**Workshop of Regional and Sub-Regional Courts**

**Strasbourg, 20-21 October 2015**

**Introduction to the work of the Commissioner for Human Rights**

The closest (or most formal) link between the Commissioner and the Court’s system is a specific power the Commissioner has: the power to intervene as third party in proceedings before the Court. But before that, explain how the general work of the Commissioner fits into the Court system.

**Institution**

The Commissioner is an institution of the Council of Europe, which was established in 1999 through a resolution of the Committee of Ministers.

* Independent : no instruction from inside or outside the CoE (governments or anyone else). S/he is elected for a non-renewable term of 6 years
* Impartial: Most importantly: visits and works on all countries
* Non judicial: cannot examine individual complaints (and certainly not adjudicate – the Court is there for that).
* 3 Commissioners so far: Alvaro Gil-Robles : (from establishment – Mar 2006) Thomas Hammarberg : (Apr 2006 – Mar 2012) Nils Muižnieks : Apr 2012 – Mar 2018

Important to note that the individual profile is crucial as one of the main ideas behind the setting up of this institution is having that right mix of recognised HR expertise and moral authority that can meet at the highest level of the administration.

**Mandate**

* Promotes respect of HRs on the ground in 47 MSs (esp. identifying shortcomings in law and practice and assisting MSs in following applicable standards)
* Promotes awareness of HRs
* Works with NHRSs and for their establishment
* Works with and provides protection to HRDs

To carry out his main promotion and prevention mandate, the CommHR relies on the standards of the CoE, UN and other standards – both binding and otherwise – to promote better implementation of HRs on the ground.

In terms of the tools the Commissioner has to carry out this mandate, the main tools to keep in mind are the following :

**Working methods/activities**

* Country monitoring:

CommHR carries out about 12 full visits per year, which are followed up by reports with recommendations. Since 2008, the reports do not cover all HRs but focus on two or three specific issues, which vary in each country. During the visit the Commissioner meets the authorities, civil society organisations, and other stakeholders (academics, victims of HRs violations, lawyers, etc). He also visits places of HRs relevance (typically: refugee reception centres, migrants detention centres, institutions for persons with intellectual and psycho-social disabilities, formal and informal Roma settlements, shelters for the homeless, etc.).

Some of these visits are organised in response to urgent emerging issues and their follow-up may differ from a full report.

* Thematic work

Can take different forms. In recent years, a considerable part of this work consists in the preparation of Issue Papers. These are publications drawing attention to human rights issues, in respect of which more guidance is needed (recent examples relating to themes which have been or might be relevant for cases before the Court include the right to make decisions/legal capacity of persons with intellectual or psycho-social disabilities; the rule of law on the Internet; and democratic oversight of security services)

In addition, the Commissioner has also issued Recommendations and Opinions on specific themes (for instance, on independent and effective determination of complaints against the police 2009).

* Media work (skip)
* Human Rights diplomacy (skip)
* Work with NHRSs (skip)
* Work with Human Rights Defenders (HRDs)

The Commissioner is specifically mandated to work with HRDs. This work can be seen also as a contribution to the preservation of the Court system. When lawyers bringing cases before the Court are victimized in their own country as a result of this work or when over-restrictive and loosely worded NGO legislation is implemented so as to put human rights organisations under pressure or force them to close shop, the access to effective protection for victims of human rights violations can be seriously affected in practice. The Commissioner’s recent work on HRDs in Azerbaijan and NGO laws in Russia provided two clear illustrations of this problem.

* Third party interventions

According to Article 36 ECHR, the Commissioner can intervene as third party in proceedings before the Court. Until June 2010 this was only possible at the invitation of the Court. Since June 2010 (which is when Protocol 14 to the ECHR, which gave the Commissioner this power, entered into force) the Commissioner can also intervene at his own initiative. The Commissioner can submit written contributions and participate in hearings.

The Commissioner's observations are based on his country and thematic activities. These observations cannot include any comments on the facts or merits of the case.

The Commissioners have used this power quite sparingly. So far, this has been done in nine cases. Three cases (in fact, two cases, and a group of five cases) can be highlighted:

* ***M.S.S. v. Belgium and Greece***

In May 2010 (so, still at the invitation of the Court), the previous CommHR submitted written observations concerning this case. This case related to the transfer of an asylum seeker from Belgium to Greece under the Dublin Regulation. It concerned possible violations by Greece (as a result of detention, sub-standard reception conditions and inadequate asylum procedures); and by Belgium (as a result of the exposure of the applicant asylum seeker to such treatment by sending him back to Greece). The Commissioner intervened both in writing and in a hearing (on 10 September 2010) in this case highlighting, on the basis of his first-hand experience of in these issues in Greece, the systematic deficiencies of the asylum system in this country. The judgment which found a number of violations of Article 3 resulted in the suspension of all Dublin returns of asylum seekers to Greece.

* ***The Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania***

In October 2011, the previous Commissioner submitted – for the first time at his own initiative -- written [observations](http://www.coe.int/t/commissioner/News/2011/111018TPIRomania_en.asp) in this case (and the current Commissioner took part in the hearing that followed). The case concerned a young Roma man from Romania with a severe intellectual disability, HIV+, who was abandoned by the mother at birth, lived all his life in institutions and died in an institution as a result of neglect shortly after turning 18. An NGO who had become aware of Mr Campeanu’s case while he was still alive, took the case before the Court, although it had never received power of attorney (or was otherwise authorized to act on his behalf). The issue the Commissioner was interested in was therefore an admissibility issue, namely whether such an NGO should have the right to legal standing (normally, it shouldn’t have, as it was not a direct victim). On the basis of his first-hand experience, the Commissioner highlighted the difficulties of certain vulnerable groups (in particular, people with intellectual disabilities) in accessing justice and advanced that denying the NGO right to stand would result in practice in no reasonable prospect of seeking and obtaining redress for a violation of the Convention. The Grand Chamber judgment finally established a new exception from the requirement that the applicants must claim to be a victim of a violation and accepted that a NGO may, in very specific circumstances, have standing to submit an application on behalf of the person directly affected by a human rights violation, even though this person had not given the NGO power of attorney.

* ***Five cases against Azerbaijan***

Between February and April 2015, the current Commissioner intervened in five different cases against Azerbaijan. These cases concerned the pre-trial detention of a number of human rights defenders and journalists. On the basis of his extensive work on these issues in Azerbaijan, the Commissioner highlighted a consistent and serious pattern of harassment, including judicial harassment, against human rights defenders, journalists and other critical voices in Azerbaijan, and of reprisals against those who expose human rights violations in the country. The Court has not decided these cases yet.

There has therefore been a clear acceleration in the use by the Commissioner of his power to intervene as third party in proceedings before the Court lately. One of the criteria guiding the selection of cases for the Commissioner’s intervention is the added value of such an intervention, notably in terms of the Commissioner having first-hand experience of an issue through field work. Given the extensive work that the Commissioner is carrying out in the field of migration and asylum as a result of increasing refugee and migratory movements through Europe, it is not excluded that further third party interventions may concern this important subject matter. In any event, the Office of the Commissioner is constantly monitoring cases that have been communicated by the Court to state parties with a view to identifying any suitable case for a Commissioner’s intervention.

Third party interventions are the means through which the Commissioner’s findings are formally put before the Court. However, the Commissioner’s work can – and in fact is – used by the Court’s system outside the framework of third party interventions.

* Country reports and thematic work are often referred to (sometimes extensively) by the Court in its judgments. For example, in a judgment rendered in October 2014 (*Sharifi and Others* *v. Italy and Greece*), which concerned indiscriminate collective expulsions of four Afghan nationals from Italy to Greece,[[1]](#footnote-1) the Court referred to the Commissioner’s reports on both Greece and Italy, which covered specifically the issues at stake. One month later, in a Grand Chamber judgment (*Tarakhel v. Switzerland*), the Court again quoted extensively from the Commissioner’s report on Italy, to decide on whether the proposed removal of Afghan asylum-seeker family from Switzerland to Italy under Dublin II Regulation would entail a violation of Article 3, on account of the reception conditions in Italy.
* The country work of the Commissioner is also highly relevant for the Committee of Ministers in its supervisory function of the execution of the Court’s judgments. Some of the Commissioner’s reports (or parts of reports) focus specifically on the execution of specific judgments and are therefore useful to the Committee of Ministers. A good example of this is the 2013 Commissioner’s report on the Czech Republic, much of which focused on the implementation of the Court’s judgment in the case of *D.H. and Others* (on discriminatory placement of Roma children in schools for children with mild intellectual disabilities).

1. The four applicants stated that on various dates in 2007 and 2008 they had entered Greek territory from Afghanistan. After illegally boarding vessels for Italy, they had arrived between January 2008 and February 2009 in the port of Ancona, where the border police had intercepted them and immediately deported them back to Greece. According to the applicants, this practice of immediate return had already been followed for several months by the Italian authorities. Neither Italy nor Greece had authorised them to apply for asylum. In respect of Greece, they complained of the difficulties encountered in the procedures for obtaining asylum. In respect of Italy, the applicants alleged that they had been unable to contact lawyers or interpreters. They had been given no information about their rights. Equally, they had been given no “official, written and translated” document concerning their return. They alleged that the Italian border police had immediately taken them back to the ships from which they had just disembarked. [↑](#footnote-ref-1)