Parliamentary **Assembly**
Assemblée parlementaire

Parliamentary Assembly
Assemblée parlementaire
COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Doc. 11039
2 October 2006

3rd annual report on the activities of the Council of Europe Commissioner for Human Rights (1 January - 31 December 2002)

Recommendation 1640 (2004)

Reply from the Committee of Ministers
adopted at the 974th meeting of the Ministers' Deputies (27 September 2006)

1. The Committee of Ministers welcomed the constructive nature of the Assembly's proposals adopted in response to the 3rd annual report of the Council of Europe Commissioner for Human Rights.

2. At the 872nd meeting of the Ministers' Deputies (February 2004, item 3.1), the Committee invited the Commissioner to give an opinion on Recommendation 1640 (2004). On 8 December 2004, the Commissioner submitted his opinion. The Committee of Ministers has drawn up its reply in the light of the considerations raised by the Commissioner on the basis of the points raised in this opinion.

3. In response to the general recommendations made by the Parliamentary Assembly, the Committee of Ministers joins the Commissioner in fully sharing the Assembly's view that it would be desirable to increase the effectiveness of the implementation of his recommendations and improve follow-up action on his reports. Particular reference is made to the proposal in paragraph 5 of the recommendation, encouraging the Commissioner to play a more active role in his task of promoting legislative change where this proves necessary.

4. In practice, this role has assumed steadily increasing importance in the Commissioner's fulfilment of his mandate: the reports on effective respect for human rights that he draws up after making evaluation visits to each member state now invariably include recommendations to the authorities for eliminating or reducing the obstacles to full enjoyment of fundamental rights. This is an essential part of the Commissioner's mandate and his recommendations, once implemented at domestic level, have beneficial consequences in preventive terms, ensuring that the member states' legal framework is more respectful of human rights. In directly tackling the sources of potential violations of the rights and freedoms safeguarded by the European Convention on Human Rights, these recommendations should at the same time serve to reduce the number of applications to the European Court.

5. Furthermore, to make his recommendations more effective, the Commissioner has set up a "monitoring" procedure designed to check, after a reasonable period, whether the state in question has applied the recommendations made by the Commissioner in his evaluation report, and if so, to what extent. The monitoring report thus drawn up is transmitted to the Committee of Ministers. In the Commissioner's view, this procedure is likely to facilitate ongoing dialogue with the authorities of the state concerned on the reforms advocated in his report. It also serves to keep the spotlight on these reforms in the national debate.

F – 67075 Strasbourg Cedex, tel: +33 3 88 41 20 00, fax: +33 3 88 41 27 76, http://assembly.coe.int, e-mail: assembly@coe.int

6. In this context, the Commissioner pointed out in his opinion that any improvement in the performance of his tasks, especially in this area, demands the prior allocation of appropriate financial, and especially human, resources. It is recalled in this context that the Commissioner has often spoken in favour of increasing the resources of the Organisation as a whole. The Committee of Ministers also notes in this context the views expressed by the outgoing Commissioner in his Final Report and by the incoming Commissioner upon taking up his duties, to the effect that, despite the efforts made more needs to be done to adapt the Commissioner's resources to the requirements of his mandate not least in view of the role foreseen for the Commissioner under Protocol No. 14 to the European Convention on Human Rights (see below).

7. The Assembly also makes a number of specific proposals, most of which concern changes to the Commissioner's terms of reference as adopted by the Committee of Ministers in Budapest in Resolution (99) 50. The Committee of Ministers understands the reasons for these proposals but takes note of the Commissioner's comments on the subject:

a) The proposals made in paragraph 7a. and b. of the recommendation both concern the relationship with the European Court of Human Rights, especially the possibility for the Commissioner either to bring cases before the Court or to intervene in cases pending before it. The Commissioner points out on this subject that Protocol No.14 to the European Convention on Human Rights has for the moment settled this issue by providing in its Article 13 for a new paragraph 3 to be added to Article 36 of the Convention to the effect that in all cases before a Chamber or the Grand Chamber, the Council of Europe Commissioner for Human Rights may submit written comments and take part in hearings.

In the Commissioner's view, this new right to take part in proceedings before the Court is of great importance. In any event, it is important to ensure that this new function in the judicial area does not detract from the performance of the many other functions assigned to him by the terms of reference. Obviously, too, the experience acquired in the performance of this new task will be useful if the Commissioner is one day empowered to bring cases before the Court, as the Assembly wishes. Be that as it may, as soon as the Protocol comes into force, the Court will have to establish the procedure enabling the Commissioner to exercise this function. The Committee of Ministers agrees with the Assembly that this function should be the object of a change to the Commissioner's terms of reference.

In this connection, he also points out that according to paragraph 88 of the Explanatory Report to Protocol No.14, decisions declaring applications admissible will not be communicated to the Commissioner – although he is now empowered to intervene in these cases – "since sending him or her all such decisions would entail an excessive amount of extra work for the Registry". It will therefore be for the Commissioner to "seek this information" (§88 of the Explanatory Report) himself, by determining with the Court, in due course, the arrangements for access to information which will allow him to intervene in the relevant cases.

b) The proposals made in paragraph 7c.i. and ii. both concern the dissemination of reports. In this connection the Committee draws attention to the Commissioner's constant practice of transmitting these reports both to the Committee of Ministers and to the Parliamentary Assembly. Moreover, the reports are invariably published, with a permanent concern for openness which has never been challenged.

c) As regards the proposal made in paragraph 7c.iii. of the recommendation, the Commissioner points out that he regularly requests information from the member states on the basis of Article 6.1 of his terms of reference.

d) The proposal to amend the terms of reference made in paragraph 7c.iv. of the recommendation is more of an editorial nature, but is fully consonant with the Assembly's concern (see above) to reinforce the Commissioner's role in promoting legislative reform. Consequently, the Commissioner expressed support for this proposal.

e) Lastly, as regards the proposed amendment in set out paragraph 7c.v. of the recommendation, designed to impose an age-limit of 70 years for exercising the functions of Commissioner, it will be noted that Article 22 of the European Convention on Human Rights contains a similar provision with regard to judges of the European Court of Human Rights. Given the parallelism between Commissioner's terms of reference and the criteria established for judges of the Court, it would seem both logical and consistent to agree to the amendment proposed here, which the Commissioner supported in his opinion.

8. However, none of the points commented in sub-paragraphs b to e above seems in itself sufficient to motivate a redrafting of Resolution (99) 50 (in particular it is unnecessary to introduce the age-limit as a matter of urgency as the present Commissioner will not reach the proposed age before the expiry of his strict term), but the Committee will keep these proposals in view against the time when more substantive changes are required.

9. The Committee of Ministers observes that developments have taken place in the circumstances in which the Commissioner operates since the adoption of Recommendation 1640 (2004), not least the decisions of the Third Summit with regard to the institution and the handover between the first Commissioner, Álvaro Gil-Robles and his successor Commissioner Thomas Hammarberg. It looks forward to pursuing its dialogue with the Assembly on the basis of the latter's most recent reflections on the subject, with the aim of ensuring the optimum future effectiveness of an institution which, in a relatively short time, has established an essential place in the system of human rights protection provided by the Council of Europe.