Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Resolution 1581 (2007)[1]

Council of Europe Commissioner for Human Rights – stock-taking and perspectives

Parliamentary Assembly

1. The Parliamentary Assembly recalls at the outset the recommendations it made in 2004 in Recommendation 1640 (2004) on the 3rd annual report of the Council of Europe Commissioner for Human Rights – some of which are still relevant – and reiterates its desire to give its political backing to the work of the Council of Europe Commissioner for Human Rights ("the Commissioner").

2. The Assembly welcomes the brisk and steadfast progress of the institution of the Commissioner for Human Rights since its establishment. This relatively new institution can – and must – expand on its experience and develop further so that it can really come into its own.

3. The Assembly takes note of the prospects for widening the Commissioner's mandate referred to in Protocol No. 14 to the European Convention on Human Rights (CETS No. 194), in the Juncker report "Council of Europe-European Union: a sole ambition for the European continent", and in the Group of Wise Persons' report on the efficiency of the European Court of Human Rights ("the Court"), which reflect the confidence that the institution enjoys.

4. Initially, the broad nature of the Commissioner's mandate was an undoubted asset. In the long term, however, it could entail certain drawbacks, such as the dissipation of the Commissioner's efforts, and prevent him from concentrating his resources on certain essential activities. The possibility of reviewing his terms of reference to target them more specifically in the light of experience might be considered in due course.

5. The Assembly would like the Commissioner to be able to follow the situation of human rights in all member states simultaneously and encourages him to persevere in his efforts to increase his presence in the member states, which the Assembly regards as crucial. It is aware that this task requires appropriate funding.

6. The Assembly notes with concern that the considerable hopes placed in the institution of Commissioner are hardly matched by the resources at its disposal, even though the latter have recently been increased. The Assembly strongly condemns this situation, which undermines the institution's viability and credibility, and calls for a substantial increase in the financial and human resources at the Commissioner's disposal in order to fulfil his missions and for these resources to be given the predictability and stability required for the Commissioner to carry out his tasks successfully. The Assembly therefore encourages the Commissioner to inform it annually of his plans and the means required to carry them out.

7. The Assembly supports the idea of a possible unconditional financial contribution by the European Union to fund the Commissioner's activities; its modalities will have to be specified in such a way as to safeguard the Commissioner's independence.

8. The Assembly emphasises that the Commissioner's independence is a great strength, constituting an absolute prerequisite for him to perform his duties properly, and must be a constant priority. This independence must be safeguarded and, where necessary, reinforced, so that the Commissioner's impartiality is always guaranteed. The Assembly considers that the Commissioner's independence could be consolidated, inter alia, through procedural measures designed to give him more say in budgetary and staff management

1. Assembly debate on 5 October 2007 (36th Sitting) (see Doc. 11376, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Gardetto). Text adopted by the Assembly on 5 October 2007 (36th Sitting).

matters. It welcomes the fact that the Commissioner is now more involved in determining his budget. The member states and other Council of Europe bodies must respect the independence not only of the Commissioner but also of his partners, particularly that of national human rights structures (NHRSs), in other words, national human rights commissions or institutions and independent ombudsmen.

9. Co-operation of the Commissioner with institutions outside the Council of Europe is a core aspect of his work. The Assembly welcomes the fact that good working relationships have been established in particular with the European Union, the Office of the United Nations High Commissioner for Human Rights, the Office of the United Nations High Commissioner for Refugees and the Organization for Security and Co-operation in Europe and encourages the Commissioner to build on these relationships so as to make use of opportunities for interaction.

10. In this connection, the Assembly invites the European Fundamental Rights Agency to consider the Commissioner as an essential partner and take full account of his activities; it encourages the European Union to offer the Commissioner its support and envisage the possibility of funding some of the activities and projects run by the Commissioner's Office.

11. To ensure the long-term survival and the efficiency of the monitoring system of the European Convention on Human Rights (ETS No. 5 – "the Convention"), the backlog in the Court needs to be relieved. The Assembly takes the view that, working in conjunction with the NHRSs, the Commissioner should make a key contribution here by identifying or helping to eliminate any practices liable to trigger applications to the domestic courts and, possibly, the Strasbourg Court. The Assembly encourages the Commissioner in his efforts to tackle the roots of human rights violations and develop alternative or complementary out-of-court means of securing protection of those rights. In particular it calls on the Commissioner to foster the implementation in each member state of independent mediation systems consistent with the principles of the Convention.

12. In this context, the Assembly welcomes the Commissioner's undertaking to make public, before the entry into force of Protocol No. 14 to the Convention, the criteria which will guide his interventions before the Court under his new powers as set out in that protocol. It calls on him to make use of these powers only in cases involving systemic problems, where general measures need to be taken by member states.

13. The Assembly also notes that, when it comes to monitoring the execution of Court judgments, the Commissioner and the NHRSs are well placed to inform the Court and the Committee of Ministers as to whether or not practices or situations already declared in breach of the Convention by the Court persist or have actually been stopped and urges them to do so. The Assembly welcomes the Commissioner's plan to make structural problems highlighted by the Court one of the priority issues in his dialogue with the authorities of the member states.

14. The Assembly notes with interest the Commissioner's proposal to extend his activities in monitoring the execution of Court judgments including by stepping up efforts to assess the compatibility of legislation, bills before parliament and national administrative practices with the Convention. The Assembly encourages the Commissioner to pursue these efforts and to co-operate with it in this respect.

15. The Assembly also welcomes that the Commissioner has expressed his willingness to offer his support when it comes to monitoring the implementation of the Court's "pilot judgments" and encourages this initiative.

16. In connection with the greater role that the Commissioner shall be required to play in monitoring compliance with the Convention, the Assembly considers it essential for effective co-operation mechanisms to be set up, as indicated in particular in the explanatory report, firstly, to enable the Court to highlight in its judgments underlying structural problems and bring them to the knowledge of the member states, the Committee of Ministers, the Commissioner, the Assembly and the competent Council of Europe bodies and, secondly, to ensure that there is fruitful interaction between the Court, the Assembly, in particular its Monitoring Committee, the Committee of Ministers, the European Commission for Democracy through Law (Venice Commission), the European Commission against Racism and Intolerance (ECRI), the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), the European Committee of Social Rights (CEDS), the other competent Council of Europe bodies and the Commissioner. The arrangements for such mechanisms could be discussed at annual tripartite meetings between representatives of the Committee of Ministers, the Parliamentary Assembly and the Commissioner.

17. The Assembly is of the opinion that, as part of this interaction, the Commissioner and the Court must co-operate in determining the fields covered by "pilot judgments" and securing improved execution of Court judgments, as recommended in the Committee of Ministers' Declaration of 19 May 2006.

18. The Assembly points out that, for consistency's sake and in order to make the best possible use of the Council of Europe's alas overly limited resources, the Commissioner has the statutory duty, under Article 1, paragraph 2, of Committee of Ministers Resolution 99 (50), to ensure that he does not duplicate the work of other sectors of the Organisation. An effort to rationalise and to co-ordinate the Council of Europe's activities, to regularly exchange information and to improve communication and co-operation between its bodies should accordingly be made by the Organisation as a whole so as to co-ordinate its activities more effectively and focus on the areas of excellence – human rights, democracy and the rule of law – which are its reason for existing.

19. The Assembly also considers it essential for each member state to have its own independent institution, along the lines of an ombudsman's office, with competence for human rights matters and in a position to perform its tasks effectively. The Assembly considers that good co-operation between the ombudsman's office and the national human rights bodies is likely to strengthen the effectiveness of human rights protection. It accordingly supports the decision by the Commissioner and the UN High Commissioner for Human Rights to step up their efforts under the technical assistance pilot project, JOIN (Joint Operations for Independent National Institutions for the Promotion and Protection of Human Rights), to encourage the setting up, in Council of Europe member states which do not already have them, of national human rights institutions that comply with the requirements of the 1992 Paris Principles. In addition, the Assembly deems it appropriate that, where the need arises, specialised ombudsmen should be appointed in each member state, for example an ombudsman for children as already recommended by the Assembly in its Resolution 1530 (2007) on child victims: stamping out all forms of violence, exploitation and abuse.

20. Broadly speaking, on the one hand, the effective implementation of the Commissioner's recommendations should be more closely monitored with the help of other Council of Europe bodies, particularly the Parliamentary Assembly, and on the other hand, the Commissioner should verify, particularly during his visits to member states, the follow-up action being given by the latter to the Assembly's resolutions and recommendations on human rights.

21. The Assembly therefore encourages and supports the Council of Europe Commissioner for Human Rights in his efforts to:

21.1. determine and make public how he proposes to organise his activities before the Court in a manner compatible with the explicit prohibition of a judicial role set forth in Resolution (99) 50 on the Council of Europe Commissioner for Human Rights, and invites the Commissioner and the Court to ensure that the two institutions exchange relevant information;

21.2. intensify his co-operation with the NHRSs and with other Council of Europe sectors concerned by supervision of the execution of Court judgments, and, in particular, pay special attention to structural problems highlighted by the Court in his dialogue with the member states' authorities;

21.3. look into the opportuneness and means of reinforcing his presence on the ground in the member states;

21.4. ensure that there is continuing interaction and the best possible co-ordination with other Council of Europe sectors.

22. The Assembly calls on the Council of Europe Commissioner for Human Rights to:

22.1. continue to react rapidly and flexibly to topical issues, inter alia, by issuing more frequent ad hoc recommendations and by preparing thematic reports;

22.2. draw up regular reports on the follow-up action given to his recommendations, identify impediments to their implementation and make these reports public;

22.3. invite, on subjects of joint concern, members of the secretariats of other relevant Council of Europe bodies to join his office's delegation when he is visiting member states, on a reciprocal basis;

22.4. review action taken on relevant Assembly resolutions and recommendations when visiting member states;

22.5. in the course of his work assess also the human rights situation in Council of Europe member states which are not, or are no longer, subject to the Assembly's monitoring procedure;

22.6. verify member states' compliance with their duty to co-operate with the Court and provide them with the assistance they need to fulfil this objective;

22.7. extend and enhance his co-operation with NHRSs, in particular on the basis of the 11 proposals set out at the 10th Round Table of European Ombudsmen and the Council of Europe Commissioner for Human Rights held in Athens on 12 and 13 April 2007, and consider setting up a mechanism for the protection of human rights defenders, in particular in emergency cases.

23. The Assembly also invites the relevant authorities of all the member states to:

23.1. co-operate unreservedly with the Commissioner for Human Rights;

23.2. fully and rapidly implement his recommendations;

23.3. set up independent ombudsmen and NHRSs competent in human rights matters, where they do not already exist;

23.4. provide NHRSs with appropriate human and financial resources and ensure that they are independent;

23.5. draw up, if they have not yet done so, national human rights action plans in co-operation with the Commissioner.

24. The Assembly resolves to refer more regularly in its activities to the relevant recommendations of the Commissioner and declares its willingness to react promptly to any requests from the Commissioner to support him, notably by calling on the national parliaments concerned, in the implementation of his recommendations, in particular when member states persist in ignoring these recommendations.

25. The Assembly resolves to respond to the Commissioner's annual report by giving its own views and examining the activities that are subject to co-operation with the Commissioner.

26. The Assembly calls on its Monitoring Committee to incorporate in its monitoring procedures, and systematically remind member states of, the Commissioner's recommendations with regard to states subject to a monitoring or post-monitoring procedure on the honouring of their commitments and ask them to implement any recommendations by the Commissioner that have not been acted upon within a reasonable time.