

## **II. The Role of The Parliamentary Assembly of the Council of Europe in Defending Human Rights.**

**Communication from Mr Bruno HALLER, Secretary General of the Parliamentary Assembly of the Council of Europe, Havana Session (April 2001)**

### **Introduction**

There are periods in history where there is a clear consensus on the need for certain major projects. This was the case in 1949 with the establishment of the first European political organisation, the Council of Europe. Its aim was to reconcile and unify Europe, and bring peace and stability to its people after a number of fratricidal wars that had seen millions die and the total and systematic negation of human dignity. Its headquarters were established in Strasbourg, a city that had been disputed and fought over throughout its history and has now become a symbol of reconciliation and co-operation. The whole project was founded on the values of democracy, human dignity and the rule of law. They still underlie all the Council of Europe's activities.

Its Assembly, an emanation of national parliaments, was the pioneer parliamentary institution in Europe. It held its first session in August 1949 and its first recommendation to governments was to draw up the European Convention on Human Rights (ECHR).

Since then, the Assembly has been unstinting in its efforts to protect fundamental rights, firstly by seeking to extend the list of rights enshrined in the Convention itself, through the adoption of additional protocols, and then by producing specific proposals in related areas, such as social rights, the rights of minorities, combating torture, the right of asylum, conscientious objection, prisoners' rights, data protection, the elimination of discrimination and so on. More recently, the Assembly is increasingly concerned with overseeing the execution of judgments of the European Court of Human Rights. It has also

done outstanding work in the field in member states faced with crises involving serious human rights violations.

The Assembly is therefore both a standard setting body for human rights and a vigilant guardian of respect for those rights.

Naturally, the Assembly is not alone in promoting human rights in Europe. In the Council of Europe alone, the Committee of Ministers, committees of government experts and the Court and former Commission of Human Rights have all made major contributions to this cause. However, the Assembly, as pioneer in this field, has been the most determined and dynamic force for progress concerning human rights in Europe, and as such has largely fulfilled its role as the political body representing the peoples of Europe. It gave the decisive impetus to the establishment of a body of European human rights law. All its activities are guided by its commitment to opposing the arbitrary use of authority and supporting individual liberty.

## **A. The Assembly's Standard Setting Activities**

### **1. The launching of the ECHR**

Given the serious international tensions in 1949 and 1950 and the absence of any catalogue of human rights in the Council of Europe's Statute, the Assembly had to produce proposals that could command general agreement. It was essential to secure the rapid adoption of a European Convention guaranteeing fundamental rights with a supervisory machinery to protect them. The Assembly therefore decided, at least for the time being, not to seek the inclusion of social, economic and cultural rights in the draft document. It identified some ten civil and political rights of the 1948 Universal Declaration of Human Rights for inclusion in the European Convention:

- the right to security of the person;
- freedom of thought, conscience and religion;
- freedom of opinion and expression;
- the right of peaceful assembly;
- the right of association;
- immunity from arbitrary arrest, detention or exile;
- the prohibition of slavery or servitude;

- the prohibition of arbitrary interference with privacy, family, home or correspondence;
- the right to marry and found a family;
- the holding of free elections at reasonable intervals by universal suffrage and secret ballot.

The Assembly's approach was discerning and led to the signing of the ECHR in Rome on 4 November 1950. The Convention was the first great post-war legal text to be submitted to west European parliaments for approval and ratification.

## **2. The Assembly's major influence on the principles enshrined in the ECHR**

The Convention has certain distinguishing features:

- it was the world's and Europe's first legally binding catalogue of human rights and established an international system for enforcing these rights, which is unique;
- it constitutes a common denominator for all the democratic countries of Europe and its ratification is the main criterion for becoming and remaining a member of the Council of Europe, thus making a major contribution to human security and democratic stability throughout the continent;
- by offering the possibility of individual applications (even though this was originally optional), it enables persons of any nationality to refer their cases to the Convention's judicial bodies, after all domestic remedies have been exhausted, if they consider that their rights under the Convention have been violated by one of the contracting parties; it is worth noting that nearly 5% of applications now come from non-European citizens;
- from its inception, it is the cornerstone and legal foundation for the European unification process;
- it has played a pioneering role for other regions of the world.

With regard to the last point, from the outset the Convention has contained a clause authorising any contracting party to declare that it will apply to territories for whose international relations that country is responsible. For a certain number of years, this clause permitted the extension of the Convention's application to some forty non-European territories.

This probably goes some way to explaining why similar provisions to those of the ECHR are to be found in the constitutions of several non-European countries which became independent, ensuring that the Convention's influence is felt well beyond the frontiers of Europe.

### **3. Role in strengthening the political dimension of the ECHR**

From the outset, the Assembly sought to give the ECHR a political dimension. In its draft preambles, for example, it emphasised that maintaining fundamental freedoms depended on the existence of a genuinely democratic system of government and a common conception of and respect for these freedoms. More specifically, the Assembly wished to secure the inclusion in the Convention of a provision requiring states to respect not only citizens' political and civic rights but also the general principles of democracy. Eventually, such a clause was incorporated into the first protocol to the Convention; in particular, this requires governments to hold free elections at reasonable intervals.

At the end of the 1960s, drawing on the experience of the assumption of power by the Colonels in Greece in 1967, that led two years later to that country's withdrawal from the organisation, the Assembly called on the Committee of Ministers to amend the ECHR to grant it the right to lodge applications against contracting parties to the Convention with the European Court of Human Rights which had violated their obligations. The Assembly was unsuccessful in this attempt but it has twice recommended member states to apply Article 33 of the Convention as a matter of urgency and refer breaches of the Convention and its protocols by a member state to the European Court of Human Rights.

### **4. The Assembly's contribution to Protocols Nos 1 and 4 of the ECHR**

There have so far been five additional protocols (1, 4, 6, 7 and 12 - the last of which is not yet in force) extending the rights provided for under the ECHR. The Assembly has had a major influence on their drafting and content.

The first protocol, dating from March 1952, included:

- the right to property;
- the right to education;
- a "democratic" clause, under which the contracting parties undertake to hold free elections at reasonable intervals by secret ballot.

The Assembly had wanted these rights to be included from the start. However, this posed problems for certain member governments and to avoid delaying the adoption of the ECHR in Rome in November 1950 it was agreed to incorporate the aforementioned three rights in an additional protocol, whose signatories included Robert Schuman, Konrad Adenauer and Sir Anthony Eden.

Protocol No. 4 of the ECHR in 1963 takes extensive account of proposals previously made by the Assembly and adds the following rights:

- no deprivation of liberty merely on the ground of inability to fulfil a contractual obligation;
- freedom of movement and freedom to choose one's residence;
- prohibition of the expulsion of nationals and the collective expulsion of aliens.

### 5. The Assembly's campaign for the abolition of the death penalty **Protocol No. 6 of the ECHR**

The right to life stipulated in Article 2 of the ECHR is fundamental, since it is an absolute precondition for the enjoyment of the other rights laid down in the Convention. However, in its original version the ECHR contained a major limitation on the right to life since death could be inflicted in application of a sentence passed by a court in conformity with domestic law.

From the start, Assembly members committed themselves to defending human life and over the years the campaign to abolish the death penalty became one of the Assembly's priorities.

It took several recommendations and the more favourable climate for abolition of the early 1980s to persuade the Committee of Ministers to instruct a committee of experts to draw up an additional protocol abolishing the death penalty in peacetime. This protocol - probably the most significant in terms of human dignity - was opened for signature in 1983 and the Assembly then set

about securing its signature and ratification by all the member states. In practice, Western Europe has been free of capital punishment since 1984.

In 1989, with the Council of Europe's enlargement to Eastern Europe, where several types of capital offence remained and the death penalty was still applied, the Assembly once more found itself confronted with the reality of capital punishment. It used its authority in relation to the accession procedure to make the introduction of a legal or *de facto* moratorium on the application of the death sentence a political precondition of Council membership. In view of the difficulties in the countries concerned, it undertook public awareness campaigns in several of them. As a result of its ceaseless efforts, in late 2000 the Assembly's Committee on Legal Affairs and Human Rights was able to conclude that Europe was about to become a death penalty-free continent.

Currently, all the member states have ratified Protocol No. 6, with the exception of Armenia, Russia and Turkey, which however apply a moratorium. Azerbaijan has abolished the death penalty but has not yet ratified the protocol.

Since the early 1990s, the Assembly has also been campaigning for the abolition of the death penalty in war-time, in other words for its complete abandonment.

The Assembly's initiatives have recently received the significant support of member states. The ministerial conference on human rights in Rome on 3 and 4 November last year invited the Committee of Ministers to consider the possibility of a new protocol to the Convention excluding the option of maintaining the death penalty for acts committed in time of war or of imminent threat of war. The Swedish delegation to the Committee of Ministers has already presented a draft protocol on the subject. Also in November 2000, the organisation's foreign ministers adopted a declaration entitled "for a European death penalty-free area".

## **6. The Assembly's contribution to Protocols Nos 7 and 12**

Protocol No. 7 was opened for signature in 1984 and is also the fruit of Assembly initiatives, in the form of proposals to add to the ECHR a number of new rights already enshrined in the constitutions of most of the organisation's member states and/or in the United Nations Covenant on Civil and Political Rights.

Five new rights were included in the protocol, concerning:

- aliens' right of residence;
- the right to compensation for judicial errors;
- the right of everyone convicted of a criminal offence by a tribunal to have his conviction or sentence reviewed by a higher tribunal;
- the right not to be tried or punished again in criminal proceedings under the jurisdiction of the same state for an offence for which the individual has already been finally acquitted or convicted (*ne bis in idem*);
- equality of rights and responsibilities between spouses during marriage and in the event of its dissolution.

The Assembly also played a major role in extending the protection against discrimination granted by the Convention (Art. 14), which was fairly limited. It took some time before this concept asserted itself. Following prompting from the Assembly, Protocol No. 12 was opened for signature in November 2000. It stipulates that no one shall be discriminated against by any public authority on any ground.

## **7. Assembly activities to increase human rights protection through other instruments than the ECHR**

### *a. Defending social and economic rights in Europe*

Once the ECHR had come into force in 1953, the Assembly turned its attention to the protection of social and economic rights. In view of governments' reluctance to incorporate them in the Convention, it favoured the drafting of a legal instrument specifically for that purpose. There was much resistance and it was not until 1961 that the European Social Charter - which has since become a genuine counterpart to the ECHR - was opened for signature. In the employment field, the Charter provides for:

- non-discrimination in employment;
- the right of association and to bargain collectively;
- equal treatment for migrant workers.

In the field of social cohesion the Charter protects:

- the right to social security;
- the right of children and young persons to protection;
- the right of migrant workers and their families to protection and assistance.

The Assembly then turned its efforts to urging member states to ratify the Charter and encouraging them to recognise as many provisions as possible. It also presented the Committee of Ministers with a wide-ranging action plan to promote the Charter, revise its content and improve its supervisory machinery, thereby strengthening its political influence and institutional role in the social field.

The first protocol to the European Social Charter, opened for signature in 1988, added four new rights, partially inspired by the Parliamentary Assembly:

- the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on grounds of sex;
- workers' right to be informed and to be consulted within the undertaking;
- workers' right to take part in the determination and improvement of working conditions and working environment in the work place;
- the right of elderly persons to social protection.

In 1991, a protocol amending the European Social Charter improved the Charter's supervisory system, broadly reflecting the wishes of the Assembly. Both the Committee of Ministers' and the Assembly's role in the supervision process were revised. The former was authorised to address recommendations directly to individual governments while the Assembly became the Charter's political body concerned with stimulating and organising debate.

The Assembly also proposed the establishment of a collective complaints procedure, similar to that existing in the International Labour Organisation. This led to the 1995 Additional Protocol to the Charter providing for a system of collective complaints for employers' organisations, trade unions and certain non-governmental organisations.

A political assessment of the Charter and a report on its future produced by the Assembly made a major contribution to the drafting of the revised Social Charter, which was opened for signature in 1996. This is a complete treaty bringing together in a single instrument all the rights enshrined in the 1961 Charter and the 1988 protocol, together with a number of new ones. The Assembly had also proposed calling the new version the "European Charter of Social and Economic Rights".

In 1998 and 1999, the Assembly once more turned its attention to the future of the European Social Charter as:

- the social benchmark for all of the Council of Europe's activities;
- a basis for drafting new legislative and contractual instruments, both national and European, to facilitate the political and social management of the changes under way.

It launched a campaign to encourage the new member states from central and eastern Europe to ratify the Charter and in 1998 decided to include signature and ratification in the list of candidate states' undertakings on accession. It also recommended that the Committee of Ministers:

- provide for governments to lodge complaints when a contracting party is in breach of one of the Charter's mandatory core provisions;
- incorporate certain Charter rights in the ECHR;
- set up a European court of social rights to enforce respect for Charter requirements.

In June 1999, the Assembly repeated its call for rights enumerated in the European Social Charter to be included in the ECHR and asked the Committee of Ministers to produce an additional protocol on fundamental social rights.

Although this proposal still faces considerable opposition, its time will probably come. At all events, the Assembly will not slacken its efforts to achieve this goal. The European Social Charter is a major component of Europe's system of values and makes a significant contribution to strengthening and disseminating the European social model.

### ***b. Contribution to the European Convention for the Prevention of Torture***

In 1983, the Parliamentary Assembly presented the Committee of Ministers with a draft European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. It was opened for signature by the Committee of Ministers in November 1987. The Assembly had taken this step because the ECHR could only be used to highlight and condemn acts of torture once an individual had already become a victim. A preventive system of protection was therefore needed. Moreover, since the majority of acts of torture were committed in places of detention, it had to be possible to visit the latter on a regular basis and without prior warning. Therefore the Convention's main innovation was the creation of a committee with powers to visit any location within contracting parties' jurisdiction where persons were deprived of their liberty by the authorities.

The Assembly also took the political decision to make ratification of the Torture Convention one of the undertakings to be entered into by new member states of the Council of Europe. This led to the Convention's ratification and implementation by a growing number of central and east European states, contributing greatly to improving detention conditions in these countries.

It is also interesting to note that a 1993 protocol allows non-member states to accede to the Convention.

*c. The Parliamentary Assembly and the protection of national minorities*

The Assembly has long been concerned with protecting minority rights and has campaigned for the Council of Europe to formulate principles that states should abide by in a spirit of tolerance, based on the idea that diversity is a source of mutual enrichment, and that enforced assimilation is unacceptable. With the advent of democracy in central and eastern Europe, the Parliamentary Assembly and other Council of Europe bodies, such as the Congress of Local and Regional Authorities of Europe and the Venice Commission for Democracy through Law, have stepped up their activities concerned with protecting minorities and other related issues (for example, the Charter for Regional or Minority Languages). Minority problems that for years had been neglected or ignored by these countries' authoritarian regimes now forced themselves on public attention and required close co-operation and consultation between the Assembly and the emerging democracies.

In 1990, the Assembly proposed that the Committee of Ministers draw up a special convention to protect the rights of minorities, based on a list of international standards, whose recognition was essential if they were to receive adequate protection. Further Assembly initiatives, in particular Recommendation 1201 (1993), and the positive attitude adopted by the Summit of Heads of State and Government in Vienna in 1993 helped to secure the preparation of the Convention for the Protection of National Minorities, which was opened for signature in 1995. Recommendation 1201 offers a good illustration of how the "soft law" represented by Assembly adopted texts can have a direct impact on international law. This Assembly recommendation is actually explicitly referred to in several bilateral treaties of co-operation and good neighbourliness concluded since 1993, such as the one between Slovakia and Hungary.

The Assembly's inclusion of the Framework Convention in the political conditions for Council membership has contributed to the rapid increase in the number of contracting parties (currently 33).

In January 2001, the Assembly held a debate on the rights of national minorities, and called on the Committee of Ministers to:

- draft a protocol to the ECHR on the rights of national minorities, which would include a definition of national minority;
- draft an additional protocol to the Framework Convention for the Protection of National Minorities giving the European Court of Human Rights or

a general judicial authority of the Council of Europe the power to give advisory opinions concerning the interpretation of the framework convention.

In making these requests, the Assembly reaffirmed its view that adequate protection for the members of national minorities and their communities is an integral aspect of human rights protection and is the only way for countries to reduce ethnic tensions that might otherwise lead to major conflicts. The Assembly also, on that occasion, criticised several Council of Europe member states for denying the existence of national minorities and the fact that many European minorities were did not receive adequate protection.

### *d. The Assembly, human rights and biomedicine*

The Council of Europe and its Assembly are always on the look-out for legal vacuums in areas with human rights implications. Since the 1980s, it has been very concerned with the ethical problems connected with medical and biological progress which were a source of public disquiet. The Assembly's purpose in examining these issues has been to respond to public expectations and offer the Committee of Ministers and national parliaments guidelines for their standard-setting activities in this area.

Its first reports were on genetic engineering, and the use of embryos and human foetuses for diagnostic, therapeutic, scientific and commercial purposes. In 1991, it recommended that the Committee of Ministers draw up a framework convention setting out common general standards for the protection of human beings in the context of the development of biological sciences and supplement these with additional protocols on specific aspects, such as medical research, organ transplants and the protection of the human embryo and foetus.

This Assembly initiative was reinforced by a proposal from the European Ministers of Justice, persuaded the Committee of Ministers to give the green light to a convention on human rights and biomedicine. The first draft convention submitted to the Assembly in 1994 for an opinion provoked strong criticism from specialist groups, churches and national parliaments. It did not enjoy the support of the Assembly, which proposed several amendments. Four drafts were eventually necessary before the convention was finally opened for signature in 1997. This is a good illustration of how, by joining forces with leading sections of society, the Assembly can have a significant impact on a major European convention.

Since then, the relevant Assembly committees have continued to explore biomedical issues and in April 2001 it will debate an opinion to the Committee

of Ministers on a protocol concerning organ transplants and tissues of human origin. Another debate will concentrate on the protection of the human genome.

*e. Activities to promote equality between men and women*

Equality between men and women has always been one of the Assembly's priorities. Its approach has been to strengthen the safeguards for equality offered by the ECHR and secure better representation for women in politics. In 1998, the Assembly set up a new Committee on Equal Opportunities for Women and Men which was retained after the major restructuring of the Assembly committee structure in 2000. The creation was all the more justified in response to discrimination, violence against women and other topical issues, such as domestic slavery, which call for new Assembly initiatives.

The new Protocol No. 12 to the ECHR on non-discrimination is likely to give fresh impetus to the Council's and the Assembly's efforts to secure equality of the sexes and is clearly a step in the right direction. For the record, in its Recommendations 1229 (1994) and 1269 (1995), the Assembly recommended that the Committee of Ministers "include the principle of equality of rights between men and women in an additional protocol to the European Convention on Human Rights".

*1. The Assembly's commitment to protecting other rights*

The Assembly continues to campaign, for the inclusion of other rights, such as those concerning asylum, children and conscientious objection to military service, in the ECHR. It was largely thanks to the Assembly's efforts in support of conscientious objection that the Committee of Ministers adopted a recommendation to member states on this subject in 1987. The relevant Assembly committee is currently preparing a new report on this topic.

**8. The Assembly and measures to strengthen the ECHR protection machinery**

*a. Reforming the Convention's supervisory machinery*

Once the ECHR had come into force in 1953, the Assembly concentrated on three objectives:

- encouraging contracting parties to the Convention to accept its optional clauses (recognition of the Court's jurisdiction and acceptance of individual applications);

- ensuring that applications declared admissible by the European Commission of Human Rights always came before a judicial body (the Court) rather than a political one (the Committee of Ministers);
- facilitating access by plaintiffs to the Court.

As far as west European member states are concerned, the first objective was achieved in 1990. However, the Council's enlargement led to a tripling of the number of Convention contracting parties compared with the 1950s, making reform of the supervisory machinery even more urgent.

The entry into force on 1 November 1998 of the 11th additional protocol to the ECHR was the culmination of the Assembly's long campaign for a fully judicial system for protecting the rights laid down in the Convention. It entailed the following changes:

- the former non-permanent Court, the European Commission of Human Rights and the Committee of Ministers, in its role of subsidiary decision-making body on applications, have been replaced by a new permanent European Court of Human Rights;
- the right to lodge individual applications and acceptance of the Court's jurisdiction are now obligatory;
- individuals can apply directly to the Court.

This was not easy to achieve, on account of wide differences of approach between member states.

Rather than establish a single Court, some wanted to transform the European Commission into a court of first instance. In October 1992, the Assembly helped to break the deadlock by adopting Recommendation 1194 which:

- stressed that reform of the Convention machinery could not be delayed;
- invited the Committee of Ministers to give clear preference to the creation of a single court as a full-time body.

This Recommendation received a positive response from the Committee of Ministers since it came at a politically opportune time, during the preparatory work for the Vienna Summit of October 1993, which confirmed the decision to establish a single Court.

### ***b. The problem of the Court's excessive workload***

Despite the entry into force of the 11th Protocol, which was meant to ease congestion of the Convention's supervisory system, the number of applications continues to rise. There were 2000 in 1993, 8400 in 1999 and 10 500 in 2000;

once all European countries have become contracting parties it is thought that the figure could reach 20 000 applications a year. Steps must be taken to enable the Court to deal with the backlog of cases, including financial measures. The Committee of Ministers and the Parliamentary Assembly are preparing proposals to resolve these problems and a report by the Committee on Legal Affairs and Human Rights will be discussed at the next plenary session.

*c. Electing judges*

Under the ECHR, as revised by the 11th Protocol, judges at the European Court of Human Rights are elected by the Parliamentary Assembly in respect of each High Contracting Party by a majority of votes cast from a list of three candidates nominated by each High Contracting Party. The same procedure applies following ratification of the Convention by new member states. Judges' normal term of office is six years, and they may be re-elected. Lists of candidates received by the Assembly are examined by a special sub-committee of the Committee on Legal Affairs and Human Rights, which interviews each candidate and then prepares a report, with recommendations. After the Bureau of the Assembly has taken note of the report, it is distributed to all the members of the Assembly. This procedure enables members to ensure that judges are properly qualified and on the occasion of the first election in 1999 the sub-committee asked several Contracting Parties to revise their list.

Furthermore, the Assembly submitted proposals to the Committee of Ministers aimed at improving national procedures for selecting and nominating candidates. Finally, the Assembly attaches great importance to the presence of female candidates.

## **9. The Assembly and execution of judgments of the European Court of Human Rights**

When the Council of Europe celebrated its 25th anniversary in 1974, the Court had delivered fewer than 20 judgments. Twenty-seven years later the figure had risen to almost 2000.

Before 1989, execution of the Court's judgments did not raise any particular problems, even though countries were sometimes slow to carry out the reforms to their legislation that certain judgments required.

However, more recently, the Court has had to make an increasing number of rulings on cases with a political dimension or cases whose final resolution calls for comprehensive action by the governments concerned.

Moreover, the Court sometimes awards applicants high financial damages.

It is hardly surprising therefore that the execution of judgments is posing more problems and the Assembly considers that failure to execute certain judgments poses a threat to the Convention's achievements over the last fifty years. Since 1997, members of the Assembly have directed more and more questions on this subject to the Committee of Ministers particularly during part-sessions. Finally, in September 2000, the Assembly adopted a recommendation asking the Committee of Ministers to:

- be stricter towards member states which fail in their obligation to execute decisions of the Court;
- amend the Convention so as to give the Committee of Ministers the power to ask the Court for a clarifying interpretation of its judgments in cases where the execution gives rise to reasonable doubts and serious problems regarding the correct mode of implementation;
- amend the Convention to introduce a system of daily fines for a delay in performance of a legal obligation, to be imposed on states that persistently fail to execute a Court judgment;
- instruct the Secretary General to reinforce and improve his technical assistance programmes;
- keep the Assembly informed of progress in the execution of judgments, in particular by more systematic use of interim resolutions setting a timetable for carrying out the necessary reforms.

Since then, there has been a certain amount of progress. In its Resolution 1226 (2000), also adopted in September 2000, the Assembly decided to:

- keep a permanent updated record of the execution of judgments of the Court and hold regular debates about the execution of judgments, on the basis of this record;
- adopt recommendations to the Committee of Ministers, and through it to the relevant states, concerning the execution of certain judgments, if it notices abnormal delays;
- consider as a reason to open a monitoring procedure the case of a member state refusing to implement a decision of the Court.

### **10. "Modernisation" of the ECHR**

The Assembly's Committee on Legal Affairs and Human Rights is currently drawing up a report on "adapting the ECHR to current needs - introducing

new rights". In particular it is considering how the Convention can take more account of:

- human dignity;
- the right to free elections;
- the right of asylum;
- protection against damage to the environment;
- the right to education;
- the right to data protection;
- the non-patentability of the human body, including the genome;
- the right to conscientious objection;
- the total abolition of the death penalty;
- the rights of minorities;
- social rights;
- equality of the sexes.

## **B. The Assembly and Non-legislative Means of Improving the Protection of Human Rights**

### **1. Relations between the Assembly and specialised bodies of the Council of Europe**

Faced with the difficulties raised by the inclusion of new rights in the ECHR and the limits of traditional forms of intergovernmental co-operation, the Assembly has initiated or supported moves to set up specialised bodies. These include the European Commission against Racism and Intolerance, the European Commission for Democracy through Law and the Commissioner for Human Rights.

#### *a. The European Commission against Racism and Intolerance (ECRI)*

By holding regular debates on the dangers of racist propaganda and anti-Semitism, the Assembly was responsible for the groundwork leading to ECRI's inception, decided at the First Summit of Heads of State and Government of the Council of Europe (Vienna, 1993). The Commission assesses the effectiveness of

existing national and international measures to combat racism, xenophobia, anti-Semitism and intolerance, strengthens them where necessary and encourages prevention and awareness-raising campaigns in member states. Under the slogan "All different, all equal", ECRI's work led in October 2000 to the organisation in Strasbourg of the European Conference against Racism and Intolerance, which prepared a European contribution to the United Nations Conference to be held later this year in South Africa. The Assembly has always emphasised in this context that Europe and the UN must share a common goal of promoting greater understanding between cultures and ethnic and religious groups.

*b. The European Commission for Democracy through Law (Venice Commission)*

Established following an Italian initiative, the Venice Commission examines constitutional, legislative and administrative measures in terms of the contribution they can make towards consolidating the fundamental principles of the Council of Europe. While it concentrates in particular on justice and constitutional reforms, it also has a role to play in bringing peace to European conflict zones. The Assembly regularly asks the Commission for its opinion, often in connection with matters concerning human rights (such as the compatibility of the death penalty with national constitutions and the participation of minorities in public life).

*c. The Council of Europe Commissioner for Human Rights*

Although the post of European Commissioner for Human Rights was established in 1999, Assembly members first proposed it as long ago as January 1972. The Commissioner is a non-judicial institution which promotes education in and awareness of human rights as well as their observance and enjoyment as specified in Council of Europe instruments. The Assembly has co-operated closely with the Commissioner who will present his first progress report to the Assembly session in April 2001.

## **2. Assembly examination of the human rights situation in member states and its response to serious violations of these rights**

*a. Background*

The Assembly has consistently laid claim to the right and legitimacy to judge whether member states continue to comply fully or not with the human

rights standards expected of them. In 1951 the Committee of Ministers gave implicit recognition to this right when it decided to consult the Assembly before inviting a State to become a member of the Council or to withdraw from the Organisation under Article 8 of the Statute.

Where the values embodied in the Organisation's Statute are flouted the Assembly always has given proof of its commitments to human security and democratic stability. Unfortunately, prior to 1989 the Council had to deal with such crises in Europe on several occasions. In the radically new circumstances prevailing since the end of the Cold War, the Assembly has pursued its mission of safeguarding freedom and democracy, and there has been no shortage of conflict and crisis situations and ensuing violations of human rights.

Two of the Assembly's strengths are the flexibility of its working methods and its wealth of experience. It was responsible for giving practical form to the concept of parliamentary diplomacy. Assembly members are able to bring about the necessary conditions for negotiation and mediation between different political forces, and they sometimes succeed where governments have failed. What is more, the Assembly is always willing to listen, encourage dialogue and provide support.

Another strength is the frankness of the Assembly's discussions and the pluralist character of its debates. Thus, Ms Leni Fischer, then President of the Assembly, declared at the Second Summit of the Council in 1997: "There are constant violations of human rights in our member states, and even torture and executions. The separation of powers continues to be infringed, the press is muzzled, minorities are oppressed, freedom of religion is flouted and opposition parties are the subject of undemocratic attacks. We cannot just sweep such facts under the carpet in order to retain 'family harmony'. Families must be able to speak the truth, and the truth sometimes hurts."

### *b. The situation before 1989*

Prior to 1989, the two most significant crises in Council member states concerned the Greek colonels' regime from 1967 to 1974 and the assumption of power by the Turkish generals between 1980 and 1984. In the first instance, the pressure brought to bear by the Council, and the Assembly in particular, was such that Greece withdrew its membership. In the second case, it has been generally acknowledged that, in addition to the interstate application lodged against Turkey with the European Commission of Human Rights by a group of several European states, the Parliamentary Assembly's debates and repeated criticism were instrumental in the gradual return to democracy in that country. In both cases the Assembly appointed members (rapporteurs) to

examine the situation at first hand and commissioned reports from recognised experts.

*c. Assembly activity since 1989*

(i) Innovative responses to the new situation

Since the Council of Europe opened its doors to the east, the Organisation and the Assembly have been far more active on the ground in both member states and applicant countries in the defence of human rights.

When the Berlin Wall came down, the Council of Europe suddenly received a large number of membership applications from new democracies wishing to benefit from European unification. This rush of applications from countries in democratic transition and the desire to welcome them so that human rights protection might be extended to the entire continent combined to bring about an unfamiliar new situation. The Assembly reacted with courage and with a political vision. It found itself in the front line as the Committee of Ministers referred to its membership applications as they stood, at least in the beginning. In order to familiarise politicians in the new democracies with its own workings, those of the Council and the criteria set for membership, the Assembly created a new special guest status for national parliaments from applicant countries. In the interests of maintaining the Council's standards and preserving its legislative "acquis", the Assembly was also obliged to extend and adapt the political conditions for admission to the Organisation. In 1991 it took the decision to ask legal experts to look into the compatibility of applicant countries' human rights situations and legal systems with Council norms. Wishing to standardise the preparation of its opinions on membership applications, in 1993 it began to address a list of commitments to be accepted by the national authorities in applicant countries. They often included requests to introduce specific reforms. In order to guarantee the honouring of commitments thus entered into, in 1993 it also introduced a monitoring procedure, thereby once again demonstrating its political acumen and creativity. This last initiative was welcomed by the First Council of Europe Summit in October of that year, which reaffirmed the need to ensure that undertakings made were respected in full.

In conducting the necessary investigations in connection with requests for special guest status, membership applications and the monitoring procedure, Assembly representatives have had to visit applicant countries for talks and negotiations with senior members of national parliaments and government leaders. Human rights issues are of particular importance in this context. This

"field work" has enabled the Assembly to extend the Council's legislative "acquis" to almost the entire continent. When handling membership applications, the Assembly has required the countries concerned to strive to prevent or overcome conflict through peaceful measures entailing respect for human rights. As far back as 1993, during debate on the Assembly opinion concerning the Czech Republic's application for membership, the Assembly adopted the following amendment: "[The Assembly] attaches great importance to the political implications of the obligations arising from membership of the Council of Europe with regard to the solving of problems by means of political dialogue. Membership also implies readiness to settle by dialogue and negotiation any question arising in the relationship between member states".

Since that time a similar clause is included in all Assembly opinions on applications for membership. It is also worth mentioning that the report on which the Opinion on Russia's request for membership is based, contains a detailed section on areas of political or military tension, including the human rights situation in Chechnya and the respect of international humanitarian law. More recently, in its Opinions on Armenia's and Azerbaijan's requests for membership the Assembly took note of the commitments to continue efforts to settle the Nagorno-Karabakh conflict by peaceful means only. Moreover, the Opinion concerning Armenia takes up that country's commitment to use its considerable influence over the Armenians in Nagorno-Karabakh to foster a solution to the conflict. It is also to be noted that the President of Armenia undertook vis-à-vis the Assembly to respect the cease-fire agreement concerning Nagorno-Karabakh until a final solution is found to the conflict.

It goes without saying that the Assembly is aware of the importance of dialogue - including critical dialogue - co-operation and technical assistance if progress is to be made in connection with the monitoring of commitments. For this reason, since 1989/90 both the Council of Europe and the Assembly developed co-operation and assistance programmes for the new democracies.

### (ii) Assembly missions since 1989 to European countries in crisis

It is impossible to mention in detail the numerous visits conducted to the field in support or defence of human rights by Assembly delegations. However, it is worth drawing attention to a few examples.

- Parliamentary troikas

In difficult situations the formula of "parliamentary troikas" was developed between the Parliamentary Assemblies of the OSCE, the Council of Europe and

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the European Parliament. This was the case when the institutions of the Albanian state system collapsed in early 1997 and when it was decisive to coordinate action for the preparations for the elections in June and July of that year. The troika went on the ground and observed the elections which marked the start of the country's return to political stability.

Another troika in existence since 1998 consists of representatives assembled from the same three bodies to monitor the situation in Belarus. The troika visited the country at the time of the October 2000 general elections in order to lend its support to the development of democracy in Belarus, particularly in view of the presidential elections scheduled for autumn 2001. Owing to the situation in Belarus, the national parliament's special guest status has been suspended since January 1997.

A further such troika is planned in order to bring a parliamentary dimension to the Stability Pact for South-Eastern Europe.

- Assembly activity in Kosovo and relations with the Federal Republic of Yugoslavia

The Assembly supported the choice made by the population of the Federal Republic of Yugoslavia (FRY) in the September 2000 elections in favour of freedom, democracy and the rule of law. It favours setting up a joint "European Task Force" to help the country make the transition to genuine democracy. In December 2000 the Assembly observed the elections in Serbia, and in January 2001 the Bureau of the Assembly granted special guest status to the FRY Parliament. The Yugoslav application for Council membership has been referred to the relevant Assembly committees.

The Assembly is closely monitoring the political situation in Kosovo in accordance with Resolution 1244 of the United Nations Security Council. It will invite Mr Haekkerup, the Head of UNMIK, to its debate on Kosovo in April 2001. In 2000 the Assembly held an exchange of views with Mr Haekkerup's predecessor, Mr Kouchner.

- Activity in northern Caucasus

The Assembly is continuing its efforts to restore the rule of law and respect for human rights to the Chechen Republic. It places particular emphasis on the need for proper legal and humanitarian follow-up to the thousands of applications received by the Office of Mr Kalamanov, the Special Representative of the President of the Russian Federation for human rights and freedoms in the Chechen Republic.

The Assembly decided in April 2000 to withdraw the voting rights of members of the Russian delegation. The chief criticism voiced during the debate leading to this decision was that a large majority of the Russian delegates defended without any nuances their government's intransigent stance. Following further debate and fresh visits to Russia and the Chechen Republic, the Assembly decided in January 2001 to restore the Russian delegation's right to vote. This did not of course mean that the Assembly was prepared to overlook the flagrant abuses of human rights or the humanitarian situation in Chechnya. The change in the Assembly's position was motivated in particular by a fresh attitude on the part of the Russian Assembly members, which had already shown itself during a Russian parliamentary hearing attended by an Assembly delegation in September 2000, in the course of which State Duma members had severely criticised their government and demanded immediate improvements to the situation in Chechnya. The Assembly's decision to lift sanctions also took account of the stance of certain Duma members who had been consistently critical since the start of the Chechen conflict.

At the same time as it restored the Russian delegation's voting rights, the Assembly decided to set up a joint working group between its members and representatives of the Duma. This group is responsible for permanent monitoring of the progress made in implementing the Assembly recommendations on the Chechen conflict and the recommendations made by members of the Duma at the close of the September 2000 hearing in Moscow concerning the human rights situation and the overall reconstruction effort. Never before had the Assembly set up such a joint working group with a delegation from a national parliament.

- Assembly activity in western Europe

Assembly activity since 1989 has not been limited to problems affecting eastern Europe. In 1994 it also offered to co-operate with Turkey on the Kurdish question in particular.

In September 1994 the President of the Assembly and the chairpersons of the political groups undertook a visit to Turkey as a high-level political delegation. In addition to the Kurdish question, the delegation addressed certain everyday concerns relating to human rights and democratic freedoms, as well as a number of legal and constitutional issues, some of which had been inherited from the period of martial law in Turkey.

The delegation held in-depth talks with representatives of the Turkish Parliament, the Prime Minister, the Deputy Prime Minister, the Minister of Foreign Affairs and the Minister of Justice. The visit was thus a practical

example of parliamentary diplomacy, and the various Turkish political leaders gave undertakings to the delegation. Although most of these commitments were not met until the second half of 1995, the September 1994 mission was the starting point for reforms in line with the Assembly's wishes. Since April 1996 the honouring of Turkish commitments and obligations towards the Council of Europe has been the subject of a monitoring procedure.

- (iii) Assembly statements concerning serious human rights violations outside Europe

The situations in which Assembly members have stood up for human rights in non-European countries are too numerous to mention. A case in point is the situation in East Timor, which the Assembly has been monitoring since the 1970s. Through a 1991 resolution, the Assembly strongly criticised the continual grave violations of human rights which the Indonesian occupying forces had inflicted on the people of East Timor. It demanded that the Indonesian government end all violations of international instruments establishing human rights. In 1999 it again intervened by way of a recommendation to the Committee of Ministers of the Council of Europe. Among other charges, the Assembly explicitly condemned human rights violations in East Timor, notably the attempt to eliminate the people and their identity. The Committee of Ministers too adopted a public declaration concerning East Timor.

*d. Observation of national elections: an effective mode of intervention in the field*

Prior to 1989, Assembly representatives played a very infrequent role in election observation - an exception being for example, the November 1974 elections in Greece. However, since the Council of Europe opened up to the east it has become a current practice. This development is not surprising, as the Assembly has always stressed the importance of free elections both for democracy and as a criterion for Council of Europe membership. It was thanks to the Assembly that the first protocol to the ECHR incorporated a "democratic clause" obliging Contracting Parties to hold free elections by secret ballot. Election observation by the Assembly is often accompanied by practical measures to assist the new democracies to prepare elections and ensure that they run smoothly. It has thus helped to establish a secure democratic tradition in these countries. The Bureau of the Assembly recently agreed that observer delegations could monitor election campaigns more closely and offer their assistance in dealing with complaints received afterwards.

Although elections are generally problem-free, in some cases they give rise to serious concerns which are covered in reports submitted to the plenary Assembly.

The last such case concerned the general elections in Azerbaijan in early November 2000, where the Parliamentary Assembly and OSCE observers identified some serious irregularities. The Assembly consulted the Committee of Ministers about these problems, and Azerbaijan was accepted as a member of the Council only after the elections had been re-run in eleven out of the 99 electoral districts.

*e. Assembly action on behalf of individual human rights*

The Assembly regularly turns its attention to alleged violations of individual rights. Its Rules of Procedure provide for a right of petition which however only has a limited role in this field because of the system of individual applications under the European Convention on Human Rights. Recently, however, petitions concerning property disputes resulting from World War II were referred to the relevant committees by the Bureau of the Assembly.

As early as the 1960s the Assembly took steps to secure respect for the rights of members arrested on political grounds by the authorities of member states. There have also been cases in which the President, speaking on the Assembly's behalf, has requested clemency for defendants in political trials or politicians sentenced to death.

Assembly members raised the matter of the Swedish diplomat Raoul Wallenberg, who disappeared at the end of World War II. This led in 1991 to a report by the Committee on Legal Affairs and Human Rights and the adoption of an Assembly resolution. The case of the author Salman Rushdie also became the subject of written declarations by Assembly members; in 1994 Rushdie addressed the Standing Committee meeting in London.

Since the Council's eastward expansion, Assembly members have concerned themselves with the fate of a number of politicians, among them Fatos Nano, an Albanian MP, and Andrei Lukanov, a Bulgarian MP. More recently, it has campaigned for political prisoner in Transnistria, and Mr Ilascu in particular.

A motion for a resolution on political prisoners in Azerbaijan has been referred to the Assembly's Committee on Legal Affairs and Human Rights.

The Assembly has also been monitoring developments in the trial in Turkey of Mr Öcalan.

### Conclusions

The history and practice of the Parliamentary Assembly show that parliamentary institutions can play a central role for all that constitutes the human dimension of European integration.

The European institutions have contributed to the considerable progress made by human rights on our continent. As regards the Council of Europe, as of May 1998 the ECHR had been ratified by all member states for the first time since the Organisation opened its doors to eastern European countries. In 2000, again for the first time, the number of applications received by the European Court of Human Rights from central and eastern European countries exceeded that of applications from western Europe. In November 1998, the entry into force of Protocol No. 11 to the ECHR (setting up a single Court) represented the most important reform made to the Convention's supervision machinery. With one exception only, the ECHR may be advocated in the courts of all Council of Europe member states. In 1999 the Council established the post of Commissioner for Human Rights.

The Rome Ministerial Conference on Human Rights, held in November 2000, gave fresh impetus to the Council of Europe in this field.

It is also to be hoped that improved co-operation between the Council and the United Nations and the development of the Council's external relations, in particular through its granting of observer status to non-European states, will increase the impact of the ECHR on the world stage.

For its part, through its untiring commitment to the defence of human rights, the Parliamentary Assembly of the Council of Europe:

- has encouraged public support for human rights protection and taken advantage of this support to wage a determined campaign against the threats facing democratic society;
- has made a key contribution to the effectiveness of the supervision machinery established by the ECHR.

The Assembly can thus boast impressive results in its efforts to maintain the Council's credibility in achieving its primary goal of defending human rights.

# **ASSOCIATION OF SECRETARIES GENERAL**

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The Association of Secretaries General of Parliaments, constituted as a consultative body of the Inter-Parliamentary Union, seeks to facilitate personal contacts between holders of the office of Secretary General in any Parliamentary Assembly, whether such Assembly is a Member of the Union or not.

It is the task of the Association to study the law, procedure, practice and working methods of different Parliaments and to propose measures for improving those methods and for securing co-operation between the services of different Parliaments.

The Association also assists the Inter-Parliamentary Union, when asked to do so, on subjects within the scope of the Association.

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Palais-Bourbon  
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