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The situation of human rights defenders in Council of Europe member states

Report¹

Committee on Legal Affairs and Human Rights

Rapporteur: Mr Holger HAIBACH, Germany

Summary

Human rights defenders often face obstacles. In the most extreme cases, they are abducted and ill-treated and some are even assassinated.

Any violation of their rights is unacceptable and should be firmly condemned. They are a source of inspiration and deserve support and protection in their struggle for human rights without fear of attack or reprisal.

Council of Europe member states, and in particular their parliaments, are urged to respect their obligation to protect human rights defenders and their work. They are also called upon to protect those facing imminent danger in third countries, for example by delivering emergency visas or by setting up assistance programmes.

Furthermore, the Assembly should fully support the Council of Europe Human Rights Commissioner, who possesses a specific mandate to protect human rights defenders in the Council of Europe member states and to intervene in urgent cases. The Assembly, in close co-ordination with the Commissioner, should remain seized of the matter and strengthen its support for human rights defenders, notably through its newly-established annual Human Rights Prize, by involving human rights defenders in its work and, as appropriate, through mechanisms of parliamentary diplomacy.

1. Reference to committee: [Doc. 10985](#), Reference No. 3281 of 6 October 2006.



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A. Draft resolution

1. The Parliamentary Assembly pays tribute to the invaluable contribution human rights defenders make to the protection of human rights, the rule of law, democracy and the prevention of conflicts, sometimes at the risk of their own personal security.
2. The Assembly considers that human rights defenders are all those persons who, individually or together with others, act to promote or protect human rights. It is their activities in the defence of human rights that define them as human rights defenders.
3. States have the obligation and responsibility to protect human rights defenders and their work by providing an enabling environment and, if necessary, protection mechanisms to ensure the physical integrity of defenders who face specific threats. Parliamentarians have a major responsibility for shaping the political context and the working environment of human rights defenders in an appropriate way and monitoring human rights developments.
4. In many countries, human rights defenders are generally well protected in law and practice. The Assembly deplors, however, that, in some Council of Europe member states, human rights defenders are sometimes confronted with a difficult environment and face numerous obstacles and restrictions. The latter range from physical violence to more subtle and insidious measures, such as administrative obstacles. In a number of Council of Europe member states, defenders face defamation campaigns aimed at discrediting them or are accused of being unpatriotic, traitors, “spies”, or “extremists”. In the most extreme cases, human rights defenders receive death threats, are abducted, face arbitrary arrests and detention and unfair trials, and are ill-treated or even assassinated. In some cases, their family and professional entourage are also targeted.
5. The Assembly is particularly concerned by the situation of human rights defenders who are most exposed to attacks and abuses because of their identity and/or because they work on “unpopular” or sensitive issues. At special risk are those fighting against impunity for serious crimes and against corruption, as well as those working on economic, social and cultural rights, on the rights of lesbian, gay, bisexual and transgender persons, as well as for the rights of migrants, national or ethnic minorities. Women defenders also face distinct risks and obstacles. In particular, the situation of human rights defenders in the Caucasus region, where some of them face the most violent repression, including killing, abduction, arbitrary arrests and detention, is critical.
6. The Assembly considers that all attacks on, and violations of, the rights of human rights defenders in Council of Europe member states, whether carried out by state or non-state actors, are unacceptable and should be firmly condemned. It stresses that freedom of expression and freedom of assembly and association, which are of crucial importance for the work of human rights defenders, are fundamental rights protected by the European Convention on Human Rights.
7. The Assembly recalls the United Nations Declaration on Human Rights Defenders, adopted in 1998 by the United Nations General Assembly, and welcomes the recent establishment of the Office for Democratic Institutions and Human Rights (ODIHR) Focal Point of the OSCE for Human Rights Defenders and the European Union Guidelines on human rights defenders.
8. The Assembly urges the Council of Europe, Europe’s leading guardian of human rights, through its unique array of human rights instruments and bodies, to further increase its contribution to the protection of human rights defenders and their work in a long-term perspective, as well as in specific cases requiring urgent action.
9. Consequently, the Assembly warmly welcomes the Declaration adopted by the Council of Europe Committee of Ministers on 6 February 2008, which mandates the Council of Europe Commissioner for Human Rights to strengthen the role and capacity of his office in order to provide strong and effective protection for human rights defenders and to intervene in serious situations where there is a need for urgent action. The declaration also calls on other Council of Europe bodies to pay special attention to issues concerning human rights defenders.
10. Given the key responsibility of parliamentarians to create an enabling environment for human rights defenders, the Assembly intends to step up its support for human rights defenders across the continent, to complement – not overlap with – the role of the Council of Europe Commissioner for Human Rights. In this respect, the Assembly recalls that it has recently established an annual Parliamentary Assembly Human Rights Prize to reward outstanding civil society action in the defence of human rights in Europe.

11. Finally, the Assembly stresses that a broad range of protection measures is often the most effective response to ensure adequate protection for human rights defenders. These measures must involve the political and judicial authorities, national human rights structures, human rights defenders themselves and their networks, international human rights mechanisms, the diplomatic community, as well as the media.
12. Against this background, the Assembly urges member states to:
 - 12.1. fully implement the relevant provisions of the European Convention on Human Rights as interpreted by the European Court of Human Rights, especially the right to life, freedom from arbitrary arrest and detention, from torture and ill-treatment, the freedom of expression, the freedom of assembly and association, the right to a fair trial and to an effective remedy;
 - 12.2. fully implement the United Nations and Council of Europe declarations on human rights defenders, which call for an enabling environment for their work, as well as their promotion and protection, including by:
 - 12.2.1. publicly and firmly supporting their activities and guaranteeing in all circumstances their physical and psychological integrity;
 - 12.2.2. swiftly and firmly condemning, at the highest level, threats to, or attacks on, human rights defenders, their organisations and/or relatives, putting an end to such unacceptable behaviour and ensuring that law-enforcement bodies carry out effective, impartial and transparent investigations and prosecute the perpetrators;
 - 12.2.3. ensuring the effective access of human rights defenders to international protection mechanisms, in particular to the European Court of Human Rights.
13. The Assembly also calls upon member states to:
 - 13.1. set up appropriate infrastructures and assistance programmes for human rights defenders at risk;
 - 13.2. establish humanitarian visa schemes or take any other appropriate measure for human rights defenders facing imminent danger or in need of respite as a consequence of persistent persecution in third countries, or at least facilitate the issue of emergency visas for them in such situations;
 - 13.3. make full use, by those who are European Union members, of the European Union guidelines for human rights defenders in third countries, as well as to implement the principles contained therein within their own borders.
14. More specifically, the Assembly calls upon national parliaments of Council of Europe member states to:
 - 14.1. take relevant measures to implement, at parliamentary level, the United Nations and Council of Europe declarations on human rights defenders; parliaments should in particular ensure that legislation relating to defenders and their work is in conformity with international standards;
 - 14.2. adopt non-legislative texts on the protection of human rights defenders, requiring, *inter alia*, the government to strengthen the protection of human rights defenders in its internal and foreign policies and ensure scrutiny of government policies and action relevant to human rights defenders;
 - 14.3. develop and maintain regular contacts with human rights defenders;
 - 14.4. provide public recognition for the work of human rights defenders, by organising hearings and parliamentary debates and by establishing awards for human rights defenders;
 - 14.5. support assistance and protection measures for human rights defenders at risk, such as the issue of emergency visas, trial observation and involvement in networks of parliamentarians in support of human rights defenders;
 - 14.6. provide publicity for existing protection mechanisms, including the United Nations and Council of Europe declarations on human rights defenders, and in particular for the new mandate of the Council of Europe Human Rights Commissioner to protect human rights defenders in the Council of Europe member states;
 - 14.7. ensure the follow-up of Council of Europe work on human rights defenders;
 - 14.8. make the situation of human rights defenders a focal point at international parliamentary meetings such as the annual meeting of the human rights committees of parliaments of European Union member states.

15. The Assembly pays tribute to the work of the Council of Europe Human Rights Commissioner in support of human rights defenders and calls on him to:
 - 15.1. fully carry out his reinforced mandate to support and protect human rights defenders in the Council of Europe member states, which requires monitoring and reporting activities, interventions in urgent cases of human rights defenders at risk, public awareness-raising and creating networks, as well as co-operation and co-ordination with key partners and actors;
 - 15.2. recognise and make full use of the specific contribution of the Assembly and parliamentary diplomacy, both in a long-term perspective to improve the working conditions of human rights defenders and in serious situations where there is a need for urgent action.
16. The Assembly further resolves to:
 - 16.1. fully support the Council of Europe Human Rights Commissioner in his efforts to carry out his reinforced mandate;
 - 16.2. remain seized of the matter, in close co-ordination with the Human Rights Commissioner, in order to complement and reinforce the work of the latter in this field;
 - 16.3. continue to support the development of vibrant civil societies and the work of human rights defenders in Council of Europe member states, notably through the newly-established annual Parliamentary Assembly Human Rights Prize, through involvement of human rights defenders in its work and, as appropriate, through the mechanism of parliamentary diplomacy.

B. Draft recommendation

1. Referring to its Resolution (2009) ... on the situation of human rights defenders in Council of Europe member states, the Parliamentary Assembly commends the Committee of Ministers for the swift preparation and adoption of its Declaration on Council of Europe action to improve the protection of human rights defenders, on 6 February 2008. It welcomes the fact that the Committee of Ministers has decided to keep under review the question of further Council of Europe action in this field.
2. The Assembly also welcomes the adoption by the Committee of Ministers, on 10 October 2007, of the Recommendation on the legal status of non-governmental organisations in Europe and the subsequent establishment of an Expert Council on NGO Law by the Council of Europe Conference of International Non-Governmental Organisations.
3. The Assembly considers that the Council of Europe, through the full range of its human rights instruments and bodies, should further increase its contribution to the protection of human rights defenders and their work in a long-term perspective, as well as in specific cases requiring urgent action.
4. The Assembly welcomes the reinforced mandate given to the Council of Europe Human Rights Commissioner to protect and support human rights defenders in Council of Europe member states and fully supports his efforts to carry out this mandate. The Assembly is also ready to play an active role, to co-operate with and help the Commissioner with this task when the need arises.
5. The Assembly recommends that the Committee of Ministers:
 - 5.1. call on all member states to give appropriate follow up to the issues raised in Resolution ... (2009), particularly those concerning the issue of emergency visas, or any other appropriate measures, to support and protect human rights defenders at risk or in situations requiring urgent action;
 - 5.2. continue to give the necessary political support to the institution of the Human Rights Commissioner and provide it with necessary resources;
 - 5.3. give appropriate follow up to the work of the Human Rights Commissioner as well as other relevant protection mechanisms successfully invoked by human rights defenders;
 - 5.4. strengthen its own efforts to eradicate violations of the rights of human rights defenders in Council of Europe member states, in particular the most serious ones, such as assassinations, abductions, arbitrary arrests and detention, unfair trials and ill-treatment, and eradicate impunity for any such violation;
 - 5.5. increase the focus on human rights defenders within the Council of Europe's human rights awareness-raising and training activities, notably those concerning law-enforcement bodies and the media;
 - 5.6. continue to support the Council of Europe Conference of International Non-Governmental Organisations and the Expert Council on NGO Law and give concrete follow up to their work and findings;
 - 5.7. pay increased attention to the issue of human rights defenders and the role of the Council of Europe to promote and protect such defenders in its relations with other intergovernmental organisations.

C. Explanatory memorandum by Mr Holger Haibach, rapporteur

1. Introduction

“Witnessing the strength and true dedication to the ideals of human rights ... and the selfless sacrifices on the path toward achieving these goals, human rights defenders are an inspiration and deserve support, security and protection so that they can continue in their struggle for human rights without fear of attack or reprisal².”

1. Human rights defenders make an invaluable contribution to the rule of law, democracy and the protection of human rights, as well as the prevention of conflicts. In some Council of Europe (CoE) member states, however, human rights defenders are sometimes confronted with a difficult environment and have become the target of multifaceted repression.

2. Prompted by a motion for a resolution³ presented by Mr Txueka and others, the aim of this report is to examine the challenges and difficulties faced by human rights defenders and to identify concrete measures which the CoE, and in particular its Parliamentary Assembly, could take to better support and protect them.

3. In order to identify more clearly, through first-hand testimony, the problems and threats which human rights defenders face in the field, and to obtain expert advice from persons directly concerned on possible solutions proposed to improve the protection of human rights defenders in CoE member states when the need arises, the Committee on Legal Affairs and Human Rights held an exchange of views (“hearing”) on human rights defenders on 17 April 2008 with the participation of:

- Ms Rachel Denber, Human Rights Watch, Deputy Director of the Europe and Central Asia Division
- Ms Ekaterina Sokirianskaya, Human Rights Centre “Memorial”, Head of the Grozny Office (Russian Federation)
- Ms Caitriona Rice, *Front Line* - The International Foundation for the Protection of Human Rights Defenders, Protection Coordinator/Researcher
- Ms Delphine Reculeau, Observatory for the Protection of Human Rights Defenders, FIDH/OMCT, Coordinator
- Mr Johannes Heiler, Amnesty International, Adviser,
- Mr Thomas Hammarberg, Council of Europe Commissioner for Human Rights.

4. As an “extension” of the Committee’s hearing, Amnesty International organised on the same day a Round Table, which I sponsored as rapporteur, with a further enlarged panel of human rights defenders.

5. In the framework of the preparation of this report, I also participated in a Colloquy on human rights defenders organised by the CoE in November 2006 and, more recently, in a Round Table organised by the Council of Europe Commissioner for Human Rights on 3-4 November 2008 with defenders from the whole continent. This Round Table was an excellent opportunity to gather fresh first-hand information from human rights defenders themselves and to discuss their needs, as well as possible supportive actions by the CoE.

6. In view of the key role given to the Council of Europe Commissioner for Human Rights by the Declaration on human rights defenders adopted by the Committee of Ministers of the Council of Europe in February 2008, the aim of my report is to examine what could be the added value of parliamentary involvement and how synergy could best be fostered in the framework of an operational and sustainable human rights defenders protection mechanism.

2. *Front Line* at the hearing organised by the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly on 17 April 2008

3. Parliamentary Assembly [Doc. 10985](#)

2. What are human rights defenders?⁴

7. According to the United Nations Declaration on human rights defenders, “Human rights defender” is a term used to describe persons who, individually or with others, act to promote or protect human rights⁵. Human rights defenders are identified above all by what they do and it is through a description of their actions and of some of the contexts in which they work that the term can best be explained. It is generally recognised that a more concrete definition is neither possible nor even desirable, as it might be too narrow.

8. Human rights defenders work towards the realisation of any or all of the rights enshrined in the 1948 Universal Declaration of Human Rights and other international human rights instruments. Consequently, they seek the promotion and protection of civil and political rights as well as the promotion, protection and realisation of economic, social and cultural rights. In fact, human rights defenders address any human rights concerns, which can be as varied as, for example:

- summary executions,
- torture,
- arbitrary arrest and detention,
- female genital mutilation,
- breaches of freedom of expression and freedom of assembly and association
- discrimination
- employment issues,
- forced evictions,
- access to health care, and
- toxic waste and its impact on health and the environment.

9. The most obvious persons to be recognised as human rights defenders are those whose daily work specifically involves the promotion and protection of human rights, for example human rights monitors working with human rights organisations, human rights ombudsmen or human rights lawyers. A very important role is also played by journalists, who reveal unlawful action or human rights violations by state and “non-state” actors. Nevertheless, it is not essential for a person to be known as a “human rights activist” or to work for an organisation that includes “human rights” in its name in order to be a human rights defender. Again, what is most important in characterising a person as a human rights defender is not the person’s title or the name of the organisation he or she works for, but rather the nature of the work, which must be related to the defence of human rights.

10. Many people work in a professional capacity as human rights defenders and are paid a salary or fees for their work. Many others are volunteers and receive no remuneration.

11. The United Nations 1998 Declaration also indicates that human rights defenders have responsibilities as well as rights. Human rights defenders must accept the universality of human rights as defined in the 1948 Universal Declaration of Human Rights.

12. Also, in order to comply with the Declaration on human rights defenders, the actions taken by human rights defenders must be peaceful, i.e. non-violent.

13. Ombudspersons or respective national human rights structures (whether with a nation-wide or a regional/local, general or thematic competence), also have a very important place in the European human rights system. Their independence should be protected by law and in practice⁶ (see also below).

14. Human rights defenders – individuals, groups, non-governmental organisations (NGOs), human rights lawyers, journalists, ombudspersons etc. – play a crucial role in the protection and promotion of human rights. In so doing, they are often supported by intergovernmental organisations, such as the CoE.

4. See UN Fact sheet No 29 on human rights defenders (2007).

5. See: General Assembly of the United Nations, *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, 09.12.1998, A/RES/53/144.

6. See the Council of Europe Commissioner for Human Rights’ Viewpoint “Ombudsmen are key defenders of human rights –their independence must be protected”, 18.09.2006.

3. Difficulties encountered by human rights defenders in the Council of Europe member states

15. In many countries human rights defenders are generally well protected in law and practice. Many human rights defenders carry out their activities without encountering major obstacles. Unfortunately, this is not the case everywhere in Europe. A number of NGOs have expressed serious concern about difficulties encountered by human rights defenders in some CoE member states, claiming that the situation of human rights defenders is even deteriorating in a number of countries. The Committee's exchange of views with human rights defenders on 17 April 2008, as well as the Round Table on 3-4 November 2008, provided extensive information in this respect. It was stressed in particular that some human rights defenders were confronted – occasionally or on a more regular basis – with obstacles or a hostile environment in several CoE member states, in particular, Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, the Russian Federation, Serbia and Turkey.

16. Human rights defenders do not form a particular category of vulnerable persons which should have specific rights. But they do defend other persons' human rights and are therefore more visible, at the frontline. Targeting them is an insidious way to target the persons whose rights they are defending. Silencing one of them may also silence a great number of those who are relying on them. Physical assaults on human rights defenders, including some of the best known, are likely to nurture a climate of fear. As human rights defenders find it increasingly difficult to defend themselves, ordinary citizens are likely to question their ability to protect them.

3.1. Obstacles and restrictions ranging from direct use or threat of violence to more insidious measures

17. In some CoE member states, human rights defenders face obstacles and restrictions ranging from direct use or threat of violence to more insidious measures. State authorities are still the most common perpetrators of violations against human rights defenders although they bear the primary responsibility for assuring their protection. State authorities, in this context, should be understood widely to include multiple types of authorities at the bureaucratic and political levels, and to include local authorities as well as those at the regional or national levels. In addition, a variety of "non-state" actors (armed groups, organised crime, businesses such as transnational corporations, ultra-nationalist or other groups and individuals promoting hate and intolerance) also commit, or are implicated in, acts against human rights defenders, at times with the complicity of state bodies.⁷

18. Violations most commonly target either human rights defenders themselves or the organisations and mechanisms through which they work. The offices and/or homes of defenders are the subject of attacks, burglary and unauthorised searches and pressure is put on persons or businesses that support their work, for instance those providing them with funding or premises. Human rights defenders who are threatened fear for their own safety, but also for that of their families and professional relations. The unfortunate practice of targeting family members of human rights defenders is often referred to as "family hostage taking".

19. In the most extreme cases, human rights defenders receive death threats or are actually assassinated, like the murdered journalists Hrant Dink in Turkey in 2007, Anna Politkovskaia in Russia in 2006 and this year, Stanislav Markelov, a prominent Russian human rights lawyer, who was shot dead in Moscow together with a trainee journalist.

20. In a number of CoE member states, human rights defenders are faced with challenges to their legitimacy. State and non-state actors often try to discredit the work of human rights defenders in order to publicly vilify them and negatively influence public opinion. In some cases, they are accused of being "enemies", "traitors", "spies" or "extremists", after reporting human rights violations, or having communicated with international organisations, or domestic or foreign media⁸, or they are accused of being financially dependent on foreign states or international organisations. Representatives of NGOs I have met also denounced the detrimental action of "GONGOs" ("governmental NGOs" or NGOs created and manipulated by the authorities), whose aim is to challenge the legitimacy of actual NGOs and human rights defenders.

21. In other cases, human rights defenders face arbitrary arrests and detention and unfair trials. Interferences with the independence of the judiciary and the slow and ineffective functioning of the courts are also major obstacles to the work of human rights defenders and used against them.

7. See UN Fact sheet No 29 on human rights defenders.

8. In this respect, they share the plight of "whistleblowers", whose protection is the subject of a separate report under preparation by Mr Omtzigt (Netherlands, EPP/CD).

22. In some cases also, the authorities put illicit pressure on those who defend applicants before the European Court of Human Rights⁹ and who assist victims of human rights violations in exhausting national remedies before applying to the Court. In this context, the Assembly has stressed on several occasions member states' duty to cooperate with the European Court of Human Rights and the need to protect applicants and witnesses and their legal representatives¹⁰.

23. Strategies of persecution and harassment of human rights defenders by the perpetrators of human rights violations have become more sophisticated and legal action is increasingly used against those working for the rights of others. Common courses of legal action include the prevention of legal registration of organisations and the bringing of false legal claims and cases, including criminal prosecutions on trumped-up charges. Human rights defenders need access to an effective legal defense. The importance of a fair trial is paramount. Consequently, human rights defenders have stressed the importance of an independent trial observer being present to monitor the proceedings of a trial and produce a report on the fairness of the trial. This can have an effect on the transparency of the proceedings and bring international media attention to the case of the human rights defender.

24. The responsibility of certain media and public authorities for engaging in, tolerating or supporting hate speech¹¹ against particular human rights defenders and organisations should not be underestimated.

25. Administrative obstacles, in particular concerning the registration process of human rights associations, and restrictive laws, in particular ones that impose excessive administrative burdens, reporting or translation requirements etc. may have an equally drastic impact on the ability of NGOs and individuals to promote and defend human rights.

26. In some cases, in order to make their work more difficult, NGOs are accused of violations of national legislation, such as breaches of tax law, which have nothing to do with these NGOs' core activities. According to the Observatory for the protection of human rights defenders – a programme developed jointly by the International Federation of Human Rights (IFHR) and the World Organisation Against Torture (WOAT) – the abuse of domestic legislation for repressive purposes is a serious concern which illustrates a trend towards more subtle and aggravated repression. Attempts to disbar lawyers have also been reported.

27. Prosecution of human rights defenders for alleged violation of state secrets or espionage (“spy-mania”) is also of particular concern. The Parliamentary Assembly has already stressed on several occasions that “the state’s legitimate interest in protecting official secrets must not become a pretext to unduly restrict the freedom of expression and of information, international scientific co-operation and the work of lawyers and other defenders of human rights”¹². In this context, I would like to mention the case of Mr Grigory Pasko, a Russian former naval officer who worked as a journalist. Following a series of investigative reports on illegal dumping of nuclear waste into the ocean by Pacific Fleet military vessels, he was arrested in 1997 and charged with disclosing a state secret. He was condemned on treason charges to four years of labour and served two-thirds of his sentence. In 2003, Mr Pasko was released from prison following an extremely rare civilian court decision overturning the verdict of a military court. This case illustrated, *inter alia*, the need for a clear and public definition of all secrecy-related criminal offences¹³.

28. Restrictions on funding and on access to information and access to the media and to the Internet are also serious obstacles to the work of human rights defenders. Travel restrictions¹⁴ and restrictions on trade union rights are other reported obstacles.

29. At the Parliamentary Assembly committee’s hearing on 17 April 2008 and at the November 2008 Round Table, NGOs stressed that in the Russian Federation, human rights defenders have experienced serious problems, particularly over the last two years, which illustrate most of the difficulties mentioned above (see

9. The recent judgment of the Strasbourg Court in the case of Ryabov v. Russia (Judgment final on 07.07.2008) illustrates cases of pressure on applicants to the European Court of Human Rights (ECtHR, or Strasbourg Court) and lawyers representing them (in this case, Mrs Moskalenko was one of the applicant’s representatives).

10. See Assembly [Resolution 1571 \(2007\)](#) and [Recommendation 1809 \(2007\)](#) “CoE member states’ duty to cooperate with the European Court of Human Rights” and [Doc. 11183](#).

11. See in this context the Council of Europe Committee of Ministers’ Recommendation on “hate speech” (Recommendation No. R (97) 20).

12. See Parliamentary Assembly [Resolution 1551 \(2007\)](#), § 1.

13. I have been informed that he is continuing to fight to clear his name, and currently has an application pending before the European Court of Human Rights.

14. See CoE press release of 21.02.2008, “Parliamentary Assembly rapporteur calls on Russia to grant visa to highly-respected human rights defender”.

also the part on defenders particularly at risk below). At the same time, NGOs also stressed that some of the obstacles facing human rights defenders in the Russian Federation, are found in other countries, too (see above).

30. Reportedly, the 2006 legislation on NGOs in the Russian Federation¹⁵ has been used, together with other administrative obstacles – and in certain cases in conjunction with the new anti-terrorism legislation and legislation on combating extremism, as amended in 2007¹⁶ – to harass organisations that work on controversial matters, receive foreign funding, or whose activities might stimulate political opposition. This situation was illustrated recently by the search of the offices of the *Memorial* human rights centre in St Petersburg. The Council of Europe Human Rights Commissioner and the (then) EU Presidency expressed their deep concern and urged the Russian authorities to guarantee the freedom of action of this organisation. The EU further expressed its very concern at the use of the law on extremism against this association. In a resolution adopted in December 2008 on “attacks on human rights defenders in Russia and the Anna Politkovskaya murder trial”, the European Parliament asked the Russian authorities, *inter alia*, to return without delay to Memorial the material taken during the police raid. The European Parliament also indicated that it was “alarmed at the attempt made in October 2008 on the life of human rights lawyer Karinna Moskalkenko and her family” and appealed “to both the French and Russian authorities to identify the perpetrators and their motives”¹⁷. Mrs Moskalkenko is a highly respected human rights lawyer who has won a number of cases before the European Court of Human Rights (see footnote 8 above) and is also member of the Council of Europe Human Rights Commissioner’s Task force on human rights defenders. Her own organisation, the Centre for international Protection, has, reportedly, also been under constant pressure during last years.

3.2. Human rights defenders particularly at risk

31. Some human rights defenders face particular difficulties because of their identity and/or the issues they are working on, in particular those considered as “unpopular” or sensitive ones. At special risk, are, *inter alia*, those working on economic, social and cultural rights, for the protection and promotion of the rights of lesbian, gay, bisexual and transgender persons (LGBT persons), as well as for the rights of migrants, national or ethnic minorities. More generally, human rights defenders fighting discrimination often meet hostility and are targeted by the authorities and/or even parts of society. Especially, those fighting impunity for serious crimes and corruption are often the target of violence, including by the very persons or groups whose criminal actions are exposed by them.

32. The last few years have seen a great increase in the level of activity by human rights defenders working for the rights of LGBT in CoE member states. This has met with extensive opposition, activists often being targets for persecution. But others (activists, politicians, lawyers, trades unionists etc) are also sometimes targeted if they help promote or defend LGBT rights or are themselves “accused” of being gay in order to discredit them. This is particularly true where the issues involve freedom of expression, association and assembly with governments banning public and media discussion of homosexuality, as well as LGBT Pride marches and events¹⁸.

33. Women human rights defenders face distinct risks and distinct obstacles with regard to effectively carrying out their human rights work. They are at risk because of both who they are and what they do. Consequently, all regional and international mechanisms need to ensure that the issues of women, and women human rights defenders, are addressed in order to protect women in those countries that remain openly patriarchal. To quote Mrs Sonja Biserko, a human rights defender from Serbia, when speaking about the media campaign against her and other fellow women defenders in Serbia: “The media campaign against us is based on insults. The aim is to demonise and dehumanise us by insults such as calling us ‘ugly, fat

15. Since 2005, the CoE has worked with the Russian authorities twice providing expert analysis of the law on association on NGOs. In both rounds, it was made clear that the law had problems, that the provisions were too vague and that NGOs were over-regulated.

16. Cases of human rights organisations persecuted under the pretext of extremist activities include the “Beslan mothers”, the Chechen Committee for National Salvation (ChCNS) based in Nazran (Ingushetia), the Nizhny Novgorod-based Russian-Chechen Friendship Society which has been under constant pressure for almost three years, and the Moscow-based Centre for International Protection.

17. A small quantity of mercury was found in her car in Strasbourg in October 2008. Investigation by the French police is ongoing.

18. See also the resolution adopted by the COE INGO conference on 23.01.2008, OING D(2008) Res1: Human rights defenders working for the rights of LGBT persons.

women' and 'lesbians'. We are more like totems than humans. The International Community has to see what is behind this demonising of us, why we are seen as enemies".¹⁹ This is also a concrete example of another strategy often used against women human rights defenders.

34. Hate speech, especially from public authorities, and impunity, or perceived impunity, of those violating their rights increase the risks to which human rights defenders are exposed.

35. In CoE member states, the situation of human rights defenders in the Caucasus region (Armenia, Azerbaijan, Georgia, and especially in the North Caucasus (Russian Federation) is considered to be particularly critical, since some of them face the most violent repression, including killings, abductions, arbitrary arrests and detention²⁰.

3.3. Lack of understanding of the concept of civil society

36. In certain cases, the role of human rights defenders in a democratic society needs to be better understood in order to be fully appreciated. In some cases, authorities misinterpret the concept of civil society as a possible "niche" or "nest" for anti-state actions and terrorist activities and apply restrictive legislation to impede the emergence of a functioning civil society.

37. The activities of human rights defenders often do involve criticism of the authorities' policies. But open and free debates on the governments' policies are at the heart of a functioning democracy. In addition, human rights defenders can assist the authorities in promoting human rights, drafting the appropriate legislation and devise appropriate human rights policies. They should be seen as partners, 'critical friends', rather than enemies.

3.4. Violations of freedom of expression and freedom of assembly and association

38. In this context, freedom of expression and freedom of assembly and association are of crucial importance for the work of human rights defenders since they are at the heart of an active civil society²¹. Human rights defenders must be allowed to criticize. They should be able to carry out their monitoring and reporting activities regarding human rights violations. During the Roundtable held in Strasbourg in November 2008, participants from Georgia and from the Chechen Republic (Russian Federation) also stressed that human rights defenders should, *inter alia*, be granted access to places of detention and post-conflicts areas and allowed to report on human rights violations there.

39. As indicated above, however, all too often, registration procedures, administrative requirements, as well as (alleged inappropriate) funding and tax inspections are used as obstacles to freedom of assembly and association. The protection of public morals or safety is often wrongfully invoked to justify denials of the freedoms of assembly, association and expression.

40. Obviously, there is a clear need to reaffirm the existing standards in this respect and to urge the authorities concerned to implement them. Freedom of expression and of association are enshrined in the European Convention on Human Rights (Articles 10 and 11), which has been ratified by all CoE member states.

41. Restrictions on the exercise of the rights to freedom of expression and freedom of assembly must be prescribed by law and be necessary in a democratic society in the interest of national security or public safety, for the prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedom of others.

19. Amnesty International Round Table of 17.04.2008, quote from the speech of *Frontline*.

20. Concerning the North Caucasus in particular: In Ingushetia, the chair of the board of "Memorial" and three journalists were abducted in 2007 and a human rights defender and applicant to the European Court of human rights, Mr Zurab Tsetchoev was abducted in July 2008. In Daghestan, Mr Babaev, a human rights defender and head of the regional list of the opposition party Yabloko, was shot dead in November 2007. With respect to the Chechen Republic, I was informed by representatives of the NGO Memorial that the President of the Chechen Republic, Mr Kadyrov, had proposed Memorial to enter into a form of co-operation with his administration that would have practically ended the group's independence. This shows the extent of the pressure on NGOs. Memorial refused this offer and in March 2008 the President stopped all co-operation with the group's representatives, who are now in a particularly delicate situation.

Concerning Armenia, Azerbaijan and Georgia, see, *inter alia*, recent Parliamentary Assembly monitoring reports and reports of the Council of Europe Commissioner for Human Rights.

21. In this respect, see Recommendation Rec(2007)14 of the Committee of Ministers to member states on the legal status of non-governmental organisations in Europe.

42. Authorities play a central role in upholding their citizens' rights to freedom of assembly and expression. This includes the positive obligation for the state to provide effective protection and ensure respect for those who wish to assemble and express themselves, even if their views are unpopular or are not shared by the majority of society.

43. In its often cited *Handyside* judgment of 7 December 1976, the European Court of Human Rights has affirmed that freedom of expression applies not only to information and ideas that are favourably received or regarded as inoffensive or indifferent, but also to those that "offend, shock or disturb" the state or any sector of the population. More recently, in 2007, in the case of *Bączkowski and others v. Poland*²² addressing freedom of assembly and freedom of expression, the Court of Human Rights drew attention to the positive obligation of the State to secure the effective enjoyment of Convention rights, stressing that "this obligation is of particular importance for persons holding unpopular views or belonging to minorities, because they are more vulnerable to victimisation". The Court also emphasised that the exercise of freedom of expression by elected politicians "entails particular responsibility".

3.5. Failure of state authorities to respect their obligation and responsibility to protect human rights defenders and their work

44. States have the obligation and the responsibility to protect human rights defenders and their work by providing conditions that fully enable the exercise of advocacy, monitoring and reporting on human rights and, if necessary, protection mechanisms to ensure the physical integrity of human rights defenders who face specific threats.

45. In many states, the obligation to respect, protect and implement human rights is generally fulfilled effectively. Also, every state has individuals working for the authorities and the law-enforcement forces who do their utmost to protect human rights and those who defend them.

46. As stressed during the Parliamentary Assembly committee's hearing in April 2008, however, the attitude of each government towards human rights movements differs. Some governments may make institutional changes, for example the enactment of human rights policies which are then implemented to varying degrees, others acknowledge individual cases of abuse but do not take any, or, any sufficient action.

47. Most offending governments either deny human rights violations outright, or portray such incidents as aberrations, or even defend acts of repression in the name of state security (particularly in the wake of 11 September 2001), culture, religion, morality or public health. In the face of criticism, some governments have been seen to close ranks and attack the critics, rather than acting against human rights abuses exposed by them. From the perspective of repressive governments, those speaking out against human rights abuses, and not the abuses themselves, become the problem that needs to be "solved".

48. In some member states of the CoE, there is even a need to ensure protection, including of their physical integrity, of human rights defenders who face threats²³.

49. In addition, attacks on human rights defenders are not always properly investigated and many perpetrators, organisers or instigators are never prosecuted (see also below).

4. Improving the situation of human rights defenders at national level: the key role of parliamentarians

4.1. Making the states' responsibility a reality

50. As stressed in December 2008 by United Nations and regional mechanisms and representatives to mark the tenth anniversary of the United Nations Declaration on Human Rights defenders, states should "recognise the activities of human rights defenders as legitimate human rights work, ensure the removal of all obstacles and take proactive measures to support the work of human rights defenders". "Very often, firm public stands in support of human rights defenders can transform a situation of vulnerability into one of empowerment for defenders".

22. No. 1543/06, judgment final on 24.09.2007.

23. See in particular reports and press releases from Amnesty International, HRW and the Observatory for the protection of Human Rights Defenders.

51. Attacks on human rights defenders should also be condemned at the highest level of the state, investigated and prosecuted vigorously. As stressed by the United Nations rapporteur on human rights defenders “breaking that vicious circle of impunity is a fundamental contribution to the protection of defenders and of human rights more broadly”.

52. Thus, the Declaration of the Committee of Ministers on CoE action to improve the protection of human rights defenders and promote their activities²⁴ calls on member states to:

- i. create an environment conducive to the work of human rights defenders, enabling individuals, groups and associations to freely carry out activities, on a legal basis, consistent with international standards, to promote and strive for the protection of human rights and fundamental freedoms without any restrictions other than those authorised by the European Convention on Human Rights;
- ii. take effective measures to protect, promote and respect human rights defenders and ensure respect for their activities;
- iii. strengthen their judicial systems and ensure the existence of effective remedies for those whose rights and freedoms are violated;
- iv. take effective measures to prevent attacks on or harassment of human rights defenders, ensure independent and effective investigation of such acts and to hold those responsible accountable through administrative measures and/or criminal proceedings;
- v. consider giving or, where appropriate, strengthening competence and capacity to independent commissions, ombudspersons, or national human rights institutions to receive, consider and make recommendations for the resolution of complaints by human rights defenders about violations of their rights;
- vi. ensure that their legislation, in particular on freedom of association, peaceful assembly and expression, is in conformity with internationally recognised human rights standards and, where appropriate, seek advice from the Council of Europe in this respect;
- vii. ensure the effective access of human rights defenders to the European Court of Human Rights, the European Committee of Social Rights and other human rights protection mechanisms in accordance with applicable procedures;
- viii. co-operate with the Council of Europe human rights mechanisms and in particular with the European Court of Human Rights in accordance with the ECHR, as well as with the Commissioner for Human Rights by facilitating his/her visits, providing adequate responses and entering into dialogue with him/her about the situation of human rights defenders when so requested;
- ix. consider signing and ratifying the European Convention on the Recognition of the Legal Personality of International Non-Governmental Organisations (ETS No. 124);
- x. consider signing and ratifying the 1995 Additional Protocol to the European Social Charter and to consider recognising the right of national NGOs fulfilling the criteria mentioned therein to lodge collective complaints before the European Committee of Social Rights;

53. In this context, it is also worth recalling that the Council of Europe Committee of Ministers’s Recommendation on “hate speech”²⁵ asserts that public authorities and institutions have a “special responsibility to refrain from statements ..., speech ... and other forms of discrimination or hatred based on intolerance”, especially when it is disseminated through the media. Any legitimate interference with freedom of expression should be “narrowly circumscribed and applied in a lawful and non-arbitrary manner on the basis of objective criteria (and) subject to independent judicial control”.

4.2. Transnational measures

54. Transnational measures should also be encouraged (see also “the key role of parliamentarians below”). The issuing of emergency visas should be considered as a necessary tool to protect human rights defenders at immediate risk or in need of respite.

24. Declaration adopted by the Committee of Ministers on 6 February 2008 at its 1017th meeting of Ministers’ Deputies

25. Recommendation No. R (97) 20.

55. In this respect, the Declaration of the Committee of Ministers on CoE action to improve the protection of human rights defenders and promote their activities calls on member states to:

“xi) provide measures for swift assistance and protection to human rights defenders in danger in third countries, such as, where appropriate, attendance at and observation of trials and/or, if feasible, the issuing of emergency visas;”.

56. *Front Line* recalled that, at a legal level, the option of issuing emergency visas to human rights defenders at risk already exists. Indeed, the Common Consular Instructions (CCI) offer the possibility to the Contracting Parties of the Schengen Convention to issue emergency visas with a limited territorial validity on humanitarian grounds to human right defenders at risk. In practice, consular offices can also decide by themselves to speed up the normal process of issuing a uniform visa (Schengen visa) but the existence of visa applications requiring consultation with the national central authority and the authority of one or more other Contracting Parties often stands in the way of a quick delivery of visas. The current informal practices – sometimes rather confidential – are at the discretion of the consular authorities in the country of origin of the human right defenders.

57. It would appear that only Ireland and Spain have humanitarian visa schemes for human right defenders facing imminent danger or in need of respite as a consequence of constant persecution. This practice should be encouraged. Most other EU member states, however, when they are aware of the difficult situation of human rights defenders, deliver visas on a case-by-case basis, with a territorial validity for those at immediate risk. The Norwegian government has also recently adopted guidelines for systematising and strengthening the efforts of its foreign service missions in supporting human rights defenders. These guidelines mention specifically the issue of visas for human rights defenders. In addition, the German Parliament adopted cross-party resolutions in 2003 and 2008 urging the German government and its diplomatic representations, in the most serious cases, to take necessary measures for the protection of human rights defenders and to accept them in Germany for a short given period, on the basis of the relevant legal provisions relating to aliens.

58. *Front Line* stressed that temporary relocation visas are seen as a protection measure to be used in extreme circumstances as part of a global strategy of protection for human rights defenders. Prior to relocating a defender, other measures of protection, for example general protection measures, advocacy and lobbying, should be explored. The overall aim should be to support defenders on the ground in order for them to continue to work to promote and protect human rights within their societies. *Front Line* also stressed that the existing refugee status can hardly give a proper response to the specific situation of human rights defenders at risk, since they intend to go back to their country. In addition, relocation inside the country of origin or in the sub-region is not always suitable.

59. The primary objectives of relocating human rights defenders are: saving their lives, preventing them from being tortured or mistreated, preserve their mental health and give them the possibility to work peacefully. These objectives may require that close relatives are also relocated.

60. Concerns have been raised in relation to a temporary humanitarian visa scheme being abused and offering a channel for asylum seekers applying for refugee status. In an expert meeting hosted by *Front Line* on the issue of temporary humanitarian visas for human rights defenders, statements by the Spanish and Irish representatives, as well as by NGOs and human right defenders have shown that the overwhelming majority of human right defenders, who come to the EU to participate in all kinds of events, do not request asylum, but go back to their countries and continue their work.

61. In this perspective, the establishment of shelter houses, foundations and assistance programmes for human rights defenders, their family members and persons persecuted for political reasons, such as those existing in Germany in the city-state of Hamburg, should also be developed. In this context, *Front Line* is also advocating the setting up of ‘shelter cities’ in Europe and suggested that Strasbourg as a European symbol should participate actively. The need for appropriate infrastructure for this (such as, for example, help from foundations) was stressed by human rights defenders present in Strasbourg in November 2008.

4.3. The key role of parliamentarians

62. Parliamentarians contribute to shaping the political context and the working environment of human rights defenders, and should monitor human rights developments in their respective countries.

63. As stressed by Amnesty International at the committee’s hearing in April 2008 with respect to human rights defenders, national parliaments have an essential role to play in taking a range of measures set out in the United Nations Declaration on human rights defenders and the Council of Europe Committee of Ministers’

Declaration aimed at ensuring an enabling environment for the work of human rights defenders and ensuring their protection. Amnesty International also called on members of the Parliamentary Assembly to lead these efforts in the 47 member states of the CoE.

64. Four concrete measures that Amnesty International, at the committee's hearing, considered as being of key importance were the following:

- Ensuring a systematic review of legislation at the national level – aimed at bringing it fully into line with international standards – including guaranteeing the rights to freedom of expression, assembly and association and stimulating changes in practice and policy in CoE member states, including in the field of the judiciary. As rapporteur, I should add that there is also an obvious need to focus on legislation in security matters (fight against terrorism, definition of secrecy-related criminal offenses, for example). In addition, full support should be given to the recently established CoE Expert Council on NGO Law.
- Develop and maintain close contacts with human right defenders: human rights defenders recognised that regional and international human rights mechanisms and the lobbying around them can result in relatively better responsiveness in terms of protection measures.
- Parliamentarians could also ensure scrutiny of government policies and action relevant to the work of human right defenders and their protection. Parliamentary Assembly members could push for changes of policy and action where required and first and foremost, consider initiating the elaboration of national parliamentary strategies and action plans to create an enabling environment.
- Parliamentarians could facilitate assistance and protection for human right defenders from their own countries and from other countries when they are at risk (e.g. issue emergency visas for human right defenders facing an imminent risk).

65. The German Bundestag's programme "Parliamentarians protecting Parliamentarians" is one of the concrete transnational measures aimed at protecting human rights defenders in other countries²⁶. This initiative was launched by the Bundestag Committee for "Human Rights and Humanitarian Aid" to help members of parliament who have been threatened or prosecuted and to expand the efforts and support for human rights defenders. Following the cross-factional motion on "protection of threatened human rights defenders", all representatives of the Bundestag are now bound to support this initiative and to assist their threatened colleagues.²⁷ (see also § 57 above concerning the resolutions adopted by the German Parliament in 2003 and 2008 and the protection of human rights defenders at risk).

66. In Belgium, the House of Representatives and the Senate have adopted Resolutions on human rights defenders asking the government to strengthen the protection of human rights defenders in its foreign policy. In June 2007, a non-legislative motion about the protection of the human rights defenders was also approved by the Spanish Parliament. I have also been informed that in the United Kingdom, an all-party Parliamentary Human Rights Group collects information on human rights violations in various countries, addresses its concerns to the governments concerned, establishes and coordinates contacts with NGOs and other parliamentary groups, organises missions to areas of concern and briefs parliamentarians who travel abroad or receive delegations.

67. Other initiatives could include²⁸:

- ensuring the visibility of the United Nations and CoE Declarations on human rights defenders, of the new mandate of the Council of Europe Human Rights Commissioner to protect defenders in the CoE member states, as well as of other human rights defenders protection mechanisms/representatives;
- ensuring the follow-up of CoE work on human rights defenders;
- making the situation of human rights defenders a focal point at international parliamentary meetings such as the annual meeting of the human rights committees of parliaments of EU member states.

26. See also the Inter-Parliamentary Union (IPU)'s Committee for the Protection of Human Rights of Parliamentarians.

27. See: Deutscher Bundestag, Ausschuss für Menschenrechte und humanitäre Hilfe, Antrag zum "Schutz von bedrohten Menschenrechtsverteidigern", Drucksache 15/2078.

28. See also the website of [Protection International](#).

5. Protection mechanisms for human rights defenders at international level

68. The role of international organisations is not to replace national authorities in the discharge of their responsibilities, but to monitor and provide assistance, and, if necessary, apply pressure to make sure that human rights defenders can do their work properly and are able to criticise human rights violations.

5.1. Under the auspices of the United Nations

69. 2008 marked the tenth anniversary of the United Nations Declaration on Human Rights Defenders. Indeed, in 1998, in recognition of the critical role of human rights defenders and the difficulties they face, the United Nations General Assembly adopted a “Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms” (the United Nations Declaration on Human Rights Defenders). According to the then United Nations Secretary General, Kofi Annan, the Declaration is based on the basic premise that when the rights of human rights defenders are violated, the rights of all of us are endangered and we are all under threat. This Declaration is indeed the first United Nations instrument that acknowledges the importance and legitimacy of the activities engaged in by human rights defenders.

70. The mandate of the Special Representative on human rights defenders was established in 2000 by the then Commission on Human Rights (as a Special Procedure) to support implementation of the Declaration. In March 2008, the mandate of the Special Representative of the Secretary General on the situation of human rights defenders was renewed by consensus; however with the new title of Special Rapporteur on the situation of human rights defenders.

71. The (then) Special Representative, Mrs Hina Jilani, has repeatedly indicated that building complementarity between universal international mechanisms on the one hand and regional ones on the other would seem to offer guarantees of the protection mechanisms’ effectiveness as regards both protective effect and preventive capacity²⁹.

5.2. Regional mechanisms outside Europe

72. The African Commission on Human and People’s Rights (ACHPR)³⁰ and the Inter-American Commission on Human Rights (IACHR)³¹ have both set up programmes to protect human rights defenders. The IACHR set up a human rights defenders Unit in 2001 and the ACHPR mandated a Special rapporteur on human rights defenders to promote *inter alia* the implementation of the United Nations Declaration on human rights defenders.

5.3. Europe: existing mechanisms and their limits

5.3.1. OSCE/ODIHR: the newly-established Focal Point

73. In December 2003, the OSCE’s Warsaw-based Office for Democratic Institutions and Human Rights (ODIHR) created a special programme on freedom of association and has, since 2006, established a Focal Point for human rights defenders. This Focal Point “closely monitors the situation of human rights defenders, identifies issues of concern, and seeks to promote and protect their interests.”³² ODIHR also issues annual reports on human rights defenders in the OSCE region.

74. However, the Observatory for the Protection of human rights defenders, based in Brussels, stresses the necessity to considerably develop the activities of the newly created Focal Point, so that it is given a capacity of systematic alert in the case of urgent issues arising in a number of countries. The Observatory considers that this alert mechanism would be a good way to monitor and to ensure the implementation of the commitments of OSCE participating states with regard to freedoms of association, peaceful assembly and expression of human rights defenders.³³

29. Yearbook of the European Convention on Human Rights, 2006, Vol. 49A, Protecting and supporting human rights defenders in Europe. Mrs Margaret Sekagya, from Uganda, is the newly-appointed Special Representative.

30. See: http://www.achpr.org/english/_info/index_hrd_en.html.

31. See: <http://www.cidh.org/defenders/defensores.htm>

32. See: <http://www.osce.org/odihr/27867.html>.

33. See: <http://www.fidh.org/spip.php?article4766>.

5.3.2. The European Union: the Guidelines on human rights defenders

75. In 2004, the Council of the EU adopted the Guidelines on human rights defenders which were slightly revised in December 2008. The purpose of the EU Guidelines on human rights defenders is to identify ways and means to effectively work towards the promotion and protection of human rights defenders in third countries, within the context of the Common Foreign and Security Policy (CFSP).³⁴ The guidelines also recommend strengthening existing regional mechanisms for the protection of human rights defenders.

76. The Council Working Party on Human Rights (COHOM) was established, *inter alia*, to make recommendations for possible EU actions “including condemnation of threats and attacks against human rights defenders, as well as for demarches and public statements where human rights defenders are at immediate or serious risk.”³⁵ To mark the 60th anniversary of the Universal Declaration on Human Rights, the EU has also adopted guidelines on violence against women and girls and combating all forms of discrimination against them of relevance for women human rights defenders.

77. These guidelines constitute an important and promising instrument. However, they do not cover EU member states since they only apply to third countries. In addition, it seems that the guidelines are not yet sufficiently well-known and are not taken up systematically.

5.3.3. The Council of Europe: a strong political move to devise a new protection mechanism for Council of Europe member states

78. In February 2008, the Committee of Ministers of the Council of Europe took a big step towards the effective protection of human rights defenders by adopting the Declaration on CoE action to improve the protection of human rights defenders and promote their activities. The Committee of Ministers thereby endorsed the Commissioner's functions of promotion and protection of human rights and fundamental freedoms in line with the commitment made by Heads of state and government at the third Council of Europe Summit. Such endorsement was particularly important in respect of the Commissioner's role to intervene in urgent cases³⁶. The Commissioner for Human Rights thus became ‘the regional mechanism’ for the protection of human rights defenders in the CoE member states. However, for the mechanism to become operational, the Office of the Commissioner requires additional resources (see part VI below).

6. Towards a Council of Europe human rights defenders protection mechanism: the new mandate of the Commissioner for Human Rights and the contribution of the Parliamentary Assembly

6.1. Human rights defenders' call to the Council of Europe to devise its own mechanism

79. The fact that serious human rights violations continue to be inflicted upon human rights defenders shows that much more needs to be done to support their role and protect them. This situation is a tell-tale illustration of the gap which still exists between international standards and principles and the reality for human rights defenders in the field.

80. Actually, all NGOs present at the hearing held by the Parliamentary Assembly Committee on Legal Affairs and Human Rights in April 2008, insisted on the need to strengthen the protection of human rights defenders at the national, regional and United Nations levels. The CoE should play a key role in ensuring action on behalf of and facilitating assistance for human rights defenders who are at risk. Consequently, NGOs have welcomed the Council of Europe Committee of Ministers' Declaration which identifies the Commissioner for Human Rights as the CoE institution with a remit to address the situation of defenders in CoE member states generally and in cases where there is a need for urgent action.

81. To avoid duplication of each others' efforts and to make maximum use of the comparative strengths of individual CoE bodies and institutions, all interlocutors stressed that it was important to ensure both complementarity and co-ordination of this work. They thanked the Council of Europe Human Rights Commissioner and the Parliamentary Assembly for their increased involvement and called on them to coordinate their efforts.

34. See : Ensuring protection – European Union Guidelines on Human Rights Defenders, <http://ue.eu.int/uedocs/cmsUpload/GuidelinesDefenders.pdf>.

35. *Idem*.

36. See CM(2008)5 add, 08.01.2008 Steering Committee for Human Rights (CDDH) – Activity report on Council of Europe action to improve the protection of human rights defenders and promote their activities.

82. NGOs provided a number of suggestions and stressed that visibility and publicity, in most cases, contributed to their protection. They considered that a combination of national and international mechanisms or measures was necessary, as well as a combination of long term and urgent actions.

83. NGOs also insisted that:

- human rights defenders at risk should have, in the CoE (and elsewhere), access to emergency contact persons/ telephones numbers/hotlines;
- any initiative or reaction to an incident or threat concerning a human right defender should be taken in consultation with the human rights defender/NGO concerned in order to avoid counter-productive results.

6.2. Council of Europe: towards a new regional human rights defenders protection mechanism?

6.2.1. The Committee of Ministers' Declaration of 2008: the new mandate of the Council of Europe Commissioner for Human Rights

84. In 2005, the heads of state and government committed the CoE to play a more dynamic role in protecting the rights of individuals and promoting the invaluable engagement of NGOs to actively defend Human Rights.

85. In 2007, the Committee of Ministers adopted a Recommendation on the legal status of non-governmental organisations in Europe³⁷, which defines the minimum standards to be respected concerning the creation, management and the general activities of NGOs in CoE member states and recalls that NGOs should enjoy the rights to freedom of expression and all other universally and regionally guaranteed rights and freedoms.

86. In February 2008, the Committee of Ministers adopted the Declaration on CoE action to improve the protection of human rights defenders and promote their activities³⁸ thanks, in particular, to the remarkable commitment of Petter Wille, Ambassador and Permanent representative of Norway to the CoE. The Committee of Ministers also decided to keep under review the question of further CoE action in this field. Its own contribution will be crucial to follow up the implementation of the Declaration at the intergovernmental level.

87. The Declaration, *inter alia*, invites the Commissioner for Human Rights to strengthen the role and capacity of his Office in order to provide strong and effective protection for human rights defenders and calls on CoE bodies and institutions to pay special attention to issues concerning human rights defenders in their respective work.

88. The Committee of Ministers' Declaration therefore reinforced and expanded the role of the Commissioner for Human Rights. The tasks given to the Commissioner build on his past and current practice. New elements were added, such as the requirement to report publicly on the situation of human rights defenders and to intervene in serious situations where there is a need for urgent action (*for more details see the Declaration*).

89. The Council of Europe Commissioner for Human Rights also has an explicit mandate to promote the setting-up of "national human rights structures", to facilitate their work and to co-operate with them. In this regard the Committee of Ministers' Declaration clearly linked his activities to support and strengthen national human rights structures with his enhanced role to support and protect human rights defenders in paragraph 2 v) and calls on member states to "consider giving or, where appropriate, strengthening competence and capacity to independent commissions, ombudspersons, or national human rights institutions to receive, consider and make recommendations for the resolution of complaints by human rights defenders about violations of their rights".

37. Recommendation Rec(2007)14 of the Committee of Ministers to member states: *On the legal status of non-governmental organizations in Europe*, 10.10.2007

38. Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities, 06.02.2008.

6.2.2. *The Commissioner's strategy to implement the Declaration*

90. Following the adoption of the Declaration, the Commissioner has proceeded to its implementation by mainstreaming the protection and support to human rights defenders into virtually all the activities of the Office and by developing a strategy based on five pillars:

- Mainstreaming and *monitoring* of the situation of human rights defenders at national and regional levels with a view to identify gaps and shortcomings in national legislations, regulations and practices, which may affect their working conditions and safety;
- *Reporting publicly* on the situation of human rights defenders: annual reports on the situation of defenders will be published, starting in 2009;
- *Intervening in urgent cases* of defenders at risk, notably calling upon the governments to implement their human rights obligations and to assist them in looking for solutions to problems which defenders may face;
- *Public awareness raising and creating networks*: Dissemination and awareness of the reinforced mandate of the Commissioner through participating in various events and publications. The website of the Commissioner has a particular page dedicated to human rights defenders;
- *Co-operation, co-ordination and complementarity* with key partners and actors such as the United Nations Special Rapporteur on Human Rights Defenders, the OSCE-ODIHR, the EU, non-governmental organisations and National Human Rights Structures. For this purpose the Commissioner has set up a task force.

91. On 3-4 November 2008, the Office of the Commissioner organised, in Strasbourg, a Round Table to discuss the main obstacles to the work of Human Rights Defenders in Europe and the type of support and actions required by the Commissioner. The event provided a platform to discuss obstacles to their work and networking of defenders. It raised awareness of the strengthened mandate of the Commissioner and of the Committee of Ministers' Declaration on human rights defenders. Participants discussed the way forward with the Declaration, the work conditions of defenders as well as security and protection needs of defenders. Some 60 participants adopted a declaration calling for a more active involvement of the Commissioner and the allocation of more resources to his Office. The Commissioner announced that the Office would be organising a Conference dedicated to human rights defenders again in 2009.

92. Pursuant to paragraph 4 iv) of the Committee of Ministers' Declaration, the Office of the Commissioner initiated, in June 2008, the creation of a Taskforce on Human Rights Defenders. The taskforce consists of the United Nations Special Rapporteur on Human Rights Defenders, the ODIHR/OSCE Focal Point for Human Rights Defenders, the Council of the European Union and the European Commission, as well as international non-governmental organisations dedicated to supporting human rights defenders, and human rights defenders working in European countries covering different themes. The taskforce had as an initial objective to prepare the November round table. It will continue to address issues of common interest or concern in a coordinated way and to ensure complementarity of the different bodies and mechanisms' activities.

93. On 19 November 2008, the Office of the Commissioner briefed the 'contact points' of the National Human Rights Structures on the latest developments within the CoE as regards the protection and promotion of the work of human rights defenders. The 'contact points' expressed strong interest to further explore possible synergies between the work of defenders and National Human Rights Structures. The participants agreed to the Office organising a joint meeting between the two actors in 2009.

94. The Commissioner also plans to hold a new roundtable in 2009, and present an Annual Report on the situation of human rights defenders to the Committee of Ministers, in May/June 2009. However, additional financial and human resources are needed to effectively implement this mandate. The Commissioner has requested the Committee of Ministers and the Parliamentary Assembly to devise ways for close co-operation, taking into account his new mandate. The Parliamentary Assembly has an important contribution to make, by influencing the political context and the working environment of human rights defenders at the national level. The political role and leadership of parliamentarians at the European level was also emphasised.

6.2.3. *The contribution of the Parliamentary Assembly and in particular its Committee on Legal Affairs and Human Rights*

95. In this context, it is important to stress that Parliamentary Assembly members have different "hats"/ mandates (ranging from local to national and international ones) enabling them to act at different levels, which make their contribution even more valuable. Parliamentary involvement therefore clearly constitutes an added

value which should be exploited in full co-ordination with the Council of Europe Human Rights Commissioner. Accordingly, the Committee of Ministers working group on human rights defenders requested the Parliamentary Assembly to “continue to pay special attention to the situation and work of human rights defenders”³⁹.

96. The Assembly, both as political body and statutory organ of the CoE, which has focused its endeavours on the protection and promotion of human rights, has a crucial role to play in supporting and protecting human rights defenders across the continent. Such a role can certainly complement -- not overlap with -- that of the Council of Europe Commissioner for Human Rights.

97. As stressed by Lluís Maria de Puig, President of the Parliamentary Assembly, “Over the years, the Parliamentary Assembly’s work has been increasingly inclusive, in recognition of the crucial role of NGOs and human rights defenders in upholding and promoting human rights at the grass roots level, often in extremely difficult conditions and at great risk for their safety and lives.”⁴⁰

98. In January 2007, during a debate on “Threats to the lives and freedom of expression of journalists”, the Assembly called for new specific monitoring mechanisms for identifying and analysing attacks against journalists in Europe, as well as progress made by national law enforcement authorities and national parliaments in their investigations of these attacks⁴¹.

99. Furthermore, when the Assembly held its first all-embracing debate on the state of human rights and democracy in Europe in April 2007, it stressed that the unimpeded work of human rights defenders is crucial for the protection and promotion of human rights in Europe⁴² and decided to establish an annual Parliamentary Assembly Human Rights Prize, which will reward outstanding civil society action in the defence of human rights in Europe, as a means of recognising the significant contribution of civil society, including human rights defenders, to the promotion and protection of human rights. The first Prize will be awarded at a ceremony in Strasbourg during the Parliamentary Assembly summer plenary session (22-26 June 2009).

100. The Committee on Legal Affairs and Human Rights, in particular, has a long tradition of co-operating with human rights defenders. The committee, through its Chairpersons, rapporteurs and/or through its sub-committee on Human Rights, has always endeavoured to support human rights defenders in difficult situations, by issuing *ad hoc* statements, press releases and/or addressing the competent authorities in writing. The committee is aware that this type of *ad hoc* reaction is not fully satisfactory. A more systematic mechanism is needed. In October 2005, the sub-committee on Human Rights held an exchange of views with Mrs Louise Arbour, United Nations High Commissioner for Human Rights and her staff and with human rights NGOs present in Geneva (International Commission of Jurists, International Federation for Human Rights, International Service for Human Rights, Human Rights Watch, Association for the Prevention of Torture, Quaker United Nations Office). The sub-committee has stressed the issue of facilitating visa regimes for human rights defenders, as well as the need for an operational mechanism to deal with cases in which their physical integrity is threatened; the NGO representatives present expressed their discontent with the existing EU declaration on the matter.

101. At the hearing organised in April 2008 by the Committee on Legal Affairs and Human Rights, Amnesty International welcomed the leading role of the Commissioner and called on parliamentarians to strengthen their contribution, within the Parliamentary Assembly, to the protection of human rights defenders.

102. As rapporteur, I consider that the Assembly should indeed fully support the Human Rights Commissioner as “the regional protection mechanism” for CoE member states, whilst playing its own role in supporting and protecting human rights defenders across the continent, in close co-ordination with the Commissioner. This role should cover both long term and emergency actions.

103. During my regular meetings with the Council of Europe Human Rights Commissioner and contacts with his Office, we agreed that the Assembly and, in particular, its Committee on Legal Affairs and Human Rights, clearly had a complementary role to play in serious situations, provided such reactions were coordinated. I also stressed that there was a need to ensure the continuity and sustainability of such parliamentary co-operation.

39. CDDH, Group of specialists on human rights defenders, Activity report, 24.09.2007.

40. [Link to the Human Rights Prize website](#)

41. See Parliamentary Assembly [Resolution 1535 \(2007\)](#) and [Recommendation 1783 \(2007\)](#).

42. See Parliamentary Assembly [Resolution 1547 \(2007\)](#), *State of human rights and democracy in Europe* and [Doc. 11202](#). See also Parliamentary Assembly [Resolution 1589 \(2007\)](#) and [Recommendation 1820 \(2007\)](#) *Co-operation between the Assembly and the Conference of INGOs*.

104. In this respect, it is of the utmost importance for the Assembly and its Committee on Legal Affairs and Human Rights/Rapporteur to have an appropriate mandate and the required legitimacy to be able to react to urgent situations, in full co-ordination with the Human Rights Commissioner, and to be able to join the efforts of other mechanisms for the protection of defenders whenever this is required (e.g. through the Task Force).

105. Consequently, the Assembly should remain seized of the matter and further support the development of vibrant civil societies and the work of human rights defenders in CoE member states, notably through the newly established Parliamentary Assembly human rights debates and Human Rights Prize, through involvement of human rights defenders in its work, contacts with member states' authorities and, as appropriate, through the mechanism of parliamentary diplomacy.

106. Regarding more specifically urgent cases and support to threatened defenders, the Assembly, through its Committee on Legal Affairs and Human Rights, should, in close co-ordination with the Human Rights Commissioner, continue to:

- invite defenders for exchanges of views or “sponsor” such exchanges of views;
- publicise the case and/or challenge defamatory statements and statements wrongly accusing defenders;
- address the authorities;

Parliamentarians, in particular the rapporteur, should also alert their own networks (other MPs, Foreign Affairs Ministry/Embassy in the country concerned etc.) in appropriate cases.

107. So far, as the committee's rapporteur on Human Rights defenders, I have reacted to a number of urgent appeals from human rights NGOs or individuals through confidential letters to the relevant authorities, in co-ordination with the Office of the Human Rights Commissioner. I consider these as examples of parliamentary diplomacy.

108. Nevertheless, I wish to recall that any initiative or reaction to an incident or threat concerning a human rights defender should be taken in consultation with the human rights defenders/NGOs concerned or persons in direct contact with them in order to avoid counter-productive results.

109. With respect to *Amnesty International's* proposal to organise a CoE campaign to promote the role and the work of human rights defenders, the Assembly should certainly support and actively take part in such a campaign were it be organised and led by the CoE Human Rights Commissioner. However, such a campaign would only be possible should the Office of the Commissioner receive adequate resources.

6.2.4. Further Council of Europe action: better use of the Council of Europe's unique array of human rights instruments and bodies

110. The CoE has a unique array of human rights instruments to create and promote an enabling environment for the work of human rights defenders. CoE bodies and institutions should pay increased attention to the issue of human rights defenders.

Council of Europe Control/monitoring mechanisms

111. The CoE has, in particular, a unique set of legally binding instruments, which is backed by a monitoring system that is accessible also to human rights defenders. These mechanisms include the European Court of Human Rights, the European Committee for the Prevention of Torture (CPT), the Advisory Committee of the Framework Convention for the protection of national minorities and the European Committee of Social Rights which deals with collective complaints. The (non treaty-based) European Commission against Racism and Intolerance (ECRI) also has special relevance for human rights defenders.

112. The member states' duty to co-operate with the European Court of Human Rights has already been referred to⁴³. One should also bear in mind that the Court provides for 'interim measures' (Rule 39 of the Rules of the Court). Its application is normally limited to situations where there is a risk to the life, health or well-being of an applicant. Interim measures have already been granted in cases involving “an imminent risk of irreparable damage” and cases concerning deportation or extradition proceedings where there are serious reasons to believe that there is a real risk of death or ill-treatment in the country concerned. It appears that, to date, Rule 39 has not yet been applied in cases of harassment of or threats to human rights activists.

43. Paragraph 22 above.

The Council of Europe and civil society

113. Independent non-governmental organisations (NGOs) are a vital component of European society, guaranteeing freedom of expression and association, both of which are fundamental to democracy. The CoE recognised their influence as early as 1952 when it gave international NGOs (INGOs) the opportunity to acquire consultative status. Since 2003, “consultative status” has been replaced by “participatory status”⁴⁴. When INGO’s are granted this status, the steering committees, committees of governmental experts and other bodies of the Committee of Ministers, may involve them in the definition of CoE policies, programmes and actions. The CoE also has a permanent structure for co-operation with INGOs: the Liaison Committee and the annual Plenary Conference of NGOs⁴⁵.

114. In addition, one should recall the existence of the CoE 1986 European Convention on the Recognition of the Legal Personality of International NGOs which is aimed at facilitating the activities of NGOs at international level. Also, in 2002, a group of CoE experts approved the Fundamental Principles on the Status of NGOs in Europe. They address topics such as the legal personality of NGOs, their statutes, management, fund raising, transparency and accountability of NGOs etc. These principles complement the above-mentioned Convention and provide guidance to states that are currently reforming their legislation on NGOs, thereby contributing to European harmonisation in this area.

115. Article 36 of the European Convention on Human Rights also allows for the possibility of civil society representatives or associations to intervene as third parties before the Court. Under this procedure, NGOs/associations may submit their written comments at the invitation of the president of a Chamber. The opportunities for NGOs to intervene before the Court in a third party capacity have increased in recent years.

116. Finally, in January 2008, following the adoption of the Recommendation on the legal status of non-governmental organisations in Europe (see above) by the Committee of Ministers, the CoE Conference of International Non-Governmental Organisations (INGOS) established an Expert Council on NGO Law. The mandate of the Expert Council is to contribute to the creation of an enabling environment for NGOs throughout Europe by examining national NGO law and its implementation, and promoting its compatibility with CoE standards and European good practice. Its purpose is to provide advice on how to bring national law and practice into line with CoE standards and European good practice and to propose ways in which CoE standards could be further developed. The Expert Council’s first report was discussed at the Conference of INGOs Plenary Session in October 2008.

6.2.5. The role of the media and of civil society

117. The media can play a vital role in supporting human rights defenders by reporting on violations committed against defenders and nurturing public support for defenders’ work and, *inter alia*, challenging defamatory statements, including ones wrongly accusing defenders of being terrorists, criminals or otherwise enemies of the State⁴⁶.

118. Civil society should also develop its own networks at the local, national and European levels, including links with relevant international mechanisms, such as INGOs in the human rights field.

119. The NGO “Protection International” is also proposing the establishment of an interparliamentary forum for the protection of human rights defenders on a website which would gather all instruments and protection mechanisms, provided by NGOs or inter-governmental institutions, as well as “best practices” in this field⁴⁷.

Reporting committee: Committee on Legal Affairs and Human Rights

Reference to committee: [Doc. 10985](#), Reference No. 3281 of 6 October 2006

44. [Resolution \(2003\)8](#) adopted by the Committee of Ministers on 19.11.2003. All NGOs enjoying consultative status were automatically granted participatory status.

45. In 1976, a [Liaison Committee](#) of NGOs enjoying consultative, now participatory, status with the CoE was established - under the responsibility of the non-governmental organisations themselves, but working closely with the CoE secretariat - to improve methods of co-operation with the CoE. In addition, a Plenary Conference, to which all NGOs enjoying consultative, now participatory, status with the CoE are invited, was similarly initiated in 1977. It determines guidelines for improving the functioning of the participatory status and, in the light of these, the Liaison Committee’s objectives. See also Parliamentary Assembly [Resolution 1589 \(2007\)](#), [Recommendation 1820 \(2007\)](#) and [Doc. 11441](#) on Co-operation between the Parliamentary Assembly and the Conference of INGOs.

46. For details, see the UN Fact Sheet No 29.

47. See www.protectionline.org

Draft resolution and draft recommendation unanimously adopted by the committee on 27 January 2009

Members of the committee: Mrs Herta Däubler-Gmelin (Chairperson), Mr Christos **Pourgourides**, Mr Pietro Marcenaro, Mr Rafael Huseynov (Vice-Chairpersons), Mr José Luis Arnaut, Mrs Meritxell Batet Lamaña, Mrs Marie-Louise **Bemelmans-Vidéc**, Mrs Anna **Benaki**, Mr Erol Aslan **Cebeci**, Mrs Ingrida **Circene**, Mrs Ann Clwyd, Mrs Alma Čolo, Mr Joe Costello, Mrs Lydie Err, Mr Renato **Farina**, Mr Valeriy **Fedorov**, Mr Joseph Fenech Adami, Mrs Mirjana **Ferić-Vac**, Mr György **Frunđa**, Mr Jean-Charles Gardetto, Mr József Gedei, Mrs Svetlana Goryacheva, Mrs Carina **Hägg**, Mr Holger **Haibach**, Mrs Gultakin **Hajibayli**, Mr Serhiy Holovaty, Mr Johannes Hübner, Mr Michel **Hunault**, Mrs Fatme Ilyaz, Mr Kastriot Islami, Mr Želiko Ivanji, Mrs Iglia **Ivanova**, Mrs Kateřina Jacques, Mr András Kelemen, Mrs Kateřina Konečná, Mr Franz Eduard **Kühnel**, Mr Eduard **Kukan**, Mrs Darja Lavtižar-Bebler, Mrs Sabine Leutheusser-Schnarrenberger, Mr Aleksei **Lotman**, Mr Humfrey Malins (alternate: Mr Christopher **Chope**), Mr Andrija Mandić, Mr Alberto Martins, Mr Dick **Marty**, Mrs Ermira Mehmeti, Mr Morten Messerschmidt, Mr Akaki Minashvili, Mr Philippe Monfils, Mr Alejandro Muñoz Alonso, Mr Felix **Müri**, Mr Philippe Nachbar (alternate: Mr René **Rouquet**), Mr Tomislav Nikolić, Mr Valery Parfenov, Mrs Maria Postoico, Mrs Marietta **de Pourbaix-Lundin**, Mr Valeriy Pysarenko (alternate: Mr Hryhoriy **Omelchenko**), Mr Janusz **Rachoń**, Mrs Marie-Line Reynaud, Mr François Rochebloine, Mr Paul Rowen, Mr Armen Rustamyan, Mr Kimmo **Sasi**, Mr Ellert Schram, Mr Dimitrios Stamatis (alternate: Mr Emmanouil **Kefaloyiannis**), Mr Fiorenzo **Stolfi**, Mr Christoph Strässer, Lord John **Tomlinson**, Mr Mihai Tudose, Mr Tuğrul **Türkeş**, Mrs Özlem Türköne, Mr Viktor Tykhonov, Mr Øyvind Vaksdal, Mr Giuseppe Valentino, Mr Hugo Vandenberghe, Mr Egidijus **Vareikis**, Mr Luigi Vitali, Mr Klaas de Vries (alternate: Mr Pieter **Omtzigt**), Mr Dimitry Vyatkin, Mrs Renate Wohlwend, Mr Jordi Xuclà I Costa (alternate: Mr Arcadio **Díaz Tejera**)

N.B.: The names of the members who took part in the meeting are printed in **bold**

Secretariat of the committee: Mr Drzemczewski, Mr Schirmer, Mrs Maffucci-Hugel, Ms Heurtin