in assistance.
32. Defenders, and in particular defenders at risk, should make greater efforts to act collectively and strategically. For instance, defenders in neighbouring countries might explore opportunities to act in support of each other following threats or attacks to an individual defender or organisation. Alternatively, within their own countries, defenders might explore opportunities to act in partnership with other civil society actors who are perceived by state actors as more 'mainstream' (such as professional associations, interest groups, or citizen initiatives). Defenders should communicate more amongst themselves and identify further opportunities for mutual support and reinforcement.
33. Another suggestion was that international organisations should consider widening the focus of their monitoring to include non-state actors suspected of hindering the work of defenders, and should develop appropriate strategies and guidelines for states to deal with any impunity issues.
34. Defenders might formally address misinformation presented by the authorities and the media, for instance through the publication of counter-reports or statements. In the short-to-medium term, it would be useful for defenders to develop strategies and dedicate personnel not only to *respond* to unfavourable reports against them but also to *influence* the human rights issues presented in the media. In the medium-to-long term, NGOs could consider engaging media professionals in human rights and ethics training.
35. International organisations and defenders were encouraged to take initiatives commemorating high-profile human rights defenders who have been killed or have disappeared, and to support those who currently face strong pressure in response to their human rights work.
36. Another proposal was that emphasis should be placed on engaging younger generations with human rights issues, as well as raising awareness among key interest groups, especially the media. The public should have a better understanding of human rights and of the vital work of defenders in upholding human rights, the rule of law and democratic values.

II. Access to human rights protection mechanisms

37. All participants acknowledged the important role to be played by national human rights structures (NHRs) in protecting and promoting human rights for all. However, many participants reported mixed results and ongoing challenges in advancing their goals in co-operation with these mechanisms.

Encouraging signs – protecting and promoting human rights together

38. Many states in the Council of Europe area have taken steps to establish NHRs including ombudspersons, human rights commissions, equality bodies, and national preventive mechanisms (NPM) to monitor places of deprivation of liberty. The challenge now remains to make these structures effective and functional, not least by assisting them to work in partnership with a wide cross-section of civil society.
39. In Serbia, two examples of positive co-operation between NHRs and defenders were described. Firstly, amendments to the Law on free access to information, which were jointly proposed by civil society and the Ombudsman, were adopted in 2009. Secondly, a strategy on personal data protection, advocated by the Commissioner for Access to Information of Public Importance and Personal Data Protection as well as by civil society, was implemented in 2010. Another important development welcomed by civil society included a first inspection of the Security Information Agency by the Ombudsman.
40. In Montenegro, one example of positive co-operation between NHRs and defenders relates to the process of constitutional review, a part of the mandate of the Ombudsman, and one which he has proved willing to exercise in consultation with NGOs. It was also emphasised that civil society has worked successfully with European institutions as they consider the country's EU membership and assess Montenegro's human rights record, including a proper framework for the establishment and functioning of NHRs.
41. A representative from the Organisation for Security and Cooperation in Europe (OSCE) summarised the findings from the OSCE Supplementary Human Dimension Meeting on National Human Rights Institutions in the OSCE area in Vienna in April 2011² and the OSCE Conference on the same issue in Vilnius in July 2011. NGOs were identified as an important source of expertise, a crucial means to have access to different sections of society and an important early warning tool for NHRs. During these events, recommendations were made encouraging NGOs to assess the work of NHRs and hold them accountable.

National human rights structures remain a weak partner for human rights defenders

42. Several participants positively assessed the work of some NHRs but they also outlined certain major shortcomings which tend to limit their impact.
43. First and foremost, participants raised concerns about the independence of NHRs. In France, not only have recent legislative reforms resulted in the replacement of the Ombudsperson, the Defender of the Rights of the Child, the National Commission on Ethics in the Security Services, and the High Authority Against Discrimination and for Equality (HALDE) by a single function – the Defender of Rights – but the post-holder is appointed directly by the President. In Albania, the politicised nature of the selection process has been illustrated by the persistent failure of the Parliament to agree on a candidate and to appoint an Ombudsperson – a position which has remained vacant since 2010³. In Montenegro, civil society continues to advocate for a two-thirds majority in the appointment of the Ombudsperson, as the former post-holders have been perceived as too close to the ruling party line in the execution of their duties. In Greece, the requirement of a 60% majority has gone some way towards addressing concerns of independence, as it at least obliges the two largest parties to engage in discussions in order to agree on an appointment.
44. NHRs at the regional and local levels of government are often even less autonomous from the respective authorities. In Turkey, district human rights council members are appointed by local authorities and tend to be overly politically affiliated. In Italy, the civil defender working at the regional, provincial and communal level has had a very weak impact on issues related to asylum seekers, refugees and migrants.

² [Supplementary Human Dimension Meeting, National Human Rights Institutions \(Ombudsinstitutions, commissions, institutes and others\)](#), 14-15 April 2011, Vienna, Final Report.

³ The Albanian Parliament selected a new Ombudsman in December 2011.

45. In his response, the Commissioner acknowledged the challenges related to the selection of office-holders. He considered that selection by a state's legislative body remains the best solution as it at least ensures the separation of powers between a government and its oversight institutions. He nevertheless recommended that the selection process be complemented by a prior consultation process with civil society, which might take the form of a series of public hearings in which civil society actors ask questions of potential candidates and present their preferences to parliament for consideration. In Poland, such a practice is already in place and has been welcomed by civil society.
46. A second challenge to the effective functioning of NHRs relates to the allocation of sufficient human and financial resources. It was believed that NHRs have also felt the impact of recent austerity measures. There are many cases of NHRs being disbanded or merged in order to pool resources, in some cases - according to defenders - negatively impacting on human rights. In Poland, the Ombudsman has been designated as NPM and equality body without receiving any additional resources.
47. The Commissioner called for vigilance in ensuring a regular and adequate supply of funds for NHRs. He emphasised that the importance of complaint mechanisms is only likely to increase during times of economic hardship, as institutions are likely to come under pressure to handle a growing volume of complaints and other activities.
48. The combination of limited independence and under-resourcing makes NHRs a weak partner for human rights defenders in many cases, as pointed out by participants. Post-holders are then adopting a relatively passive or reactive approach to advancing human rights agendas and are unwilling or unable to serve as serious contributors in protecting defenders or in promoting an enabling environment for their work. The capacity to break new ground is rare; for instance as many participants cited failure by NHRs to call for oversight over security agencies. Procedures for reviewing complaints can often be bureaucratic and lengthy. The enforceability of recommendations by NHRs depends largely on the receptiveness of the authorities. One participant also mentioned the lack of public visibility of NHRs. While defenders nevertheless work closely with NHRs to maximise opportunities of mutual interest, these structures are not yet perceived as reliable partners from which support can be sought in case of threats to defenders and their organisations, or to the country's human rights situation in general.

National human rights structures benefit from contacts with civil society groups

49. Many participants pointed to the fact that access for human rights defenders to effective and functioning NHRs often depends on subjective variables, such as the personalities in charge, their willingness to co-operate, or their ability to make themselves heard and enforce their recommendations. Therefore, emphasis was placed on the importance of defenders advocating for a strong national legal framework to outline the specific competencies and enforcement mechanisms attached to NHRs. In Turkey, defenders have spent years advocating for improvements to the draft law which would establish a Turkish National Human Rights Commission, with a view to ensuring its independence from the executive. The result has been a delay in the establishment of a national commission, but it is hoped that it will be possible to establish a commission which has a strong legal grounding based on the Paris Principles⁴.
50. Some participants believed that access to and co-operation between NHRs and defenders can only be improved by fostering the independent standing of human rights defenders, including through the adoption of international and national standards relating to human rights defenders. The work of defenders and their co-operation with NHRs should not solely be dependent on the goodwill of institutions and authorities. One participant advanced the idea that defenders would benefit from greater public legitimacy if they were given legal rights at the national level to access information for the purposes of human rights monitoring, to visit places of detention, and to

⁴ [Principles relating to the Status of National Institutions \(The Paris Principles\)](#), UN General Assembly Resolution 48/134 of 20 December 1993.

engage in human rights litigation on behalf of victims. Defenders should also have the possibility to monitor the security services and to be given access to closed security trials. It was also noted that an enhanced formal status for some defenders might create its own problems of definition, accreditation and marginalisation.

51. Although not related to NHRs specifically, other participants stated that changes to national legislation which removed the possibility for defenders to submit *actio popularis* or *amicus briefs* have greatly reduced the recourse to justice in cases of alleged human rights violations. One participant noted that NGOs and defenders who are members of advisory councils to NHRs may feel restricted in their possibility to be critical of these institutions. Some participants criticised the fact that the designation of some bodies as the formal NPM has led, as is the case in Georgia, to NGOs being prevented from monitoring places of detention as they used to do.

Proposals

52. States should be encouraged to engage in a round of consultations with civil society prior to the selection of individuals for important positions in NHRs.
53. Caution should be exercised when reducing resources or deciding to merge different specialised NHRs: these bodies are all the more necessary in times of hardship. Human rights defenders and international organisations should follow these processes closely and react appropriately if the effectiveness and independence of NHRs are being reduced.
54. The Commissioner supported the call by some participants in favour of a greater oversight by NHRs and human rights defenders over the security and intelligence bodies, especially considering the lack of political and judicial control over the security sector. He also underlined the importance of establishing independent complaints mechanisms in relation to the actions of law enforcement bodies⁵.
55. International organisations could encourage the relevant actors to draw on good practices and lessons learned from other NHRs, which might be complemented by developing peer-to-peer learning between different institutions.
56. International organisations are encouraged to seek to identify ways in which defenders might play a greater role in the implementation of the Paris Principles and in the independent assessment of the work of NHRs, including with the involvement of independent experts.
57. The Commissioner called for more intense co-operation and joint action between human rights defenders or organisations and NHRs, to influence positive changes in national legislation, policy and practice relating to human rights.

III. Effective participation of human rights defenders in public consultation and decision-making processes

58. Various participants described the public consultation and decision-making processes in their respective states, and provided specific examples of their participation as well as of the effectiveness of its impact. It was generally observed that many states have included provisions for public consultation in their legal frameworks. The implementation of these provisions varies from state to state and, according to defenders, depends on the political party in power, on the issue in question, and on the interest and capacity of civil society.
59. Examples of participation provided by defenders related almost exclusively to legislative drafting processes at the national level. The opportunities for participation at the regional and local government levels were not discussed.

⁵ [Opinion of the Commissioner for Human Rights concerning Independent and Effective Determination of Complaints against the Police](#), CommDH (2009)4, 12 March 2009.

Participation good practices

60. Good practices in participation were identified at three stages in the legislative drafting process: in the reviewing of draft legislation, in the development of draft legislation, and in proposals for new or amended legislation.
61. Of the three stages, defenders stated that they are most commonly invited to participate at the pre-approval review stage. In Georgia, draft laws can be available to NGOs on request and prior to adoption by the Parliament. The Georgian Young Lawyers Association (GYLA) monitors legislative activity on a permanent basis and the Parliament has the practice of sending draft laws for review to GYLA. NGOs and civil society in Georgia have used this situation to “human rights-proof” national legislation, as was the case with the Law on Media Transparency, which provides for more transparency as regards media ownership. In this way, civil society actors in Georgia have also been able to advocate for additional legislation in order to support the independence of the judiciary. In Moldova, public consultation is mandatory according to the law on legislative acts. All draft laws are published on the webpage of the Ministry of Justice. Co-operation between NGOs and the government was described as fruitful in addressing anti-corruption issues. In France, draft laws are also made public and hearings are frequently held by the relevant law commission and by certain political parties to present aspects of the law and to consider comments. Defenders from Poland, Hungary and Albania also stated that they have been involved in reviewing draft laws.
62. Some defenders described examples in which they were invited to take part in the development of legislation. There was general agreement that the early involvement of civil society, i.e. before the review stage, serves as a good practice in the area of participation. In Poland, the Chancellery of the President has recently initiated a series of debates with different stakeholders, including NGOs, to review existing procedural rules on consultation and decision-making. In Bulgaria, NGOs have been contributing to the implementation of ECtHR judgments, with regard to both individual and general measures. For example, the Ministry of Health invited NGOs to participate in a working group to assist with the execution of ECtHR judgements relating to mental health cases. The Bulgarian Helsinki Committee is also part of a working group at the Ministry of Interior to address the excessive use of force during rallies and marches. The process entailed NGO involvement in the relevant parliamentary committees and culminated in the adoption of amendments to the existing legislation related to assemblies, in line with ECtHR recommendations. In Turkey, the process of drafting a law on asylum was initiated and completed in close co-operation with civil society – the exercise demonstrated the possibility of building mutual respect and created a space for real dialogue in which actors have been able to propose a wide range of solutions and to agree on compromises.
63. A few participants recalled instances in which they have taken advantage of legal provisions allowing individuals to draft and propose new legislation or amendments directly. While this initiative is positive, the success of the ventures has varied significantly. In Albania, NGOs prepared a draft law on anti-discrimination and successfully lobbied for a group of parliamentarians to sponsor it through Parliament. Similarly, in Moldova, NGOs prepared a draft law on freedom of expression which was then introduced by a Member of Parliament. With less effect, some years ago, defenders in Serbia drafted two laws which were submitted to Parliament, but which have never been considered. In Poland, defenders made use of petitioning procedures to compel Parliament to consider a proposal to set a quota for female parliamentarians. Defenders from Turkey drew attention to the role of NGOs in proposing changes to legislation which fails to comply with international standards. For instance, Turkish NGOs have been instrumental in calling for the repeal of anti-terrorism provisions which permit the prosecution of children.
64. In each of the three phases detailed: reviewing, developing or proposing legislation; the importance of a pro-active and creative approach by defenders was emphasised. Some defenders recognised the potential for success even after an initial setback. For example, in Montenegro, NGOs were unsuccessful in requiring the Law Against Corruption and Organised Crime to establish a National Commission to monitor its implementation. NGOs then advocated to include

such a Commission in the Strategy Against Corruption and Organised Crime, which was accepted. The Commission is now established and includes two NGO representatives; this opens, for the first time, discussions on corruption and organised crime to the public. In Poland, when the government threatened to block certain internet sites, users and defenders of internet freedom and freedom of expression acted strongly, quickly and collectively to raise their objections, successfully bringing the government into a dialogue. In Armenia, when requested to comment on a draft law on NGOs, human rights defenders established a coalition which successfully lobbied to prevent the adoption of provisions which would restrict freedom of association. Advocacy from NGOs and opinions from international organisations prevented the adoption of a new draft law on religious organisations which had serious shortcomings with regard to international standards on religious freedoms.

65. Participants emphasised the importance of fostering support from other stakeholders prior to, during and following consultation and decision-making processes. Many mentioned the use of the conventional media as a tool for awareness-raising and encouraging the public to participate, as well as the use of new media as an innovative medium for participation, for instance through e-governance. Others pointed to the possibility of collaboration with professional bodies, including associations of lawyers, journalists, doctors, historians, etc., in preparing submissions or proposals for the government.
66. The Commissioner acknowledged the key role played by defenders in reminding national governments of their international obligations. He recalled that there are different possibilities which exist in some countries for civil society actors to use consultative procedures such as hearings in the parliament, engagement in popular initiatives, and active contributions to consultation processes initiated by governments.

The 'right to participation' challenge

67. Participants stressed that while it is possible to draw positive examples and good practices of civil society's effective participation in the Council of Europe area, it is equally important to acknowledge that participation is in most cases not perceived by states as an essential stage in decision-making. The participation of defenders is permitted when it is politically expedient to do so, but systematic participation for the purposes of improving respect for human rights and good governance is more limited. Participants pointed to the lack of transparency of legislative and decision-making processes which makes it difficult to participate, even when procedures are in place. In several states there are little or no opportunities for meaningful participation by defenders. In states where participation is possible, defenders at times raised concerns about the impact of their efforts.
68. Firstly, many participants mentioned that their involvement in consultation and decision-making processes was primarily considered as a formality by state authorities and that contributions or proposals from human rights defenders and civil society were seldom duly considered. In Georgia, it was noted that the input from NGOs is not given thorough consideration in many cases. In Hungary, there have been occasions where the government has not even waited for the deadline for NGOs to comment before submitting a draft to Parliament. In Cyprus, defenders are restricted in effectively participating in consultation processes as they face tight timeframes and limitations in length when submitting comments. In France, defenders have suggested that commenting on draft laws which tackle highly-politicised issues, such as immigration, is a futile exercise, as the space for effecting positive change is very small. In Bulgaria, NGOs had similarly disappointing experiences in trying (unsuccessfully) to reformulate the content of the controversial law on religious denominations. Defenders from Poland and Albania stated that draft laws relating to the secret services were never even made public during the drafting stage. In Serbia, the participation of human rights organisations is more the exception than the rule, and neither of the two draft laws submitted as a citizens' initiative were considered.
69. Secondly, participation is often only permitted at the final stages of the legislative drafting process, which does not allow for civil society actors to have a meaningful impact on the process. In Georgia, defenders noted that they are frequently asked to comment just prior to the third reading

of the law – an exercise which frequently serves as a formality within the parliament, rather than an opportunity for making substantive changes to a text. Several defenders reported that sometimes legislation is passed through an accelerated procedure, leaving no time for consultation and submission of comments. In Hungary, NGOs have been requested to comment on draft laws within extremely tight deadlines (24 hours).

70. Thirdly, the modalities for participation can be cumbersome. For instance, NGOs and civil society groups are often invited to submit written comments to draft laws or other documents – an undertaking which can sometimes go to waste given that governments subsequently have little time to review all submissions prior to finalising their drafts. NGOs are rarely invited to give oral submissions before executive working groups established to draft laws or during legislative committees' meetings convened to review draft laws.
71. Several participants noted that authorities invite only certain civil society actors to participate in legislative or other consultations. Organisations protecting and promoting Roma rights in Romania and Hungary described being excluded from many relevant consultation processes. In Cyprus, governments are required by law to consult with organisations working with minority rights when developing legislation related to minorities, but do not necessarily consult with the same organisations when developing more generally-applicable legislation which also has implications for minorities, for instance education, health and employment. To this end, there was a call for criteria to be established in order to ensure the participation of competent and experienced human rights defenders and organisations in these processes.
72. In some settings (e.g. Azerbaijan), human rights defenders are effectively excluded from consultation and decision-making processes because of negative attitudes towards them by the authorities. However, defenders can work with the public, the media and international structures to contribute to legislation-drafting. It nevertheless would appear that defenders can face difficulties in being involved in undertakings led by international governmental organisations in the field of human rights and the rule of law.
73. The Commissioner highlighted two important areas in which civil society participation could be more effective. Firstly, he underlined the need to monitor and influence the development of EU law and policy, given that once directives are passed, national governments are bound by certain interpretations which may frustrate the consultation processes with civil society. He suggested that defenders liaise closely with international and regional inter-governmental organisations and international non-governmental organisations in order to have their views reflected during the EU legislative drafting process. Secondly, he underlined the need to influence political party decisions, as frequently decisions are taken within internal political party mechanisms rather than during parliamentary sessions.

Proposals

74. International organisations should lead by example in treating human rights defenders as strategic partners in the process of building relationships (including in the political, economic and cultural fields) with individual states. The specific modalities for this partnership should be explored among international organisations in the near future.
75. The PACE Special Rapporteur on Human Rights Defenders and the PACE Legal Affairs Committee invited defenders to submit information, observations and recommendations in advance of the Rapporteur's 2012 report on human rights defenders.
76. Defenders could also lead by example in the field of participation. Defenders might engage the public in a programme of consultations on human rights-related issues in order to raise awareness, supplement government initiatives and foster support for civil society actors. Defenders could also consider practising a policy of public consultation in the internal democratic functioning of their organisations, for instance in their setting of objectives, or agreeing on strategies and projects. Defenders might focus on giving a voice to those sections of society

which tend to be excluded from traditional consultation processes, for example to LGBT persons, Roma, youths and women.

77. Defenders might opt to participate in consultation and decision-making processes in which they have relevant expertise and/or interest. It would be useful to have a mechanism or interactive resource allowing for better sharing of information, expertise and good practices on the participation of human rights defenders in public consultations, legislation drafting and decision-making, with a view to pooling resources and optimising the impact of civil society.
78. Defenders were encouraged to foster links and to work with professional bodies, for instance with law associations, when drafting their recommendations, in order to enhance the quality of their submissions and proposals. The use of ECtHR case-law should be an important element in this process.
79. Defenders could regard participation as a continuous cycle, not limited to the presentation of a position at a meeting or the submission of comments on a law with the expectation that this will yield immediate results. Regular lobbying and advocacy are required to foster relationships with influential stakeholders capable of advancing and supporting the desired objectives. Furthermore, human rights defenders could monitor the implementation of the legislation concerned.
80. It was furthermore suggested that public hearings on pieces of legislation should be organised more often. Consultation mechanisms could be put in place at different levels of authorities whereby defenders would be invited to participate in a transparent manner.
81. Human rights defenders could seek to find a point of entry to political parties, including those which appear to be hostile to the ideas and values advocated by defenders.
82. In states where there is very limited space for the participation of defenders and civil society in public decision-making, international organisations might explore opportunities for increasing the participation of defenders and civil society through international structures and mechanisms.

Taking stock of recommendations from previous events and looking forward

83. Solidarity among defenders, and between defenders and international organisations was a strong recurring theme throughout this year's Round-Table, especially from defenders at risk. National, regional and international networks of defenders can play a useful role in this respect, by providing a measure of protection – such as engaging in trial monitoring or providing legal assistance, and advancing common objectives among defenders. Certain informal actions were also proposed in order to maintain communication and foster solidarity among defenders. Participants stressed the importance of raising individual cases of human rights defenders who are facing serious threats.
84. Within the domestic institutional sphere, independent and effective NHRs can be essential partners for defenders, although it was noted that the majority of bodies are a long way from fitting this profile. Defenders were encouraged to build the capacity of weak NHRs by bridging the information deficit between institutions and citizens as well as engaging in a process of constructive criticism with NHRs which are perceived as politically-affiliated or passive in performing their duties.
85. At the international level, participants requested a greater role in consultation and decision-making processes within international organisations.
86. In many cases, national consultation and decision-making processes were perceived by participants as 'formal paper exercises' which are mostly last-minute, rushed and lack genuine interest. Except for some notable positive examples, observations and recommendations by civil society are incorporated mostly when it is politically expedient to do so, if at all.

87. The Commissioner suggested that the possibility for NGOs to receive external funding for human rights work, which is provided for by the UN Declaration, should be further reinforced. International actors should react forcefully when the activities carried out by some defenders or organisations are “criminalised” under the dubious pretext of foreign funding.
88. The call for a Human Rights Fund was reiterated. Both the Commissioner and the OSCE acknowledged the merit of the request and suggested that the issue be further investigated with a variety of international actors. The Fund would aim at providing support to NGOs engaging in human rights monitoring, lobbying and strategic litigation.
89. The relationship between defenders and the media and the interaction between defenders and the general public was highlighted in all three sessions. In order to foster a human rights culture, defenders were invited to increase their activities in promoting the awareness of human rights. The impact of recent austerity measures on vulnerable sectors of society was also suggested as an area for follow-up and scrutiny by defenders, which might also have the added value of generating more widespread popular support.
90. In his closing remarks, the Commissioner pointed to a human rights crisis across the Council of Europe area as a result of the so-called War on Terror, the economic recession, and a growth in xenophobia. He encouraged defenders to use international inter-governmental and non-governmental mechanisms already in place as effectively as possible in order to promote and protect the human rights of all.