



THE COMMISSIONER
FOR HUMAN RIGHTS



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Foreword

It is never easy to introduce an annual report, particularly when one's task is to explain the fulfilment of so broad a mandate as the promotion of human rights and the monitoring of their effective respect in quite so many States as the Council of Europe currently counts amongst its members.

Indeed, having reviewed the work completed over the course of last year, I cannot avoid a certain sense of unfulfilment, as there remain so many things one might yet have done. A cursory glance at the chapter on the resources available to the office of the Commissioner, will perhaps explain to the reader why it has not been possible to go further.

I will desist from repeating here the appraisal offered in the first section of this report, but will seek instead to complete the picture with a number of considerations drawn from my experience.

It is clear to me, in the light of the work accomplished in the first few years of the institution's existence, that the mandate of the Commissioner offers an extraordinary wealth of possibilities. It suffices to mention the evaluation visits to each country (some 23 so far), the general recommendations, the opinions, the intervention in crisis situations, the promotion of and co-operation with national institutions for the protection of human rights, the permanent contacts with non-governmental organizations to mention only some of them.

I am, moreover, increasingly convinced that the Commissioner, as an institution, must act on the basis of a relation of confidence with States and the scrupulous respect for the duty to uphold the rights, freedoms and principles expressed in the European Convention for the Protection of Human Rights and other pertinent treaties.

Such an assertion is in danger of sounding simplistic, empty even. This duty, though, requires that the Commissioner denounce to the Committee of Ministers and the Parliamentary Assembly all situations he believes to be incompatible with the above-mentioned principles and values without double standards. This critical role, however – essential though it may be – cannot in itself be sufficient. It must be complemented by a working method that seeks to contribute to the search for solutions through the drafting of recommendations outlining paths to follow, as well as a constant commitment to cooperating with governments in their implementation. It is, after all, the Commissioner's job to provide mediation that puts an end to identified violations, legal lacunae, and erroneous interpretations of fundamental legal instruments. A task, in short, one cannot afford to fail in.

This task requires constant dialogue and a rigorous follow-up of the measures taken to implement the recommendations made by the Commissioner, with a view to providing transparent and accurate information to the different organs of the Council of Europe.

I sincerely hope that the various activities undertaken by the Commissioner over the last year may have contributed to increasing the visibility and public awareness of the work that the Council of Europe has already been engaged in for decades to promote and defend the respect for human rights.

To those of the Commissioner's functions already listed, the entry into force of Protocol No. 14 to the European Convention for the Protection of Human Rights, will add a vital new one. It will increase ties with the European Court of Human Rights and offer the Commissioner yet greater means of fulfilling the tasks required by his mandate. The Commissioner will, however, be obliged to make measured use of the new competences attributed to him.

The experience of the last few years has shown the extent to which it is both possible and desirable to work together with the various international instances with competences in the field of human rights. The positive relations enjoyed with the European Union merit special mention and I look forward to strengthening them in the future.

I would like to conclude by recalling the oft-cited, but nonetheless true, line of the Spanish poet Antonio Machado *'Traveller, there is no path – paths are made by walking'*. The path leading to the respect for the freedom and dignity of human beings must constantly be travelled. There is room on this path for all those who wish to contribute to this immense task.

Alvaro Gil-Robles
Commissioner for Human Rights

**I. ACTIVITIES OF THE OFFICE OF THE
COMMISSIONER FOR HUMAN RIGHTS IN 2003**

A. OVERVIEW OF ACTIVITIES

The Commissioner's Annual Report of 2002 offered an overview of the institution's aims, activities and working methods as they had evolved in the first three years since the institution's creation and half way through the Commissioner's mandate. The year 2003 enabled the consolidation of these activities and saw a number of significant institutional developments. Above all, profiting from a stable time, and in the second half of the year, enlarged personnel, 2003 saw a notable increase in the volume of activities undertaken, even if this increase could not be sustained uniformly across all areas laid out in the Commissioner's mandate.

This section describes these activities and developments. Section II offers a substantive analysis of the main human rights concerns and challenges identified by the Commissioner during the course of 2003.

The main functions of the Commissioner, as laid out in Resolution 99(50) of the Committee of Ministers, are:

1. The promotion of the effective respect for human rights
2. The identification of legislative shortcomings
3. The promotion of education in and awareness of human rights, and,
4. The promotion of effective national institutions for the defence of human rights

1. The promotion of the effective respect for human rights

The Commissioner has sought to fulfil this aspect of his mandate in three ways; through regular country reports, country specific recommendations and through his direct intervention in crisis situations.

In all of these cases, the Commissioner's main concern has been to obtain a first hand understanding of the issues in question and to enter subsequently into a constructive dialogue with the authorities of the member State or States concerned.

i. Regular reports on the effective respect for human rights in the member States of the Council of Europe

One of the primary activities undertaken for the promotion of the effective respect for human rights is the presentation to the Committee of Ministers and the Parliamentary Assembly of reports on the human rights situation in individual member States. These reports are based on the Commissioner's findings during official visits. Such visits consist of meetings with members of the Government, Parliament, representatives of the judiciary and national human rights protection mechanisms (Ombudsmen, human rights institutions or other independent specialised bodies) as well as with the representatives of non-governmental organisations. The Commissioner will also inspect sites where the protection of human rights is particularly sensitive, such as prisons, administrative detention centres, refugee camps, asylum centres or psychiatric institutions, in order to ensure a direct acquaintance with situations in which violations are liable to occur. Each report

concludes with a number of recommendations aimed at improving the effective observance of human rights. The Commissioner is pleased to note the excellent cooperation he has received from the authorities of the member States in the organisation of the visits he has carried out to date.

In the three years leading up to 2003 the Commissioner had been able to prepare 11 regular country reports. In 2003 alone the Commissioner presented a further 9, bringing the total of countries visited for the purposes of regular reporting to 20 after 4 years in Office (see table below). An effort was made in 2003 to complete the series of reports on the ten countries to have acceded to the European Union in 2004 in order to review the important progress made during this process and to identify the remaining challenges for the full respect of human rights. A substantive analysis of the situation in the enlargement zone is provided in Section II.

The Commissioner may also undertake contact visits (marked in italics in the table below), which, without giving rise to regular reports, enable the Commissioner to take stock of a given situation and establish ties with national authorities. Thus the Commissioner visited Serbia and Montenegro in September 2003 shortly after its accession to the Council of Europe.

2000	2001	2002	2003
Georgia Moldova	Andorra Norway Slovak Republic Finland Bulgaria - <i>Switzerland</i>	Greece Hungary Romania Poland - <i>Albania</i> <i>Azerbaijan</i> <i>Armenia</i>	Czech Republic Slovenia Portugal Turkey Cyprus Lithuania Latvia Estonia Malta - <i>Serbia and Montenegro</i>

It would appear optimal for the Commissioner to present a report on each of the 45 members of the Council of Europe during the six-year cycle of his mandate. This would ensure the equal treatment of all member States and enable the Commissioner to offer the Committee of Ministers and the Parliamentary Assembly a comprehensive overview of the respect for human rights throughout the territory of the Council of Europe by the end of his mandate.

The follow-up given to the recommendations contained in the Commissioner's reports is central to the institution's effectiveness. Whilst certain recommendations call for immediate implementation, others require more extensive legislative reforms that necessarily take time to put into effect. For this reason, the Commissioner considers it important that the initial follow-up to his reports remains within the context, and the confidence, of his direct relations with the member State concerned. The Commissioner must, however, be able to inform the Committee of Ministers of persisting difficulties. Whilst the Commissioner may, therefore, wish to draw a particularly serious matter to its attention at short notice, he will, as a matter of course, present a follow-up report outlining the progress made in respect of his recommendations no later than two years after the original report's publication.

These follow-up reports are prepared on the basis of information received from national authorities, national institutions, NGOs and, if necessary, from visits by members of the Office or the Commissioner himself to the member State concerned. Follow-up reports on Norway, Slovakia, Finland and Bulgaria will be presented this year¹.

The Commissioner welcomes the generally positive reception reserved by the Committee of Ministers for his regular and follow-up reports. Greater consideration might be given, however, to finding ways in which the broad range of services and tools offered by the Council of Europe's different bodies might be employed to assist member States in addressing difficulties identified in the Commissioner's reports.

As noted in its Recommendation² on the Commissioner's Annual Report of 2002, the Parliamentary Assembly offers an equally important forum for the Commissioner to express his concerns in. During the course of the last year the Commissioner enjoyed more regular contacts with its Committees. The Commissioner welcome's the Recommendation's call for strengthened co-operation in this area.

Whilst there remains, therefore, some fine-tuning to be done, the contours of the Commissioner's regular human rights reporting are now clear. Each member State should ideally be visited once within the term of the Commissioner's mandate, with the resulting recommendations typically being reviewed after an interval of two years.

By bringing the number of countries visited in a year up to 9 in 2003, the Commissioner was able for the first time to achieve the approximate annual rate required to report on all the member States of the Council of Europe once every six years. It is evident, however, that even at this rate the Commissioner will be unable to present reports on all the member States before the end of his mandate. Indeed, even maintaining the rate achieved in 2003 will prove difficult as, from 2004 onwards, an equal number of follow-up reports will also have to be prepared.

Quite apart from the limited time available to the current Commissioner, it is clear that greater resources are required to ensure that this necessary rate can be maintained without prejudice to other important areas of the Commissioner's mandate.

ii. Recommendations

The Commissioner's regular human rights reporting procedure may be supplemented by *ad hoc* Recommendations addressed to member States on specific issues. Such recommendations will address issues, which, owing either to their complexity or urgency, cannot appropriately be treated in regular reports.

The priority attached in 2003 to the regular reports reduced the resources the office was able to attach to this activity. Nonetheless, one such recommendation was issued in 2003 concerning certain aspects of the law and practice relating to the sterilisation of women in the Slovak Republic.

¹ The follow-up report on Andorra was presented in 2003.

² Recommendation 1640 (2004).

iii. The intervention of the Commissioner in crisis situations

Certain large-scale or particularly serious human rights violations can clearly not be treated in the context of regular reports or Recommendations. Conflicts, internal divisions and the menace of terrorism continue to afflict certain member States of the Council of Europe. The Commissioner has sought to address the risks of human rights violations in such situations from the outset of his mandate, visiting the regions concerned and intervening before authorities.

In 2003 the situation in Chechnya continued to be a priority for the Commissioner. The Commissioner visited the region in February 2003, shortly before the referendum on the Chechen Constitution, and presented a report on his findings to the Committee of Ministers and the Parliamentary Assembly. The situation in Chechnya continues to warrant the attention of the Council of Europe and the Commissioner will maintain an active dialogue with the Federal Russian and Chechen authorities.

2. The identification of legislative shortcomings

Whilst legislative shortcomings, as opposed to problems of practice, are also addressed in the Commissioner's regular reports, it remains the case that certain shortcomings are too complex to be analysed in the necessary detail in the context of general reports. Thus the Commissioner may issue Opinions on existing or draft legislation raising a specific human rights concern identified either during an official visit or on the basis of information received. The Commissioner may also issue opinions on the request of Governments or other national instances, such as Parliamentary Committees or human rights institutions.

The Commissioner prepared two Opinions in 2003, the first, following discussions with the Constitutional Committee of the Finnish Parliament, on a Draft Finnish Aliens Act, and the second (published in 2004) on certain procedural safeguards surrounding the application of pre-trial detention in Portugal, on the basis of a number of problems identified during his visit in to Portugal in May 2003.

3. The promotion of education in, and awareness of, human rights

The Commissioner's official visits to the member States of the Council of Europe evidently involve a promotional aspect. An effort is also made to ensure the participation of the Commissioner or members of his Office in as many conferences and seminars as possible. At the same time, the Office has organised events and seminars of its own and engaged in regular dialogue with important actors in the field of human rights outside these contexts.

Through his visits and regular reports the Commissioner seeks to gain an overview of problems common to all or several member States. Keen to raise the awareness of such issues both amongst policy makers and the public more generally, as well as to promote the activity of related NGOs, the Commissioner organises seminars on specific themes bringing together relevant actors. The Commissioner organised two such seminars in 2003; the first, in Copenhagen in January in co-operation with the World Health Organisation, on the protection and promotion of the human rights of persons with mental disabilities and the second, in April in Athens together with the Marangopoulos Foundation, on the human rights challenges relating to immigration.³

³ The publications resulting from these seminars can be found on the Commissioner's website.

In addition to the organisation of seminars on specific issues the Commissioner has paid particular attention to the education and awareness of human rights in two key areas. These are the role of religions in European societies and the organisation and activity of armed forces.

In respect of religious communities the Commissioner has sought to establish ties with religious leaders during his official visits and through the organisation of seminars bringing together religious leaders from the main monotheistic faiths in Europe, academics and national authorities. These contacts have revealed just how important the understanding of religious facts is to an all-round education; it is central, no less, to the promotion of mutual respect and combating ignorance in which fanaticism can take hold. He continued to discuss this question with religious leaders and national authorities throughout 2003 in preparation for a seminar in Malta held in May 2004 to broadly examine this issue and, in particular, the possibility of establishing a European centre or pedagogical institute for the elaboration of curricula and the preparation of teachers in this subject.

Having organised a first meeting with members of armed forces in Moscow in December 2002, the Commissioner organised a second, in co-operation with the Spanish Ministry of Defence in Madrid in September 2003. This second seminar focused on the education and awareness of servicemen and commanders of human rights in their application both to the internal organisation of armed forces and during the many different types of military operations. The seminar focused especially on the awareness and respect for the rights of servicemen themselves and identified not only a lack of knowledge of applicable rights in many armed forces, but also a lack of consensus as to what rights might be applicable and to what extent. The participants spoke of the utility of elaborating minimum guidelines and standards in this area that might serve at once as a basis for reviewing certain military regulations and as a basic manual for distribution to servicemen and commanders. The Commissioner's dialogue with military leaders in the future will concentrate on this area and will necessarily require the broader support and involvement of other actors.

4. The promotion of national institutions for the defence of human rights

The promotion of national ombudsmen and human rights institutions is an important part of the Commissioner's mandate. They are vital to the promotion and protection of human rights at the national level and essential partners in the Commissioner's work in individual member States.

The Commissioner is mandated to promote their creation where they do not exist, and their effective functioning where they do. National Ombudsmen and Human Rights Institutions are also important sources of information on the human rights situation in member states and constitute, as a result, vital reference points during the Commissioner's visits. The Commissioner is grateful for the assistance he has received from these institutions in the countries he has visited to date.

i. The Promotion of the Institution of the Ombudsman

The effectiveness of the institution of the Ombudsman no longer needs to be demonstrated and is, with a number of variants, well implanted in the landscape of human rights protection throughout Europe. Ombudsman institutions had not yet, been created, however, in a number of member States visited by the Commissioner in recent years. In all these cases, the Commissioner has sought to promote the creation of the institution in his discussions with members of the Government, Parliament and representatives of civil society as well as in his subsequent reports.

The Commissioner addressed this issue in his reports on Slovakia and Bulgaria and organised a seminar together with the Venice Commission on the ombudsman institution in Armenia. The Commissioner is pleased to note that all of these countries have since proceeded to adopt legislation creating an ombudsman institution; Slovakia already in 2002 and Armenia and Bulgaria in 2003. The Commissioner also addressed the creation of an ombudsman institution in Turkey (a recommendation also recently expressed by the Parliamentary Assembly) in his report on the country of 2003 and proceeded to organise a seminar there together with the Human Rights Committee of the Turkish Parliament in May 2004 to further this development.

In addition to his support to individual institutions the Commissioner seeks to address issues of common interest to all ombudsmen. The primary channel for this co-operation is the biennial Council of Europe Round-Table of National Ombudsmen, the responsibility for which was passed to the Commissioner in 2002 by the Committee of Ministers. The first Council of Europe round-table of national ombudsmen to be organised by the Commissioner was held in Oslo from 3-5 November last year. At the request of the national Ombudsmen the round-table focused on the legal status of prisoners, the rights of members of minorities, the right to access to official documents and the powers of the ombudsmen vis-à-vis the judiciary. The Commissioner is keen to use these fora to work with national ombudsmen to encourage a broad conception of their role and wider human rights competences. In this context the Commissioner welcomes the Assembly's Recommendation 1615 (2003) on the Institution of the Ombudsman as an important road-map for future developments. Conscious of the diverse national frameworks and keen to promote the development of regional ombudsmen, the Commissioner will organise a round-table specifically for regional ombudsmen in 2004.

In 2003 the Commissioner initiated a special two-year programme for the promotion of Regional Ombudsmen in Russia, for which funding has been received from the European Union. The programme aims to develop and enhance the existing legislative framework, to promote the regional ombudsman institution in regions where it does not yet exist and to strengthen the independence and effective functioning of existing institutions. The programme was launched with a seminar in Kaliningrad in March 2003 and continued with meetings in Moscow and Astrakhan in September and October 2003.

ii. The promotion of National Human Rights Institutions

The number of National Human Rights Institutions, as opposed to Ombudsmen proper, is far less, even if the distinction is blurred in a number of, especially newer, member States. Such institutions, as defined by the Paris Principles, nonetheless, have a vital role to play in the promotion of human rights and their number is consequently growing.

The Commissioner's own co-operation with National Human Rights Institutions outside the context of his country visits properly began to take form towards the end of 2002 and the beginning of 2003 with the establishment, within the Office of the Commissioner, of a Liaison Office for European National Institutions for the Promotion of Human Rights. This informal mechanism has allowed for closer contacts between the Commissioner and National Human Rights Institutions and facilitated the organisation of events aiming at their promotion. Two such events were organised in 2003: the first, a workshop on National Human Rights Institutions and non-governmental organisations, in Strasbourg in October 2003 and the second, together with the Slovenian Ombudsman, on the creation of a National Human Rights Institution in Slovenia. The first Council of Europe Round-Table of National Human Rights Institutions to be organised by the Commissioner will take place in Berlin in 2004.

iii. Other human rights protection mechanisms

The landscape of human rights protection mechanisms has increasingly come to be shaped by specific issue commissions, ombudsmen and institutions. These notably include ombudsmen for children and equality and anti-discrimination commissions. The development of the latter has been stimulated in large measure by the EU directives 2000/43, on the equal treatment between persons irrespective of racial or ethnic origin, and 2002/73, on equal treatment for women and men, as well as ECRI's General Policy Recommendations Nos. 2 and 7. Whilst the directives require the establishment of national bodies to address these issues and set minimum conditions on their functioning, ECRI's Recommendations outline additional features that such institutions ought to possess in order to maximise their utility. The Commissioner has been particularly concerned to encourage the establishment of institutions reflecting ECRI's Recommendations. In an Opinion on the creation of a national body for counteracting discrimination in Poland, which was announced in his report on Poland and published early in 2004, the Commissioner added his own considerations to ECRI's detailed Recommendations.

B. INSTITUTIONAL RELATIONS

1. The Committee of Ministers of the Council of Europe

The Commissioner is pleased to note the excellent co-operation that has been established with the Committee of Ministers and the Permanent Representations individually. The Commissioner acknowledges the ready assistance received from the Permanent Representations in the organisation of all of his visits to date and is glad of the Committee of Ministers' immediate willingness to hear the Commissioner each time it has been requested, whether to present regular reports or to inform of his intervention in crisis situations.

As noted above, the only area perhaps admitting of improvement, and this owing largely to the infancy of the practice, arises in respect the presentation of follow-up reports and the response provided by the Committee of Ministers where other services of the Council of Europe might effectively be able to address concerns identified by the Commissioner. The Commissioner trusts that the necessary procedures will be established as the practice of presenting follow-up reports becomes more established.

2. The Parliamentary Assembly of the Council of Europe

The Commissioner is likewise pleased to note the strengthened co-operation and closer ties established with the Parliamentary Assembly over the last year. The Commissioner welcomes in particular the procedure established in respect of the Annual Report of 2002, whereby the report was reviewed by the Committee on Legal Affairs and Human Rights and was presented by the Commissioner during the Assembly's plenary session. This important procedure strengthens the institutional relations between the Commissioner and the Assembly and serves to emphasise the Commissioner's accountability to the organ that elected him.

The Commissioner is grateful to the support and encouragement expressed in the Assembly's Recommendation 1640 (2004) on his 3rd Annual Report, which raises a number of important issues. Paragraph 2 of the Recommendation invites the Commissioner to inform the Parliamentary Assembly of his recommendations and concerns regarding the respect for human rights in the different member States. The Recommendation invites the Commissioner to play a more active role in the work of its Committees and the Commissioner repeats his willingness to appear before them whensoever requested. Excellent ties have, indeed, already been established with the Committees on Legal Affairs and Human Rights,⁴ and Migration, Refugees and Population.⁵

The Commissioner is committed to ensuring the responsiveness of the institution to the concerns and priorities of the Assembly, for which regular contacts are again essential. The Commissioner therefore welcomes the increasing number of the Assembly texts inviting the Commissioner to examine specific issues,⁶ which he will seek to accommodate to the extent that the institution's resources allow.

The Assembly has, lastly, been particularly supportive of an enhanced role for the Commissioner in proceedings before the European Court of Human Rights.⁷ The developments in this area are reviewed below.

⁴ See Doc. 9732 on The human rights situation in the Chechen Republic and the subsequent Resolution 1323 (2003) and Recommendation 1615 (2003)1 on the Institution of the Ombudsman.

⁵ See especially, Doc. 9989 on Internal displacement in Europe and Doc. 10011 on Access to assistance and protection for asylum seekers at European seaports and coastal areas

⁶ See in particular, Resolution 1306 (2002) on the Situation in Belarus; Recommendation 1577 (2002) on the Creation of a charter of intent on clandestine migration; Recommendation 1615 (2003)1 on the Institution of the Ombudsman and Recommendation 1606 (2003) on Areas where the European Convention on Human Rights cannot be implemented.

⁷ See Recommendation 1606 (2003) on Areas where the European Convention on Human Rights cannot be implemented and, more recently, Opinion No. 251 on Draft Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention.

3. The European Court of Human Rights

In the context of the discussions on the reform of the European Court of Human Rights (the Court), the Commissioner submitted a proposal consisting of granting the Commissioner the right to seize the Court in cases raising issues of a serious or general nature. The Commissioner was motivated in this request, analogous to the powers of certain national ombudsmen to bring cases before constitutional courts, by two factors. Firstly, by bringing cases on structural problems identified in member States, the Commissioner might be able to draw the attention of the Court to the underlying source of potential violations and facilitate the preparation of judgments whose execution would be easier both to carry out and monitor, thereby reducing a likely succession of repetitive cases.

Secondly, the Commissioner's proposal was intended to strengthen the protection offered by the Court in respect of particularly serious violations where the potential applicants might face difficulties in applying to the court, or face long delays attempting to exhaust domestic remedies. This interest mirrors the concern expressed by the Parliamentary Assembly in its Recommendation 1606 (2003), on areas where the European Convention on Human Rights cannot be implemented, in which it called for the possibility of an *actio popularis* and suggested that the institution of the Commissioner should enjoy powers analogous to that of a public prosecutor.

The Commissioner's proposal and the Assembly's Recommendation⁸ were not retained in Protocol No. 14 to the European Convention on Human Rights and Fundamental Freedoms, amending the control system of the Convention; the concern being expressed that such a role might prejudice the necessary confidence between the Commissioner and member States.

Instead the Protocol proposes that a new paragraph 3 be added to Article 36 of the Convention stating "*In all cases before a Chamber or a Grand Chamber, the Council of Europe Commissioner for Human Rights may submit written comments and take part in hearings.*" This provision, permitting the Commissioner's intervention as a third party on his own initiative, retains a number of the advantages of the original proposal, as it will still allow the Commissioner to raise structural problems he has already identified beyond the narrower concerns of individual cases. He will, however, have to wait for an individual to make an application to the Court, which evidently limits the role the Commissioner might play before the Court in respect of serious and urgent human rights violations. The Commissioner does not consider that the original proposal need necessarily sit uncomfortably with his other functions, rather, used sparingly and as a last resort, it would help him to promote the effective observance of human rights, where other types of intervention open to him had not been successful.

The Commissioner nonetheless welcomes this inclusion of the institution in the European Convention for the Protection of Human Rights and Fundamental Freedoms as an important development. The Commissioner looks forward to fulfilling this function, which will inevitably entail an extra burden on the Office's limited resources, with a view to reviewing further possibilities in the light of the experience gained.

⁸ See also Opinion No. 251 on Draft Protocol No 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention.

4. The European Union

As the European Union's borders and competences continue to expand it increasingly influences the respect for human rights both within and beyond its frontiers. This development has inevitably impacted on the work of the Commissioner, for whom close ties with the different institutions of the European Union have become essential.

The first four years of the Commissioner's mandate coincided with the accession process of ten new member States. Whilst the European Union's accession criteria gave considerable impetus to the legislative and practical reforms necessary for the fulfilment of the human rights obligations resting on these States, it has been the Council of Europe that has provided much of the expertise. This tandem will no doubt continue for the remaining, and possible future, candidate countries. In the light of discussions with the EU Commissioner for Enlargement, the Commissioner has sought to contribute to this process through his visits to and reports on the recent accession countries and current candidate states.

Further afield, the Union's increasingly concerted foreign policy and the importance of democratic stability and the respect for human rights to its relations with the remaining Council of Europe member States have rendered the Union an important point of contact for the Commissioner, particularly in respect of Europe's ongoing and frozen conflicts.

Within the Union, the impact of its policies and legislation on the respect for human rights by its constituent states has steadily increased. This is particularly visible in such areas as asylum procedures, judicial co-operation and the measures taken in the context of the fight against terrorism. Indeed, the Commissioner has inevitably been confronted by the consequences of the corresponding regulations and directives during his visits to individual member states and been obliged to examine the effects of their application at the national level.

Indeed, it is not difficult to discern something of an institutional gap in this area, which the informal EU Network of independent experts on fundamental rights is not fully able to fill. A more formal independent structure, satisfying the Paris Principles, and competent to examine the respect for human rights by the Union's executive bodies and its legislation would consequently be welcome.

In respect of all the above issues the Commissioner has maintained regular contacts with different institutions of the European Union. Thus the Commissioner periodically meets with the Commissioners for Enlargement, External Relations and Freedom, Security and Justice. The Commissioner is particularly grateful to the Commissioner for Enlargement for facilitating the organisation of the Commissioner's visit to Northern Cyprus in June 2003.

The Commissioner has increasingly engaged with the European Parliament, regularly meeting deputies during its Strasbourg sessions. Frequently seized by Members of the European Parliament on diverse human rights issues in Europe, the Commissioner has in turn sought to inform the European Parliament of his concerns, resulting in several being taken up in its accession monitoring reports. The Commissioner has maintained particularly close ties with the Committees on Foreign Affairs and Citizens' Freedoms and Rights.

Lastly, the Commissioner welcomes the election of Mr Nikiforos Diamandouros as European Ombudsman, with whom excellent co-operation has rapidly been established.

5. Other International organisations

In a crowded world of international organisations and institutions, the Commissioner has sought to situate the Office in the gaps its flexibility and independence enable it to fill. Other organisations with similar aims nonetheless remain vital points of contact and co-operation.

Foremost amongst these organisations is the OSCE and its off-shoots ODIHR and the High Commissioner on National Minorities, with whom the Commissioner has sought to maintain regular contact. On the invitation of the Dutch Presidency, the Commissioner presented his views on the situation in Chechnya to the Permanent Council following his visit to the region in February 2003, regarding which the Commissioner has also maintained contact with ODIHR. For the Commissioner's visits to the three Baltic States, the work of the High Commissioner on National Minorities was naturally an important reference point. The Commissioner is also particularly grateful to the OSCE heads of mission he has met with during his recent visits to some of the Council of Europe's more troubled regions for their co-operation.

Relations with the United Nations High Commissioner for Human Rights have largely focused on the budding ties with its the National Institutions unit, with whom close co-operation will be required for the Commissioner's efforts to promote national human rights institutions. These relations were, however, sadly marred by the tragic death of Mr Sergio Vieira de Mello. This report could not be written without acknowledging the loss sustained by all who work in the field of human rights and saluting his contribution, not just as High Commissioner for Human Rights, but throughout his career, to their promotion and respect across the globe.

The UNHCR has continued to be an important source of information and assistance, not only in respect of the crisis areas the Commissioner or his staff have had occasion to visit over the last year, but also for its vital work and views on national asylum legislation as the Commissioner has increasingly come to address the immigration and asylum policies of the countries of the European Union. It is necessary to record the Office's gratitude for the UNHCR's unstinting assistance on the ground and to stress the value of its permanent presence within the Council of Europe.

The International Committee of the Red Cross has likewise continued to generously offer its assistance. The Commissioner in turn has sought to support and contribute to the ICRC's work on the prevention, protection and tracing of missing persons, an issue which the Commissioner has variously been confronted with during his visits to Europe's conflict and post-conflict regions. The Office of the Commissioner represented the Council of Europe at the International Conference of governmental and non-governmental experts on missing persons in February 2003 and at preparatory meetings beforehand. The number of missing persons continues to be of concern in various regions of Europe and the Commissioner consequently welcomes the attention currently being paid to this issue by the Parliamentary Assembly.

6. Non-governmental organisations

NGOs play a vital role in the activity of the Commissioner, both for their assistance in his promotional activity and for the invaluable information they provide. NGO representatives are always the first points of contact for the Commissioner during his evaluation visits and it is through them that the Commissioner is able to obtain an overall picture of the human rights situation prior to his meetings with national authorities. The Commissioner also meets as a matter of course with NGO delegations during the Assembly sessions and regularly addresses the Human Rights Grouping of NGOs with participative status in the Council of Europe. As the institution has become better known, so the information and assistance received from NGOs have increased. Thus NGOs contribute not only to the identification of the concerns addressed in the Commissioner's reports, recommendations and opinions, but serve also to keep the Commissioner abreast of subsequent developments.

The Commissioner seeks in turn to support the activity of NGOs, providing platforms during his seminars for the voicing of their concerns and trying to attend as many NGO conferences as possible. The Commissioner has been particularly concerned during his visits to encourage authorities to consult and co-operate closely with NGOs. The Commissioner's 2003 reports on Turkey and Chechnya both identify difficulties faced by NGOs and make recommendations for their free and effective functioning.

The Commissioner has also sought to encourage stronger links between NGOs and national ombudsmen, human rights institutions and other independent protection mechanisms. Thus, in addition to his direct dealings with individual institutions, the Commissioner organised a seminar in Strasbourg on the relations between human rights institutions and NGOs in October 2003.

C. STAFF AND BUDGET

The financial and human resources of the Commissioner's Office continue to be incommensurate with the tasks required by his mandate. The number of permanent Council of Europe managerial staff currently stands at three (the Director, the Deputy to the Director and one Administrator) with a further support staff of two assistants and a documentalist.

Under such circumstances, the Commissioner has inevitably had recourse to reinforcements seconded by member states. Thus Belgium, Finland, France, Luxemburg, Switzerland, Spain and the United Kingdom have secured the addition of a further seven members to the Office of the Commissioner, through secondments or specific budgetary allocations.

In its report on the Commissioner's Annual Report of 2002, the Parliamentary Assembly noted the potential prejudice to the Commissioner's independence resulting from this reliance on seconded staff. To this understandable critique, in so far at least as appearances are concerned, one might add the high turnover of staff that such a system implies and the inevitable consequences this has on the Office's operational effectiveness.

The need to increase the permanent staff of the Office is evident. In the absence, however, of sufficient reinforcement, and it is difficult to see how the necessary additions can entirely be accommodated under the Council of Europe's current budgetary restraints, the Commissioner will continue to have recourse to seconded staff and the assistance of individual states.

Similar considerations apply to the Office's financial resources. The Commissioner's budget has remained more or less constant since the institution's creation when its total staff amounted to no more than four persons. With the Office's expansion and broadening activity the Commissioner has once again been obliged to request the financial assistance of individual states and, in 2003, received significant contributions from Finland and the Netherlands. The Commissioner is grateful for this assistance. An increase in the Office's ordinary budget would, however, reduce this necessary reliance.

MEMBERS OF THE OFFICE*

1. PERMANENT AND TEMPORARY STAFF

Director of the Office

Mr Christos GIAKOUMOPOULOS

Deputy to the Director

Mr Markus JAEGER

Legal Officer

Mr Alexandre GUESSEL

Documentalist

Mrs Muriel DABIRI

Personal Assistant

Mrs Christine GIGANT

Assistants

Ms Firuza ASKAROV

up to 31st August 2003

Ms Mila SMELIKOVA

as from 15th November

2003

2. SECONDED STAFF OR FINANCED THROUGH VOLUNTARY CONTRIBUTIONS

Mr John DALHUISEN, *Private Counsellor to the Commissioner*

Financed by the British Government

Ms Satu SUIKKARI

Seconded by the Finnish Government

Mr Gregory MATHIEU

Seconded by the Belgian Government

Mr Fernando MORA

up to 1st March 2003

Seconded by the Swiss Government

Mr Javier CABRERA

as from 1st August 2003

Seconded by the Swiss Government

Mr Ignacio PEREZ CALDENTEY

as from 1st September 2003

Seconded by the Spanish Government

Mr Julien ATTUIL

as from 19th August 2003

Financed through voluntary contributions

Mr Nicolas WEVELSIEP

as from 1st August 2003

Recruited by the French Government

* Mr Nino Karamaoun and Mr Jean-Francois Campagna worked in the Office as stagiaires seconded by the Government of Quebec.

ORDINARY BUDGET 2003

CCM	Article		Budget
70100	0000001	Remuneration of permanent staff	391 530.00
70100	0000003	Remuneration of temporary staff	78 840.00
70100	0000013	Employees MAD	1 235.00
70100	0000036	Emoluments of the Commissioner for Human Rights	178 000.00
70100	0000080	Official journeys	101 300.00
70100	0000115	Interpretation	28 600.00
70100	0000116	Translation	12 000.00
70100	0000124	Document production and distribution	3 600.00
70100	0000129	Expert Consultants	7 000.00
70100	0000167	Representational expenses	3 600.00
70100	0000170	Meeting expenses	61 500.00
70100	0000392	Various expenses	2 000.00
70100	0110002	Round-table, National Ombudsmen	27 000.00
		Total :	896 205.00

A part of the activities of the Office of the Commissioner for Human Rights has been financed by voluntary contributions made by the Governments of Finland and the Netherlands.

II. HUMAN RIGHTS CHALLENGES IN EUROPE

A. THE RESPECT FOR THE RIGHTS OF MINORITIES IN EUROPE

For the past fifty years the Council of Europe has been striving to promote the ever-closer union of peoples through the provision of a common home for countries sharing the same values. The pursuit of this ambition has seen it double in size over the course of the last decade. The European Union, taking this aim still further, almost doubled its members in a single day. It is worth pausing, however, in the contemplation of these achievements, to consider whether all of Europe's citizens have participated equally in these developments. For even a cursory glance across Europe reveals that, just as its nations are growing together, so within many nations national and ethnic minorities are increasingly being left behind. And yet, the respect for their rights and their integration at the national level is a prerequisite for both the closer union of peoples and, ultimately, any lasting union of nations.

Three broad categories of minorities urgently requiring greater protection and integration can be identified. The first concerns those minorities resulting from the redrawing of Europe's map following the fall of communism and includes the Russian-speaking minorities in the Baltic countries and those citizens of the former Yugoslavia that have come to form minorities in its newly independent states. The second concerns the many Roma communities that continue to be discriminated against throughout Europe. The third relates to the ethnic minorities resulting from the successive waves of immigration in Western Europe.

The early nineties saw the creation and re-emergence of numerous new states, through peaceful secession in the case of the former Soviet Union, following years of bloody conflict in the case of the Balkans. In both cases new boundaries have led to a demographic recasting and the creation of new minorities. In both cases the integration of all communities is essential to the future stability of these countries and of Europe as a whole. In both the Balkans and the Baltics, however, progress towards this goal has been slow.

All three Baltic States have faced the arduous task of consolidating new democracies whilst reasserting national identities. Their admirable success in these tasks is reflected in their recent accession to the European Union. Their success in creating inclusive societies in which different minorities can find their place, and contribute to the construction of new and stable societies, is varied, however, and largely reflects the size of the Russian-speaking (and to a lesser extent Polish and Ukrainian) minorities in each country.

In Lithuania, where the Russian and Polish minorities each constitute only 8% of the population, very few problems remain. In Estonia where the Russian-speaking minorities together constitute some 30% of the population, certain obstacles to integration persist, despite several positive developments in recent years and an increasingly constructive attitude on the part of the authorities. In Latvia, however, where the Russian-speaking population reaches around 40%, greater challenges remain.

The most striking indicator of the difficulties that Estonia and Latvia still face is the number of so-called "non-citizens" in each country. These are persons, residents of the two states and citizens of the former Soviet Union at the time of its break-up, who did not automatically qualify for citizenship in the newly independent states, and were unable or unwilling to demand citizenship of another country. These persons have subsequently been able to obtain citizenship through naturalisation, a procedure which

involves the passing of language and history examinations. Through a combination of reluctance on the part of the minorities and the genuine difficulties faced by many in satisfying the naturalisation conditions, the number of non-citizens in Latvia and Estonia amounted to some 20% and 8% of the total population of the respective countries by the end of 2003, proportions which, particularly in the case of Latvia, point to very slow progress in the resolution of this issue. The incongruity of this situation is thrown into particularly sharp relief when one considers that Article 8 of the Treaty of the European Union confers citizenship of the Union on the nationals of its member states; one may well ask, indeed, whether it is possible to be a non-citizen of the European Union. It is, in any case, evident that such an anomalous situation cannot continue for long without sparking tensions and discontent. Greater efforts to encourage and facilitate naturalisation are consequently essential to the prospects of creating stable and united societies in both these countries. Integration requires that opportunities are offered but also that they are seized; the minority communities themselves must also assume their responsibility.

It is notable that the two countries have adopted different approaches to this challenge, whilst both professing the same goals, namely the creation of incentives to naturalise. In Estonia, an emphasis has been placed on dialogue and integration. Thus non-citizens have been accorded the right to vote in local elections, whilst minority communities have been granted increased possibilities of dealing with the public administration in their own language. Education reforms, foreseeing a proportion of 60/40 of teaching in Estonian and minority languages respectively in minority schools as from 2007, have been adopted with assurances that the quality of education in Russian-speaking schools will not suffer and that its implementation will reflect the resources and capacity of individual schools to achieve this goal. The results of this integrationist approach are well reflected in the in the increased participation of the Russian-speaking minorities in public life and increased rates of naturalisation.

The Latvian authorities have been reluctant to increase the rights of non-citizens (notably in respect of electoral rights and the ability to communicate with the public administration in their own language) and broaden the protection of minority rights (as evidenced by the non-ratification of the European Framework Convention for the Protection of National Minorities), for fear of decreasing the incentives to naturalise and integrate. Similar 60/40 language reforms in the education system, which are not themselves unreasonable given the legitimate interest in ensuring that all members of minorities speak Latvian to a reasonable standard, have been adopted with insufficient dialogue with the minority communities concerned and seemingly with too little sensitivity to the potential prejudice these reforms might cause, in the short run, to the quality of education provided in minority language schools if there are not enough adequately prepared teachers to apply them. The manner in which these reforms have been introduced has, unfortunately, provoked considerable tensions, which have not facilitated efforts to encourage greater integration.

There is an evident need to look to the future and to ensure that all persons feel equally involved in its construction. Whilst the success of such a common project clearly requires a commensurate commitment from the minorities themselves, national authorities must actively encourage it.

The situation in the former Yugoslavia is also one of new nations struggling to come to terms with altered ethnic compositions. Almost ten years on from the cessation of hostilities ethnic nationalism continues to undermine the respect for the rights of new

minorities. This is particularly evident in the low number of minority returns both internally and from other countries. Indeed, it is difficult not to conclude that many have definitively established themselves elsewhere. Willing candidates for return remain, however, and their right to do so should be respected. A significant factor in the realisation of this right, and itself an essential challenge, is the need to ensure that the rights of existing returnees and minority communities are fully respected.

Here however, beyond the recurring problem of the enforcement of property rights by displaced minorities, discrimination continues to undermine the equal access of minorities to education and employment throughout the former Yugoslavia. The enjoyment of civil and political rights is also restricted by the problems faced by new minorities in obtaining citizenship and permanent residence status. Thus, despite the recent adoption of a Constitutional Law on the Rights of National Minorities, a small number of Roma and ethnic Serbs continues to face practical obstacles in obtaining citizenship in Croatia. This failure to resolve their status inevitably impacts on the enjoyment of social rights – notably in their access to health care and pension rights.

Even in Slovenia, a country spared the bitter conflicts of the Balkans; a creeping ethnic nationalism has resulted in difficulties for long-term residents from other parts of the former Yugoslavia in securing their legal status and accessing their attendant rights. Despite the admirable efforts of the Government to resolve the issue of the remaining 4,000 “erased” persons - non-Slovenia citizens of the former Yugoslavia have been removed from the list of permanent residents during the nineties - popular resistance to their integration remains. Indeed, attempts by the Government to restore their status in accordance with Constitutional Court judgments were held up by a referendum in April this year in which the majority of voters rejected such moves, though the adoption of subsequent laws has allowed this process to continue.

The new Balkan states are emerging from a protracted and painful period in their history. It is hardly surprising that new nations should seek to consolidate their gains. The consolidation of these nations will not be lasting, however, if minority communities are not included in the construction of a common future. This is not a question of laws and the conferral of rights on paper; there are reams of it already. What is necessary, and to date too often lacking, is the genuine will to place the respect for minority rights at the heart of the political agenda. The events of the 17th March in Kosovo this year dramatically exposed the dangers of failing in this challenge.

Roma minorities have been amongst the worst hit by the rise of neo-nationalism, both in the Balkans and beyond; widespread discrimination continues to affect living standards and the enjoyment of the most basic rights of the Roma both in newly independent and newly democratic countries. The extent of their social exclusion in these states, the extent of their omission from a common European future is graphically illustrated by the raft of measures that have been adopted by the countries of the West to limit the feared influx of disadvantaged Roma from the Union’s newest member states; such, for some, are the gains of European citizenship.

The Commissioner has paid particular attention to the situation of the Roma both in Central and Eastern Europe and in his visits to Western European countries. The problems are almost everywhere the same: discrimination limiting access to housing and employment; segregated schooling disadvantaging Roma children from the outset; racially motivated violence, indifferent police responses; national action plans blocked by resistance at the local level. These are not the ingredients of an inclusive

society. In the West, in particular, the steady erosion of the market for the skills and professions of itinerant Roma has been met with an inadequate and belated response in terms of re-education and social assistance.

The integration of Roma requires the involvement of all and, evidently, also of the Roma themselves. Notably regarding their access to education, an effort must be made to ensure that Roma children complete the schooling capable of opening broader perspectives. Even then, however, opportunities are often limited by a latent discrimination. Nowhere, indeed, have the specific needs and ordinary rights of the Roma been adequately attended to. The 10 million Roma, citizens of their countries and increasingly citizens of Europe, are increasingly being left behind.

They are not the only ones. In Western Europe, successive waves of immigration have significantly altered the demography of most countries, bringing with them alien cultures, religions and languages. Many immigrants, and even more of their children, have become citizens, but have not, for all that, succeeded in integrating in their new societies. Pluralism, however, is no longer a choice - it is a reality. It is a reality bringing with it both problems and opportunities. This is the challenge of diversity and whilst the challenge is hardly a new one, how we deal with it will increasingly come to define the societies in which we live.

There are essentially two related challenges: the first is to ensure the integration of immigrants into the economic, social and political life of our countries. The second is to create a space in which cultural and religious differences can be maintained. There has recently been increasing debate across Europe over the compatibility of these two goals, with the preservation of cultural differences frequently being blamed for poor levels of integration and rising social tensions. Integration ought not, however, to be conditional on assimilation; whilst immigrants must, certainly, respect the social and legal norms of their new countries of residence, these societies must be capable of adapting in turn, all the more so where new citizens are concerned. This adjustment entails, in particular, the creation of real opportunities to participate fully in the life of society, notably with respect to employment. Worryingly, however, discrimination and intolerance remain commonplace and overt racism a scourge that has nowhere been entirely eliminated. Whilst several welcome attempts have been made to address institutional racism in the public sector and more closely regulate the private sphere, it cannot but be concluded that discrimination remains the single greatest obstacle to greater integration.

Far from undermining integration, the respect for the differences of new ethnic minorities is rather an essential stimulus to it, encouraging a sense of belonging, equal worth and a reciprocal respect in turn. This is nowhere more important than in the enjoyment of the right to freely practise one's religion – without, however, transforming it, through the prism of fanaticism, into a tool of social conflict and exclusion. Freedom to practise one's religion entails, in particular, a place in which to do so. It is particularly worrying, therefore, to note the difficulties that Muslim communities in many European countries face in obtaining permission to construct public mosques; worrying not only from the perspective of the denial of basic rights, but also because the pushing underground of perfectly licit religious activity can only breed yet greater exclusion and risks fostering radicalism. It is to be hoped, in this context, that the creation in some countries of National Councils for Muslim clerics might serve as a positive example to others, permitting greater dialogue between Muslim communities and state authorities on such issues.

It is obvious that the stability of a society depends on the extent to which its members feel a part of it: as contributors, as stakeholders and as beneficiaries. This applies to individual countries as it applies to any greater ambitions Europe might have. Indeed, the continued prosperity and harmony of Europe depend on our ability to create societies in which diversity neither dilutes nor divides, but is transformed from a source of conflict to a mutually enriching source of stability. It is equally obvious, however, that the three categories of minority examined here have not yet been allowed to fully find their place. We may well be constructing a Europe in which all citizens are equal, but for now, it seems, some are more citizen than others.

B. THE RESPECT FOR HUMAN RIGHTS IN THE EUROPEAN UNION ENLARGEMENT ZONE

During the course of 2003 ten member states of the Council of Europe completed their preparation for accession to the European Union. This process notably entailed numerous legislative reforms and practical changes in the field of human rights. This is, indeed, an area of particular importance to a Union maintaining the principle of citizenship (Article 17 of the Treaty on the European Union), and the recognition of the rights pertaining to this status, and founded on the principles of liberty, democracy, respect for human rights and the rule of law (Article 6 TEU). These principles and values are the same as those expressed in the European Convention on Human Rights for the last 50 years. The European Union requires that particular attention be paid to their respect, foreseeing in Article 7 TEU a mechanism for addressing serious breaches.

Over the last few years, the Commissioner has maintained close ties with the Commission and the European Parliament, both in the preparation of his visits to member states to evaluate the respect for human rights and with regard to the various activities and programmes for the promotion of human rights undertaken by his Office.⁹

It is natural, therefore, that different instances of the Union should express an interest in following the Commissioner's reports on the effective respect of human rights in its member states and candidate countries. Indeed, this reflects the conclusions expressed in the Commission's Communication to the Council and the European Parliament on the "Respect for and promotion of the values on which the Union is based" in the light of Article 7 of the Treaty on the European Union, calling for closer ties between Community institutions and the Commissioner for Human Rights.¹⁰

In the light of this interest, and with the purpose of monitoring the effective respect for the rights guaranteed by different Council of Europe instruments, the Commissioner has visited all ten of the Union's newest member states. These visits have enabled the Commissioner to observe the scale of the efforts undertaken to guarantee respect for human rights, they have also allowed for a fairly complete

⁹ Such as, for instance, the Commissioner's ongoing project for the promotion of regional ombudsmen in the Russian Federation, which is financed through a joint Council of Europe-European Union programme.

¹⁰ Communication from the Commission to the Council and the European Parliament, COM(2003) 606, p. 11: "As part of the co-operation between the Council of Europe and the European Community, contacts should be established between the Council of Europe's Commissioner and the Community institutions. The Commission is willing to establish such contacts with a view, for example, to mutual exchange of information."

vision of the challenges that still remain. Many of these problems differ only in degree from those already existing in the Union's older member states. Others, however, reflect social, structural and financial problems that will inevitably take time to resolve.

This section seeks to highlight these challenges, which show that respect for human rights requires constant efforts and that the end of a political journey cannot be equated with the completion of all the necessary improvements. In almost all his visits to the accession countries, the Commissioner has been struck by the awareness of the authorities of this fact and their commitment to concluding and, especially, implementing these reforms.

The challenges faced can be divided into four main categories. There are, firstly, those particular difficulties that result from the integration of ethnic minorities in the countries concerned: these include the Russian-speaking minorities in the Baltic states, certain citizens of the former Yugoslavia in Slovenia and, lastly, the Roma communities throughout Central and Eastern Europe. These challenges, and the importance of their resolution, are examined in the Section II. A of this report.

There are, secondly, still numerous problems relating to the completion of reforms undertaken in key areas for the respect for human rights and the rule of law. These notably include the effectiveness and independence of the judiciary, respect for procedural guarantees, police behaviour and the promotion of gender equality. Given the extent of the structural overhaul required in these areas it is hardly surprising that certain difficulties should still remain in the implementation of impressive legislative reforms.

Thirdly, there are those problems that relate to the limited financial resources that many of Europe's newer member states have been able to direct to certain key areas for the respect for human rights. These include, for example, conditions in prisons and police detention centres and institutions for the mentally disabled and the elderly, as well as the limited resources available for their greater integration in society more generally.

There are finally a number of problems relating to new challenges facing the majority of the Union's newest members. These include the management of immigration and the processing of asylum requests as these states have increasingly become countries of transit, and even destination over the last few years, without necessarily having the appropriate legislation and infrastructure to deal with this phenomenon. The dramatic rise in the trafficking of human beings has also greatly affected all accession countries as countries of origin, transit and destination. Lastly, in this category, the transition to market economies of the former Eastern-bloc countries has not come without its costs – in terms of social cohesion, the enjoyment of social rights and, in particular, the protection of labour rights.

Turning first to the judicial reforms, a number of widely shared problems can be detected, particularly as the challenges, in the post-communist countries at least, were similar and the reforms themselves profound. It cannot, therefore, be expected that a revamped judiciary will appear overnight. Whilst the quality of Supreme Court and Constitutional Court judges has rapidly reached the level of their Western counterparts, therefore, attempts to usher in a new generation of qualified and

independent judges in lower instances have taken longer. Some of the difficulties, certainly, relate to the relatively unattractive salaries that such judges earn (Lithuania was, for instance, at the time of the Commissioner's visit struggling to fill some 80 vacant posts), others to the lack of effective supervision and training. Continued efforts in this area remain necessary.

Judicial reforms have not, however, been required only in the structure of the judiciary, but also, almost entirely, in respect of criminal procedures. Again, these reforms have taken time to bed down and to be fully respected: new laws must always be implemented by old hands. This is especially evident with respect to the investigative stage of judicial proceedings – where, in the Baltic Countries in particular, the stipulated lengths of police custody are frequently exceeded, as much, it would appear, as a result of ignorance and inertia than anything else. Access to lawyers of reasonable quality early on in criminal proceedings is also often limited, particularly in Poland, Hungary, Slovakia and the Czech Republic, though recent reforms increasing the funds available for legal aid in many of these countries should go some way to rectifying this shortcoming.

The excessive length of judicial proceedings is also a widespread problem, though by no means one unique to the Union's newest members. It is, however, particularly evident in Poland, the Czech Republic, Slovenia and Malta, despite recent attempts to address this issue along similar lines to reforms elsewhere. Indeed, the causes are much the same – an excessive formalism in judicial proceedings (in Slovenia, for instance, appeal courts are often reluctant to pronounce on the facts of criminal cases, such that successful appeals on points of law frequently return to first instance courts for retrial), an explosion of small claims cases and a lack of judicial and administrative staff. Attempts to address these difficulties through greater resources, procedural reforms and the creation of alternative dispute-resolution mechanisms are only slowly beginning to turn the tide. Slow justice has a habit, however, of sliding into no justice, particularly in respect of employment and discrimination cases.

Extensive reforms to the organisation and functioning of the police forces have also been undertaken in the post-communist countries with, for the most part, impressive results, though, here again, rewriting laws has inevitably proved easier than reforming old habits. The use of excessive force remains, if not a widespread problem, at least a recurring one in certain municipalities. This problem was particularly noted by the Commissioner in Hungary, Slovakia and Latvia, with the Roma, here and elsewhere, often being most affected. Police ill-treatment is often directly correlated to impunity: the efficacy of control and complaints mechanisms is consequently of great importance and improvements could certainly be made in many countries regarding their independence and procedures, though the same might also be said of many of the Union's older members. In fact, some benefit might be gained from a broader Council of Europe study of such mechanisms.

The promotion of gender equality was an important aspect of the accession process. This emphasis resulted in a flurry of legislative activity, action plans and, by now almost everywhere, the creation of more or less independent national equality institutions. So much activity could not fail to have an effect; and yet, equal access to employment (particularly for older generations) and equal pay for equivalent work remain somewhat distant goals in many accession countries. Whilst it is likely that social developments and the recent reforms will of themselves counter such imbalances with time, ongoing efforts to promote gender equality will remain necessary.

During the Commissioner's visits to the accession countries, no human rights problems have been more striking than those arising as a result of inadequate financial resources. Whilst prison conditions have, in many countries, in fact received greater attention and a proportionately higher degree of investment than is sadly the case in many countries of the West, the necessary improvements have not been fully delivered in many accession countries. Thus, in the Baltic countries especially, whilst prisons for sentenced prisoners have undergone a wholesale transformation, equivalent funds have not yet been released (or are only now in the pipeline) for remand centres and police custody units; the results are evident, with conditions there often being far from acceptable. The provision of inadequate medical care in custody remains a widespread problem. The understandable priority attached to improving the material conditions in prisons has also limited the funds available for occupational activities, psychological assistance and the rehabilitation of drug addicts. These are, however, important aspects of prison management and will, as all the authorities concerned are indeed well aware, have to be addressed – sooner, one would hope, rather than later. Overcrowding, a fairly ubiquitous problem throughout the member states of the Council of Europe, is particularly high in Hungary, Poland and Slovenia. Priority has been attached in these countries to the construction of new detention facilities and here, as indeed, in other accession countries, commendable efforts have been made to develop alternative sentencing policies.

The conditions in psychiatric institutions has, however, often received less attention and the problems faced in a number of countries, and detected with particular severity in Hungary, Lithuania, Cyprus and Estonia, reflect this. Visits to institutions in all of these countries revealed committed staff working with inadequate resources and particularly poor living conditions for patients. A visit to Hungary revealed the continued use of cage-beds. This practice is also known to continue in the Slovak and Czech Republics. The continued use of this outdated practice of extremely limited therapeutic value reflects in part, though this cannot justify it, the lack of resources available for appropriate treatment. Real efforts and investments are required if the rights of the persons with disabilities in such institutions are to be fully respected in these countries.

Indeed, respect for the rights of persons with mental disabilities requires efforts far beyond those still lacking for institutions. Part of the problem is precisely that too many individuals continue to reside in institutions for lack of adequate support and opportunities to integrate into the community. The right of persons with disabilities to social integration, as laid out in Article 15 of the revised Social Charter, imposes important obligations on the accession countries as all others. Far greater moves towards de-institutionalisation, community care services and the creation of employment opportunities are still required in almost all the accession countries.

Similar considerations apply to respect for the rights of the elderly. In Central and Eastern Europe, many of the elderly have been hit particularly hard by the transition to market economies – finding little use for their skills and few employment opportunities in new sectors. Pensions are, almost uniformly, extremely low, leaving many elderly to eke out an existence on the edges of the society, from which admission to old people's homes does not always offer much salvation: conditions here often being extremely inadequate.

Without wishing to underestimate the extent of the challenge involved in pushing through the necessary economic reforms in the post-communist countries, it is nonetheless necessary to point out the numerous negative consequences that the speed of this transition has had on the enjoyment of employment rights. Indeed, the Commissioner has frequently been seized by unions and individuals complaining of the lack of respect shown, particularly, but not exclusively, by foreign multinationals, for basic employment rights. This extends even to the obstruction of the unionisation of workforces and the refusal of all forms of collective bargaining. Complaints have frequently been received regarding salaries well below the minimum wage. The length of judicial proceedings, often even greater in respect of employment cases, inevitably facilitates the continuation of such injustice and yet the enjoyment of these rights is supposed to be at the heart of the Union's construction. It is certainly to be hoped that greater attention will be paid to these rights, both by national authorities and by the offending enterprises now that these countries have become members.

Over the last decade Europe's members have been subject to new migratory flows – of economic immigrants, asylum seekers and as a result of trafficking in human beings. Ten years ago, none of these countries were ready for the explosion of these phenomena and many are still in the process of adapting their legislation and establishing the necessary infrastructure to deal with them. With their accession, these pressures are, if anything, likely to be felt even more strongly and it is essential that the necessary responses, which will certainly require closer co-operation with other older EU members States, are completed.

Whilst many of the human rights problems relating to asylum procedures and the reception of migrants reflect those in evidence in the rest of the Union (indeed, few of its newest members have escaped the increasingly restrictive tendencies prevailing elsewhere), some particular difficulties can nonetheless be identified. The more general problems facing all European countries, even beyond the Union's current borders, in responding to migratory pressures in a manner consistent with the full respect of human rights are examined elsewhere in this report and will not be repeated here, save to say that concern and the stakes are high. In respect of the Union's newest members at least three issues merit particular mention.

Firstly, legislative frameworks often remain incomplete, as these countries have rushed through new laws to deal with sudden migratory pressures. There tends, secondly, to be a lack of adequate infrastructure and trained personnel for receiving arriving migrants and asylum seekers. Lastly, and in no small measure due to the previous two points, there is often an excessive reliance on detention as a means of controlling asylum seekers and irregular immigrants.

Legislative lacunae are most often manifest in the absence of vital procedural guarantees. In Slovenia, for instance, decisions to place asylum seekers in administrative detention cannot be appealed before a judicial instance; in Slovakia, asylum seekers cannot produce new evidence on appeal. Whilst the Commissioner's attention has been particularly drawn to these two examples, others equally prejudicial to the rights of asylum seekers in other countries certainly abound, notably in so far as the rights of asylum seekers to health care and education are concerned.

Insufficient staffing in immigration and asylum offices in many accession countries leads to long delays in processing asylum applications and residence permits. There is also often a lack of appropriate infrastructure capable of addressing the needs of new arrivals and ensuring their effective supervision and care during the necessary

legal procedures. This absence is particular evident in respect of unaccompanied minors. The absence of reception centres capable of adequately accommodating asylum seekers upon arrival is equally notable and results, as indicated, in an excessive reliance on detention – either in closed centres with vastly reduced services and very limited liberty or, worse, and as the Commissioner has on occasion been able to observe, in police stations and ordinary prisons.

Thus, in the Czech Republic, detention is authorised for up to 180 days in respect of all persons whose expulsion is pending, whose identity cannot be established or who have sought to apply for asylum on the detection of their irregular residence. In Cyprus, the Commissioner was particularly concerned to note that the irregular entry onto its territory constitutes a criminal offence and many such “offenders”, even some wishing to apply for asylum, were encountered in a visit to a Cypriot prison. In Malta, despite a limited loosening of late, all asylum seekers and irregular immigrants are detained as a matter of course.

Cyprus and Malta are, however, particularly illustrative of the pressures that Europe’s newest members have already and will increasingly come under. On Europe’s Mediterranean fringe, they literally receive, often by misfortune, boatloads of immigrants and asylum seekers from the Mediterranean’s southern shores. In Cyprus, for instance, a mere 60 asylum requests were submitted in 1997. By 2003, this number had reached 4,411. The figures in Malta have been equally exponential.

Neither of these countries can be expected to cope with an influx of such proportions entirely on its own, illustrating once again the need for greater management of migratory flows and the distribution of assistance at the level of the Union. That the Union has begun to establish a common response, through the adoption, as a first step, of minimum standards for all aspects of asylum is therefore welcome. These standards will certainly help the accession countries to fill remaining legislative gaps, even if they won’t necessarily entail a raising of standards. The second step, however, a real common policy extending beyond asylum to the management of migratory flows, is necessary already now.

In the absence of such a policy and shared norms trafficking in human beings will continue. The accession countries are already severely affected by this phenomenon, as countries of origin, transit and even destination and have responded, without exception, with a broad range of legislative reforms criminalising its various manifestations. Where the response is often lacking, however, is in the protection afforded victims - both for those discovered nationally and those returning from abroad - which should offer effective rehabilitation, the possibility of obtaining legal residence if foreign, and incentives to testify safely against their captors. Many impressive programmes have, however, been undertaken to educate potential victims in these countries on the pitfalls and dangers involved. Trafficking in human beings is a problem that cannot be tackled by each country in isolation; assistance and co-operation are required throughout the Union and the accession of these new countries should facilitate this joint response. Co-operation beyond Europe’s enlarged frontiers will, however, also be necessary and the elaboration of a Council of Europe Convention against Trafficking facilitating this development and improving the rights of victims would mark a great step forward.

The Council of Europe has already made a significant contribution to the improvements everywhere evident in the respect for human rights in the latest accession countries. The advances made by these countries are, indeed, considerable. A continuation of the efforts made prior to accession remains necessary, however, now that this important goal has been achieved.

C. HUMAN RIGHTS, IMMIGRATION AND ASYLUM

Of the many issues that the Commissioner has examined during his visits to the member states of the Council of Europe none has arisen with greater frequency than the respect for the rights of arriving and resident foreigners. This is hardly surprising – the pressures of immigration are being felt across an increasingly large area, resulting almost everywhere in tightened asylum procedures and restrictions to the rights of immigrants, as countries compete to stem or, at least, redirect the flow of new arrivals. This development cannot, however, be attributed to the weight of numbers alone. It is certain that the real failures in the integration of immigrants and, more recently, heightened security concerns have contributed to a social climate and political debate that are increasingly hostile to foreigners.

This reaction is at odds with the realities behind the phenomenon of immigration in Europe. For so long as conflicts and poverty prevail in other parts of the globe, for so long as hard-pressed individuals aspire to a better life, immigrants will continue to seek Europe's shores. There is, at the same time, both the need and a market for foreign labour in a Europe of declining populations. The construction of a "fortress Europe" is unlikely to be able to withstand this convergence of supply and demand.

The need for comprehensive national and international strategies recognising this reality is evident. Whilst tentative steps in this direction are, certainly, being taken, the majority of recent responses have been *ad hoc*, unco-ordinated and often inconsistent. They have not, for the most part, come without considerable costs in terms of human suffering, with many migrants being forced into a clandestine existence at the very margins of society, the victims of unscrupulous employers and traffickers in human beings. The rights of asylum seekers and foreigners have almost everywhere been curtailed. A revision of Europe's immigration policies is not only a social and political necessity it is also required for the full respect of human rights.

The restrictions ushered in across Europe have focused on two areas. Firstly, on the procedures for receiving arriving foreigners and, secondly, on the legal regimes governing those already established, whether regularly or irregularly. It has been one of the more obvious consequences of the lack of coherent migration strategies, that asylum has become one of the principal means of securing residence for arriving foreigners, whether with the realistic expectation of obtaining refugee status, or simply in the hope of securing entry for however long. States clearly have a legitimate interest in regulating the entry of foreigners onto their territory and maintaining the integrity and effectiveness of asylum procedures for genuine applicants. It is notable, however, that such legitimate arguments have more often than not been used to justify restrictions aimed not merely at the prevention of abuse, but at the dissuasion of applicants altogether; tightened criteria for according refugee status, accelerated procedures and reduced guarantees have almost everywhere been introduced that risk gravely prejudicing the protection afforded to genuine asylum seekers and undermining the rights of those whose applications are ultimately rejected.

Nowhere are the acceleration of procedures and the absence of guarantees more absolute than in the case of individuals returned immediately upon arrival, without even being given the opportunity to apply for asylum at all. This practice is particularly prevalent in the larger airports of Europe, in which, through spurious legal fictions, foreigners are often considered not to have entered the territory of the state. There can, however, be no justification at all for this alarming violation of the principle of non-refoulement.

For those admitted onto the territory of the state and able to request asylum, various devices have been employed to accelerate asylum proceedings. Whilst accelerated procedures are not, in themselves, undesirable, great care must be taken to ensure that the appropriate guarantees are maintained. The rapid processing of cases deemed to be manifestly unfounded does not everywhere meet this standard; the criteria for rejecting applications on these grounds in accelerated procedures having broadened greatly, notably through the increased use of concepts such as safe countries of origin or transit and safe third countries. The evident danger is of such criteria being applied automatically, to the exclusion of the individual examination of each case, despite the fact that generally safe countries may not be so for all applicants.¹¹

The quicker the initial administrative proceedings and the broader the criteria for instant rejection, the more important procedural guarantees become. Here again, however, further restrictions have been introduced, notably regarding the grounds for appeal, limited increasingly to only the risk of torture, and the independence of the authorities to which such decisions can be appealed, often to no more than quasi-judicial bodies nominated by the executive. Lodging an appeal does not everywhere constitute grounds for suspending expulsion orders. Such provisions cannot fail to result in cases of the unfair denial of asylum. With the necessary resources, however, individual examinations and effective judicial scrutiny might easily prevent such abuses, without causing excessive delays.

The increased use of detention has been another feature of the hardening response to migratory pressures. In the worst cases, all foreigners arriving irregularly are detained as a matter of course. Elsewhere, the use of detention, often in the same facilities as common criminals, has increased: for those whose identity cannot be established, for those pending expulsion, for those suspected of absconding. There are even countries in which the illegal entry constitutes a criminal offence subject to a prison sentence prior to deportation. It is sadly necessary to stress that the search for a better life cannot constitute a crime; whatever administrative rules irregular migrants may have infringed, they ought under no circumstances to be detained with common criminals. Indeed, detention for any reason, and of any kind, ought only to be used as a last resort and not, as is all too frequently the case, for its deterrent effect.

Procedural restrictions have often been accompanied by limitations of the social and economic rights of asylum seekers, extending in some countries to the simultaneous withdrawal of welfare benefits and the right to work pending the processing of applications: no matter the obvious inconsistency. Even in Europe's wealthiest countries health care and education are often inadequate. A particular concern arises in respect of unaccompanied minors, whom the indifference of authorities frequently leave prey to networks of traffickers and organised crime.

¹¹ For a detailed analysis of the risks inherent in such procedures, see the Opinion of the Commissioner for Human Rights on the Draft Finnish Aliens Act of October 2003, CommDH(2003)13.

The same combination of rejection and deterrence defining many of the provisions for arriving asylum seekers and immigrants also characterises many of the measures recently adopted for established foreigners. Rather than addressing the excessive reliance of immigrants on asylum procedures through increased incentives and possibilities for obtaining residence permits, the stricter criteria for awarding asylum have instead been matched by an equal reluctance to award ordinary residence permits. Measures seeking to limit the overall number of new arrivals have also affected the security and rights of legally residing foreigners. The duration of residence permits has tended to be reduced and the conditions for renewal increased, to include ever more onerous requirements in terms of employment and economic autonomy. The result has been to place many immigrants in a position of quasi-servitude vis-à-vis employers all too aware of this dependency - contesting dismissal and enforcing rights through courts generally taking too long and being too costly to be worth the risk.

Family reunion has also been significantly limited. Age requirements for the reunion of spouses and children, strict economic conditions concerning employment, accommodation, the absence of social security claims and, in some instances even, steep financial deposits all touch the very limits and often infringe the right to family life and the principle of equality before the law. All of these measures greatly undermine the integration of immigrants.

The challenges and failures of integration lie at the very heart of the reactions to immigration in Europe. The failure to facilitate it, the failure to encourage it, has unquestionably provoked real social tensions. Exaggerated by distorted media coverage and exploited by an increasingly vocal xenophobic fringe, such tensions have given rise to a widening perception of foreigners as threats – to security, to employment, to local identities. Rather than combating such attitudes, the majority of European governments have instead given in to them; firstly through attempts to limit the number of new arrivals and secondly through measures confounding the encouragement of the integration of immigrants with an obligation on them to assimilate. The denial of difference, however, is only likely to provoke contrary reactions. The principal elements of a coherent integration policy are, rather, secure residence, the realistic possibility of naturalisation, real social and economic opportunities and respect for individual rights and cultural differences. These conditions cannot be said to prevail in all the member states of the Council of Europe.

The multiple restrictions outlined above and now commonplace throughout Europe have singularly failed to stem the tide of new arrivals. They have, however, created a huge market for illegal labour and an even more sinister one for traffickers in human beings promising entry to the wealthy countries of Europe and, often enough, delivering servitude upon its achievement. The economies of Europe have almost all adjusted to this black market, with certain industries, notably construction, agriculture and tourism becoming increasingly dependent on it; the occasional accident awakens us to the horrors faced by the many thousands of persons working for derisory wages with no protection, either physical or social - before complacency returns. This, however, is the ugly reality of immigration in Europe and it deserves a far more concerted structural response than the rare and *ad hoc* criminal prosecutions mustered so far.

Whilst individual countries may yet hope to compete in the market of dissuasion, it is clear that the pressures of migration in Europe can best, and most fairly, be dealt with through co-operation at the regional level. The European Union has recognised this fact, foreseeing, in the Treaty of Amsterdam, the creation of a common asylum policy within the EU. The 1999 Tampere European Council conclusions called for a two-step process, with the adoption of community texts fixing minimum norms in the area of asylum as a preliminary to the adoption of a common asylum regime. With the adoption of directives laying down minimum standards for the reception of asylum seekers and rules for the recognition of refugee status, and a political agreement on a directive for asylum procedures, the European Union has completed the first phase of its asylum policy and this is certainly a welcome development.

Whilst the two adopted directives contain numerous positive provisions, notably regarding the rights of asylum seekers pending the determination of their status and the extension of refugee status to those persecuted by non-state actors, the proposed directive on asylum procedures sets the bar extremely low, permitting several of the potentially hazardous practices outlined above. It notably provides for the use of the notion of “safe third countries”, in virtue of which applicants can be returned to countries they have traversed or with which they have close ties and in which they are not at risk from persecution, following accelerated procedures without the possibility of appeal. The use of accelerated procedures, albeit with the right to appeal, for those from “safe countries of origin”, and, even more worryingly, the possible drafting of lists of “super safe countries of origin” for expulsion without the right to appeal are also permitted. The concern in all these cases is that individuals will be returned to countries without an adequate hearing in which the particular risks faced by the individual can be presented.

It is, indeed, to be recalled that these are minimum standards only and that much will depend on their implementation in each country. In the light of the practices observed by the Commissioner during his visits, it is, unfortunately, not difficult to conclude that the proposed directive has been drafted with the intention of permitting rather than curtailing established procedures which risk gravely prejudicing the rights of asylum seekers.

It is certainly to be hoped that procedures providing greater guarantees will be established as the European Union moves towards a common asylum policy. It is obvious, however, that the pressures on asylum systems throughout Europe will continue to be such as to prompt calls for restrictive controls for so long as the underlying migratory pressures are not addressed in a more coherent manner. The European Union is still some way from the elaboration of a comprehensive strategy in this area, a strategy that recognises the economic and political realities in the countries of destination, but also in the countries of origin.

Policy considerations of this nature are, however, beyond the mandate of the Commissioner. He can only observe the dramatic consequences of this systematic failure on the respect for the human rights of more and more individuals with each passing year.