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

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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)<sup>1</sup>, 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)<sup>2</sup> for a non-renewable six-year term.<sup>3</sup> In fact, it is the only CoE institution which is embodied 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,<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup> One initiative of Commissioner Hammarberg is to publish biweekly viewpoints on topical human rights issues.<sup>7</sup> All the activities of the Office of the Commissioner are summarised in its annual report.<sup>8</sup>

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 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.<sup>9</sup> 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.<sup>10</sup> 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,<sup>11</sup> 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.<sup>12</sup> It is still

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an issue for discussion: whether such interventions should primarily concern matters of fact or of law. However, even without the proposed changes to the control system of the ECHR, there is currently nothing to prevent the Commissioner from participating in the ECtHR's proceedings as a third-party, subject to receiving permission from the ECtHR.<sup>13</sup> Indeed, he has been invited by the President of the Court to intervene in one case currently pending before the ECtHR. Another important avenue for fruitful co-operation between the ECtHR

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 ECtHR judgments, as recommended by PACE.<sup>14</sup> However, although the Commissioner has expressed his willingness to be involved in the relevant procedure,<sup>15</sup> in accordance with the rules for the supervision of the execution of judgments and of the

terms of friendly settlements,<sup>16</sup> the CoM has an express discretion to consider communications from injured parties, NGOs and national institutions for the promotion and protection of human rights,<sup>17</sup> but not from the Commissioner. Alternatively, it has been suggested that the Commissioner intensify co-operation with national human rights structures in this respect.<sup>18</sup> This exercise has indeed recently been launched by the Commissioner's Office.<sup>19</sup>

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

1 Resolution (99)50 on the CoE Commissioner for Human Rights, adopted on 7 May 1999, at the 104<sup>th</sup> session of the CoM.  
2 Ibid. Art.9 §1.  
3 Ibid. Art.11.  
4 Ibid. Art.8 §1.  
5 CommDH (2005)4, CommDH (2006)1.  
6 Resolution (99)50, supra note 2, Art.2.  
7 Published in English, French and Russian at: [http://www.coe.int/t/commissioner/Viewpoints/Default\\_en.asp](http://www.coe.int/t/commissioner/Viewpoints/Default_en.asp).

8 Resolution (99)50, supra note 2, Art.3 (h).  
9 Ibid. Art.1 §2, first sentence.  
10 Ibid. Art.1 §2, second sentence.  
11 Protocol no.14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention, CETS no.194.  
12 Ibid. Art.13.  
13 Rules of Court, Rule 44.  
14 PACE Resolution 1581 (2007), §13.  
15 Comments by the Commissioner on the interim

report of the Group of Wise Persons to the Committee of Ministers, CommDH (2006)18 rev., §14.  
16 Adopted on 10 May 2006, at the 964<sup>th</sup> meeting of the Ministers' Deputies.  
17 Ibid. Rule 9.  
18 Report of the Group of Wise Persons to the CoM, CM (2006)203, §§111-113.  
19 The first meeting of focal points of national human rights structures was organised in Strasbourg in November 2007.