The Council of Europe Commissioner for Human Rights:
strengths and weaknesses

Sergey Gelashv, Egorov, Pugatchev, Afanasiev
& Partners, St. Petersburg

The Commissioner for Human Rights is one of the newest
Council of Europe (CoE) institutions. Unlike many other CoE
bodies it does not have an international treaty as the legal basis for its existence
and functioning. It was established in 1999 by a resolution of the Committee
of Ministers (CoM)1, although the notion of this institution emerged as early as 1972.

The Commissioner is elected by the
Parliamentary Assembly of the Council
of Europe (PACE)2 for a non-renewable
six-year term.3 In fact, it is the only
CoE institution which is occupied by
one person. Currently this office is
occupied by Thomas Hammarberg (from
Sweden), former Secretary General of
Amnesty International and member of
the UN Committee on the Rights of
the Child, who, in 2006, replaced the first
Commissioner – Alvaro Gil-Robles (from
Spain).

The Commissioner's principal activity
is issuing recommendations, opinions,
and reports,4 which are addressed to both
CoE institutions and to the authorities of
the member states.

Normally the Commissioner's reports
follow on from visits to member states.
The Commissioner aims to visit all
member states at least once during his
term of office. In the course of a visit the
Commissioner meets with the highest
representatives of Government, national
human rights organisations and NGO
representatives, and also visits institutions
such as places of detention and psychiatric
hospitals. The visit is followed by the
publication of a comprehensive report
on the human rights situation in the
country concerned. Such a report is
addressed to the CoM and PACE, and
then discussed within these bodies,
leading to a response by the authorities
of the country concerned and sometimes
subsequent reaction of the Commissioner
regarding the implementation of the
recommendations contained in the report.

Aside from these country reports, the
Commissioner from time to time issues
thematic reports on important Europe-
wide human rights matters: for example,
the first Commissioner issued two reports
on the human rights situation of the
Roma, Sinti and Travellers in Europe.5
Other priorities include juvenile justice,
and the rights of vulnerable groups such
as migrants, refugees, disabled people and
LGBT people.

The Commissioner also participates
in various conferences and seminars. It
is important to note, that his mandate
is not exhaustive, which is a necessary
consequence of its independence.6 One
initiative of Commissioner Hammarberg
is to publish biweekly viewpoints on topical
human rights issues.7 All the activities
of the Office of the Commissioner are
summarised in its annual report.8

The founders of the Office of the
Commissioner were concerned not
to duplicate the activities of other
CoE bodies, especially in the field of
human rights protection. This has been
reflected in the special provision of the
Commissioner's mandate, requiring him
to not to perform those functions which
are performed by the supervisory bodies
set up under the ECHR and other
human rights instruments of the CoE.9

The most important of such bodies is of
course the ECtHR, whose main function
is to consider individual complaints
alleging violations of the ECHR by CoE
member states; therefore, it is expressly
prohibited for the Commissioner
to take up individual complaints.10

Unfortunately, this significant limitation
of the Commissioner's mandate is not
always known and many Europeans still
address their individual problems and
concerns to the Commissioner, whose
Office responds to several hundred such
communications annually. However,
sometimes such communications may
be taken into consideration, especially
during the preparation of a visit to a
certain country; they may be used as a
good source of valuable information in
this regard.

Protocol 14 to the ECHR,11 if ratified
by the Russian Federation, will transform
the Commissioner into a conventional
institution: the Commissioner will
have a right to intervene in the Court's
proceedings as a third party.12 It is still
continued on page 8.
and the Commissioner is the reliance of the former on the valuable factual information contained in the latter's reports.

Other means of strengthening the Commissioner's role further are being investigated. One of the issues currently under discussion is the participation of the Commissioner in the process of execution of EGHR judgments, as recommended by PACE. However, although the Commissioner has expressed his willingness to be involved in the relevant procedure, in accordance with the rules for the supervision of the execution of judgments and of the terms of friendly settlements, the CoM has an express discretion to consider communications from injured parties, NGOs and national institutions for the promotion and protection of human rights, but not from the Commissioner. Alternatively, it has been suggested that the Commissioner intensify cooperation with national human rights structures in this respect. This exercise has indeed recently been launched by the Commissioner's Office.

To conclude, the exact scope of the Commissioner's activities, and especially within the framework of the EGHR, remains to be defined.

1 Resolution (99/50) on the CoM Commissioner for Human Rights, adopted on 7 May 1999, at the 104th session of the CoM.
2 Ibid. Art. 5.
3 Ibid. Art. 11.
4 Ibid. Art. 8.
6 Resolution (99/50), supra note 2, Art. 2.
7 Published in English, French and Russian at: http://www.coe.int/t/dg1/commissioner/Viewpoints/Default.aspx.
8 Resolution (99/50), supra note 2, Art. 3 (b).
9 Ibid. Art. 1 §2, first sentence.
10 Ibid. Art. 1 §2, second sentence.
12 Ibid. Art. 13.
13 Rules of Court, Rule 44.
16 Adopted on 10 May 2006, at the 96th meeting of the Ministers' Deputies.
17 Ibid. Rule 9.
19 The first meeting of local points of national human rights structures was organised in Strasbourg in November 2007.