

# A COUNCIL OF EUROPE COMMISSIONER FOR HUMAN RIGHTS:

## Ensuring its effectiveness

### **1. Does the Council of Europe need a Commissioner for Human Rights?**

The Council of Europe is considering creating a position of Commissioner for Human Rights. Amnesty International welcomes the initiative as a good opportunity to consider some of the strengths and weaknesses in the current human rights protection system of the Council of Europe and to propose how such a Commissioner could help fill some of the 'gaps' in the existing system.

An office of Commissioner for Human Rights could be an important way to strengthen the Council of Europe's human rights protection and promotion arsenal. As a dynamic force, it should raise the Council's human rights profile, take urgent and preventive action where required, add political weight to implementation, and ensure a more integrated approach across the board to coordinate the human rights activities throughout the various bodies of the Council of Europe.

#### Existing human rights machinery

The Council of Europe's human rights machinery is in major transition. Many new states have joined in the past decade, often with different human rights traditions from the original member states. There has been a sharp rise in cases brought under the machinery provided by the European Convention for the Protection of Human Rights and Fundamental Freedoms. In response to consequent calls for major reform, the European human rights system is now replacing the two-tier system (of complaints being heard first by the European Commission and then by the Court) with a streamlined procedure: a single, expanded European Court of Human Rights will now hear all complaints. The new European Court, established under Protocol 11, should preserve the unique strengths of the system, which provides individuals who complain that their rights guaranteed under the Convention have been violated with binding, usually high quality, judgments coupled with a powerful enforcement machinery. The new streamlined system will tackle the enormous backlog of cases and should provide quicker access to justice (a case now takes several years from the time of submission to reaching judgment, not counting the time required to exhaust all available domestic remedies first.)

Furthermore, the European Committee for the Prevention of Torture continues to strengthen its pathbreaking work under the Convention of that name to prevent ill-treatment and torture through visits to places where people are held by a public

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authority. And the Advisory Committee established under the Framework Convention for the Protection of National Minorities, which only came into force this year, will examine its first state reports early next year. Much-needed progress has also been made in the equally important field of economic and social rights: since this summer organizations of employers and employees and international non-governmental organizations (NGOs) can now submit collective complaints under the European Social Charter.

Crucial for the success of these ongoing and new efforts is the highly professional support provided by the Directorate of Human Rights in the Secretariat of the Council of Europe. Apart from providing professional support to the above treaty-based machineries, the Directorate carries out wide-ranging tasks which include intergovernmental cooperation and important promotional activities through, for example, its programs to combat racism, to promote equality and its human rights awareness program.

However, despite additional demands being put upon the Directorate as a result of the above new developments, virtually no additional resources have been provided and the ability of the Directorate to continue to provide the professional support that is necessary is threatened. Indeed, the Council's Steering Committee for Human Rights (CDDH) has expressed the strong opinion that "The creation of this office [of High Commissioner for Human Rights] should certainly not, directly or indirectly, result in a decrease of the resources available for the work of the Directorate of Human Rights; nor should it compromise the fulfilment of the Directorate's future needs" (*Opinions drawn up by the CDDH on the draft terms of reference concerning the Council of Europe Commissioner for Human Rights at its 44th meeting, 8 -12 June 1998, paragraph 36*).

The strengths of the system are obvious and that of its judicial procedures clear to anyone who has, for example, noticed the increasing eagerness of victims to use the European human rights machinery and who has witnessed the positive and lasting legislative and administrative changes which judgments of the European court have brought about in many European countries. Less obvious are the gaps in the system which an office of a Council of Europe Commissioner on Human Rights could address.

#### Gaps in the system

What the current system does not provide is a dynamic human rights mechanism that can quickly and decisively respond at a high political level to human rights crisis situations, such as the failure of a member state to comply with its treaty obligations or other commitments, or respond quickly to large-scale or other urgent situations that require responses, such as that of human rights defenders, whose rights are threatened. Supervision of binding undertakings - like those given by new or aspiring member states to comply with Council of Europe human rights treaties - is crucial to the effectiveness of the system, but the system remains weak, as was evident when certain states did not

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promptly and fully fulfill their solemn commitments to institute a moratorium on executions.

These concerns are compounded by the lack of transparency and accountability of the Committee of Minister's monitoring procedure. The implementation machinery related to non-binding recommendations, such as those made by the Committee for the Prevention of Torture, remains weak. Nor is there a high-level public authority in the system solely charged with promotion and protection of human rights who can undertake a 'good offices' role in crisis situations and ensure that the various human rights components of the work of all organs of the Council of Europe are effectively coordinated.

## **II Essential requirements for an effective Commissioner**

In the Council of Europe, an office of Commissioner for Human Rights can only work effectively provided that:

- it substantively addresses the gaps identified above;
- it is firmly connected to the Human Rights Directorate, that has the experienced human resources and professional expertise without which the Commissioner's work would lack a solid base and remain meaningless;
- it has all the resources necessary to carry out its mission and has a carefully prepared, realistic budget - which anticipates substantively increased requests for assistance and information that are bound to result from the establishment of the position - provided that none of these will be created at the expense of existing Secretariat resources;
- the creation of the post is the genuine expression of the political will of member states to give higher priority to human rights and provide the human and financial resources as well as the political recognition which a commitment to such a high level human rights position entails;
- the new Commissioner's mandate is effectively integrated with the work of other existing human rights mechanisms in Europe notably the Organization for Security and Co-operation in Europe (OSCE) and its Office for Democratic Institutions and Human Rights (ODIHR), the High Commissioner for Minorities, as well as with the human rights policy and institutions currently being developed by the European Union (EU) , which has now before it a proposal to create an EU Commissioner for Human Rights;
- the Commissioner's mandate will complement and not overlap with comparable international human rights bodies with a global mandate, especially the UN High Commissioner for Human Rights supported by her Office in Geneva.

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In creating the position, the Council may wish to take into account the lessons learned from the UN. That organization found that, once it had established an office of High Commissioner for Human Rights as a separate entity, a much closer relationship between that office and the then Centre of Human Rights (the UN's human rights Secretariat now, called the Office of the High Commissioner for Human Rights) had to be forged to turn the ill-defined relationship into an effective one. The Steering Committee for Human Rights, in paragraph 37 of its Opinion drawn up at its 44th meeting, has also drawn the Council's attention to "... the need to clarify at some stage, the relationship between the Commissioner, his or her office and the Directorate of Human Rights (many activities of the Directorate are similar to those envisaged for the Commissioner....). It is important to avoid competition or rivalry between the Commissioner and the Directorate. On the contrary, the necessary synergies should be mobilised to ensure that there is mutual reinforcement between the work of the two".

### **III Ten Principles to guide the establishment of the Human Rights Commissioner's position**

1. The focus of the Commissioner's mandate should be on the capacity to react rapidly, especially to crisis situations where urgent intervention is required, for example by playing a 'good offices' role or carrying out on-the-spot visits.
2. The Commissioner should act to protect and promote, in close coordination with existing Council of Europe human rights bodies and the Human Rights Directorate, the full range of human rights articulated by the Council of Europe, with equal importance being given to civil, cultural, economic, political and social rights. The Commissioner should actively encourage greater and better coordination between the various human rights activities in different bodies of the Council of Europe.
3. She or he should also seek to strengthen the implementation of binding commitments undertaken by all member states, for example by tackling the lack of transparency in some existing monitoring procedures, such as that now carried out by the Committee of Ministers to monitor member states' compliance with binding commitments undertaken when joining the Council of Europe. The Commissioner should do the same in respect of non-binding commitments, such as by seeking the full implementation of recommendations made by the European Committee for the Prevention of Torture.

4. The Commissioner should have the political authority to act independently from the Parliamentary Assembly and the Committee of Ministers, the chief political organs, but be accountable and submit regular, comprehensive and public reports of her or his activities to these organs.
5. The Commissioner should regularly consult and be accessible to national and other non-governmental organizations and have the capacity to respond effectively to individuals raising substantive human rights concerns.
6. The Commissioner should be closely linked to the Human Rights Directorate. The definition of that close relationship should involve effective consultations with the relevant high level officials in the European Secretariat, but especially the Director of the Human Rights Directorate, to ensure that the work of the Commissioner draws on the accumulated expertise of the Directorate, and is firmly grounded in and supportive of the ongoing work and programs of the Directorate.
7. Before the post is created, and in order to ensure effective coordination and avoiding overlap, there should be close consultation with regional human rights bodies and mechanisms including the OSCE, its Office for Democratic Institutions and Human Rights (ODIHR), the High Commissioner for Minorities, and the EU, which has before it a proposal to create an EU Commissioner for Human Rights. There should also be close consultation with international human rights bodies with a global mandate, especially the High Commissioner for Human Rights, and with non-governmental organizations concerned with human rights. Within the Council of Europe, the Human Rights Directorate should be part of the consultation process.
8. Before the post is created, the Council of Europe should carry out a careful study of the financial and resource implications of the establishment of the new post. Under no circumstances should the creation of the position and the necessary support staff lead to any reduction in staff or resources, or increase the workload of the Human Rights Directorate.
9. Candidates for the post must be persons of high moral standing, of proven independence and impartiality, have recognized experience and expertise in human rights, must have demonstrated commitment to promoting and protecting human rights guaranteed by the Council of Europe and have

substantive knowledge of its human rights standards. They must have the political authority that the high position requires.

10. To ensure the widest political support, election should be by the Parliamentary Assembly.