

Mr Vitaly Portnov: Mr Hammarberg, they know you pretty well in the Russian Federation. Still, I would like to hear now directly from the Council of Europe Commissioner for Human Rights more detailed information about the activity of your Office.

Mr Thomas Hammarberg: In 2009, we will be marking the tenth anniversary of this Office. I am the second Commissioner for Human Rights. My predecessor, Mr Alvaro Gil-Robles, held the office for more than six years, and then I took the office in April 2006. We have tried to develop the content of our work, emphasising some aspects.

First, the Office is totally independent, even from the rest of the Council of Europe. This means that we have to act totally impartially without any political considerations in order to be effective and respected as an independent office.

The second emphasis is that we want to be very close to the real problems and not just sit here and philosophise about human rights situations. I spend very much time in travelling to all 47 member States of the Council of Europe. When I travel, I do not only sit and discuss various matters with the authorities. I go to prisons, to police stations, to psychiatric hospitals, to refugee camps, to places where minorities live, to shelters for battered women, to orphanages or centres for disabled children, etc., to all those places where human rights may be an issue.

I give special emphasis also to close relations with ombudsmen or other similar national institutions for human rights, which are independent. Likewise, I relate closely with the civil society, with non-governmental groups working for human rights as well. So, I know what they are doing and I listen to their advice and consult with them. My ambition is to try to learn as much as possible about the real situation in the area of human rights in a country before entering into dialogue, hopefully constructive, with those agencies of the government that have decision-making power.

So, dialogue is the third important element in my work. I want to have constructive relationship with governments based on good knowledge and on agreed human rights standards of the Council of Europe, such as the Convention for the Protection of Human Rights and Fundamental Freedoms and the European Social Charter. I listen to the representatives of governments but I am very principled when it comes to assessing the situation and the standards to be followed. I am not bound by assessments and judgments by the governments just because I sit and have a lot of talks with them.

After the visits, we publish our reports, so our activity is quite transparent in that sense. We do also publish thematic reports sometimes on the problems that we see in several



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HUMAN RIGHTS

member States of the Council of Europe. Moreover, I publish every fortnight a Viewpoint on a particular human rights theme, which I hope should lead to discussions in member States. That is basically my role and how I work. European Governments take seriously this Office because its work is impartial and based on agreed standards and facts.

Mr Vitaly Portnov: Thank you, it was very interesting. In that connection I would like to «throw a bridge» to the next question. In fact, your work is of information and recommendation nature. Is not it high time to vest the Commissioner for Human Rights with more effective leverage, which would enable the Commissioner in a certain situation to have an effect on a situation by way of taking binding decisions?

Mr Thomas Hammarberg: The only body within the Council of Europe to have a real judicial power is the European Court of Human Rights, whose decisions are binding for member States. The

Commissioner is a non-judicial institution who cannot deliver legally binding judgments on whether or not human rights obligations have been breached. Rather, I assist the various authorities of the member states in construing national solutions for the implementation of the Convention for the Protection of Human Rights and Fundamental Freedoms and also of the other Council of Europe human rights instruments. We have to convince the decision-makers; otherwise, there will be no impact of what we do. If we manage to do that through good quality work, we can have quite a lot of influence. So, if I were faced with a choice between more resources in order to do a good job and more formal power in order to make my recommendations binding, I would go for more resources because I think that the quality of the work is the most essential thing to achieve results.

Mr Vitaly Portnov: How do you perceive your role and place when the Protocol No. 14 to the Convention takes legal effect, considering the provision that the Commissioner for Human Rights has the right in fact to take part in any proceeding before the European Court of Human Rights?

Mr Thomas Hammarberg: The present situation is that I can already now make a third party intervention in the proceedings before the European Court, but I need an invitation by the President of the Court in order to do so.

The change with the adoption of the Protocol No. 14 would be that I shall have the right to come upon my own initiative to the European Court and present my views in the case. But this responsibility should be carefully handled. I should not take sides on the issue in a case before the European Court, but rather give an impartial third party intervention, bringing interesting and valuable information for the judges.

Mr Vitaly Portnov: That is to give an expert assessment?

Mr Thomas Hammarberg: Yes, really giving an expert assessment, but in doing so not to act as a second prosecutor or to be another defence or support lawyer for those who have complaints. The idea would be to give relevant information to the Court to assess the case itself and its broader implications. The added value of the Commissioner will be therefore his overview of the human rights situation throughout the Council of Europe membership and his knowledge of legal trends which may have an impact on the protection of human rights.

My knowledge about the countries is already on the public record and those who prepare the research element for the European Court preparing the proceedings know what I think from already published materials. But there may be situations where I could give some further background information to the judges. There would very very few cases where this would be relevant, especially in view of the fact that I should not take sides between the Government and the applicant.

I believe that the major value of the Commissioner for the European Court is not my participation in the proceedings but what I can do in my ordinary work in order to reduce the causes for people to feel that they have to complain to the Court. Therefore, my role should focus more on preventive contributions rather than interventions in case proceedings. The other major contribution I have to give to the Court is to assist in the implementation of the judgments that it has passed. And I do this in a number of cases already now, especially in key cases reflecting the need to make

changes in the law and changes in procedures, which also would be relevant in future possible cases.

Mr Vitaly Portnov: You have answered the question in a rather detailed way, thank you. Still I would like to clarify how do you view the selection of such cases to be examined by the European Court where the participation of the Commissioner for Human Rights is needed, considering that the Court handles very many individual cases that subsequently do not result in application of general measures?

Mr Thomas Hammarberg: When it comes to very individual type of cases, in particular those which are not of general nature, I do not think that the Commissioner should play any role at all, in light also of the explanatory report to Protocol No. 14. But if the complaint seems to reflect a broader problem then it begins to be more relevant for us to take an interest.

But again our main contribution would be what we can do actually outside the proceedings before the European Court, that it to work to prevent human rights violations and contribute to the respect of the Court's judgments in member States.

Mr Vitaly Portnov: Thank you very much indeed. I hope our meetings will continue and you will become our permanent author, that is the author who specially contributes to our journal.

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