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## **8<sup>th</sup> ROUND TABLE OF EUROPEAN OMBUDSMEN**

**Oslo, 3-5 November 2003**

### **FINAL DOCUMENT**

**adopted by the ombudsmen of Council of Europe member States  
in conclusion of the Round Table**

**Round Table organised jointly by  
the Norwegian Ombudsman and  
the Council of Europe Commissioner for Human Rights**

1. At the joint invitation of the Norwegian Parliamentary Ombudsman, Arne Fliflet, and the Commissioner for Human Rights of the Council of Europe, Alvaro Gil-Robles, the national ombudsmen of Council of Europe member States met for the 8<sup>th</sup> Round Table of European Ombudsmen in Oslo on 3-5 November 2003. The European Ombudsman, the Petitions Commission of the German Parliament, the Mexican National Commission for Human Rights and the Office of the Ombudsperson of Kosovo enjoyed special guest status. The author of the recent Council of Europe Parliamentary Assembly report and recommendation on "The institution of Ombudsman" participated in the discussions.

The participants of the Round Table were honoured by the presence - at the opening of the Round Table and at experts' presentations of European human rights standards - of H.M. the King of Norway, the President of the Storting, the President of the Supreme Court of Norway, the Secretary of State, the Leader of the Centre Against Ethnic Discrimination and other very senior personalities of the country. The participants of the Round Table felt encouraged by the manifest interest of the highest authorities of the Norwegian State for the human rights issues, which ombudsmen have to tackle with.

For the first time, such Round Table was organised on the Council of Europe side by the Commissioner for Human Rights, whose mandate entrusts him with helping set up human rights institutions in member States and promoting their work. As a matter of fact, since the beginning of the functioning of his institution in late 1999, the Commissioner has relied on co-operation with the ombudsmen in order to receive impartial information on the human rights situation in member States. He would like to increasingly rely on them to convey his own human rights concerns to the public and to the authorities of each country.

This is why the 8<sup>th</sup> Round Table functioned according to a new format. It was designed to concentrate on those human rights issues which were identified by the ombudsmen of member States as having given rise to the majority of problems and questions in their daily work in 2001 and 2002. These issues were:

- the legal status of prisoners,
- the rights of members of minorities,
- the right to access to official documents,
- the respective powers of the ombudsmen and the courts.

Eminent specialists in the above fields conveyed to the participants up-to-date information on the European standards governing these questions. Then the ombudsmen discussed – during workshops held in private, with the participation of the experts - the practical implications of the European human rights norms for their work at home, in particular the measures, which they themselves take in order to ensure the respect of the said rights of individuals.

2. As regards **the legal status of prisoners** it was felt essential that the ombudsmen convey the message to the public that it is the deprivation of liberty, which is the only punishment that convicted prisoners, have to undergo. The conditions of their detention may not be such as to constitute an additional punishment. International monitoring of prison conditions, including constructive criticism, may help improve prison conditions in countries and overcome political resistance, for instance against additional spending of public money to improve prison conditions where this is required to reach the European standards.

The ombudsmen and the experts underlined the paramount importance of maintaining prisoners' links with their families and friends. This is essential for the psychological health of prisoners and their reintegration in their family and society at large at the end of their imprisonment. This is not only a right of the prisoners, but also of their families, and it is definitely in the interest of society as well.

Prolonged pre-trial detention has to be avoided as much as can, as it is not compatible with the presumption of innocence. For that very reason, it was also very disturbing to note that the conditions of pre-trial detention are often harsher and detainees' rights more restricted than is the case for convicted prisoners. The ombudsmen also underlined that custody in police facilities puts special hardship on the individuals concerned, be it only because the facilities are not made for long detention of persons. It had to be as short as possible.

The European ombudsmen expressed that view that their role with respect to the supervision of the respect of prisoners' rights should be clearly mentioned in the new European Prison Rules which were presently under revision within the Council of Europe. They underlined, however, that the responsibility for respect of prisoners' rights lies with the authorities and not with the ombudsman. The latter is just one of the authorities asked to oversee the good functioning of prison administration and the respect of the rights of the detained individuals. Privatisation of prisons is a political issue and the ombudsmen do not take a stand on the question. They do, however, insist that the jurisdiction of the ombudsman has to encompass oversight over private persons and entities that perform tasks of public administration.

3. The participants underlined the importance of the full and effective implementation at the national level of the Framework Convention for the **Protection of National Minorities**, and noted that certain member States were yet to ratify or sign the Convention. The participants drew attention to the problem of the existence, or the emerging, of minorities that do not hold the citizenship of the country they live in. While some of these populations may have freshly arrived on a State's territory, others have dwelled there for decades and are yet not or no longer protected. In order to obtain the protection of the rights of such minorities, the national ombudsmen had to try to persuade their national authorities to grant them the citizenship or, in the case of persons in need of temporary protection, to grant them a collective, or B, status that was complementary to the status foreseen under the 1951 Geneva Convention.

As regards the specific situation of Roma/Gypsy/Travellers, participants were very favourable towards the Finnish proposal to create a European Forum for Roma and Travellers that could become the interlocutor of the Council of Europe in its effort to lead a genuine policy aiming at the steady and gradual improvement of their integration into European societies.

It was noted that some ombudsmen do have the possibility, under their mandate, to protect members of minorities even in their relations with private persons or entities. The adoption of a future European Constitution enshrining the principle of non-discrimination will facilitate the tasks of the ombudsmen in the 25 EU member States insofar as the legal basis for protection of the individuals' rights will be clearer and stronger yet. However, adequate means will have to be provided to those in charge of fighting discrimination.

The participants underlined the catalytic role of the ombudsman in the protection of national minorities, as well as their important preventive role, through for instance, generating dialogue.

4. Discussion of the **right to access to official documents** covered three issues: (i) the right of everyone to have access, on request, to official documents, (ii) the ombudsman's access to official documents and (iii) the citizens' access to documents held by the ombudsman.

(i) a vast majority of Council of Europe member States do have legislation that allows for the principle of citizens' access to documents. Improvement of detail and steady development of the regulations is, however, necessary. Countries, which do not have adequate regulations, should have them and seem to be in the process of adopting them. It is important that officials do not have a general discretionary power to refuse access to documents. Instead, the grounds for possible refusal should be listed by law. They typically include, for example, concerns of data protection (protection of the private sphere of individuals), public safety and security as well as the authorities' "space to think". Also, preparatory documents (drafts) are not covered by the citizens' right to access. Discussions focused on the requirement for authorities to motivate any denial of access to documents and on the scope of such requirement.

It was underlined that there should be a possibility for the individual to challenge denial of access before the courts or other independent bodies. Also, the cost of providing copies of documents and the practical arrangements for granting such access should not be such as to undermine the right of access in practice.

(ii) The ombudsman's access to official documents is absolutely essential to his or her function. In some countries ombudsmen are even allowed access to secret documents or minutes of in camera court sessions.

(iii) Regarding the access to documents held by the ombudsmen, two opposing positions could be found, between wide openness and total confidentiality in order not to jeopardize the efficiency of the very specific role played by the ombudsman. It was agreed, however, that access should not be granted to the documents of the ombudsman were this would cause significant harm to the individual concerned or in case of other grounds for refusal laid down by law.

5. The **respective powers of the ombudsmen and the courts** were subject of intensive debate over issues of principle. The great divergence of ombudsmen's mandates explains very varied situations in that field. Whereas ombudsmen can in some countries bring cases before the courts, they cannot do so in most countries. Where ombudsmen can become parties to court cases, the wide investigative powers that they should enjoy for the sake of their function as mediators – indeed their primary role, which requires impartiality and neutrality - may collide with the principle of equality of arms. Also, if an ombudsman is called upon to supervise the good functioning of the courts seen as administrations, then it is difficult to reconcile this with the possibility that the same ombudsman may have to bring cases before those whom he supervises.

As regards the accountability of ombudspersons for their acts or omissions, the participants took note of the decision rendered in April 2002 by the Court of First Instance of the European Communities in the case of *Lamberts v. European Ombudsman*, and discussed the reasons of principle which led the latter to lodge an appeal against that decision. They are awaiting with particular interest the forthcoming judgment of the Court of Justice.

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At the close of the Round Table, the European Ombudsmen expressed the wish that the Round Tables, which the Commissioner proposes to hold every two years, be organised according to the new format initiated at this meeting.

The participants expressed their gratefulness for the warm and generous welcome with which they were received in Norway by Parliamentary Ombudsman Arne Fliflet as well as by the highest authorities of the country, and they appreciated the efficient organisation of the event by the two organising teams of the Commissioner's and the Norwegian Ombudsman's Office.

At the invitation of the Danish Ombudsman, the European ombudsmen agreed to hold their forthcoming 9<sup>th</sup> Round Table in Copenhagen in April 2005. Their gathering will coincide with the 50<sup>th</sup> anniversary of the Danish Ombudsman Institution.