

ANDREY LEBEDEV *

*THE DEVELOPMENT OF THE INSTITUTION
OF THE COMMISSIONER ON HUMAN RIGHTS
IN THE RUSSIAN FEDERATION: THE FIRST FIVE YEARS*

The necessity of the creation of the institution of the Commissioner on Human Rights in Russia came about as the result of a combination of factors, including the human rights situation in the Russian Federation and the tendencies of its development, the evolution of national democratic institutions, the international experience and the conditions imposed by Russia's participation in international organizations acting in the human rights area, primarily in the Council of Europe.

After the disintegration of the Soviet Union in 1991, the Russian Federation entered the road of reforms including the creation of democratic institutions and transition towards market economy. During the last twelve years, important progress had been achieved in the human rights area¹.

In 1993 a new Russian Constitution was adopted. New legislation regarding human rights and freedoms has been elaborated. Some existing laws dealing with these issues have been amended or supplemented, the law-enforcement practices have been improved. Russia has joined the fundamental international treaties in the field of human rights. One of the most important steps in this direction was the ratification on May the 5th, 1998, of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which presented the Russian citizens with the possibility of directing their complaints to the European Court of Human Rights in Strasbourg.

At the same time now it is too early to claim that Russia has under-

* Deputy Director for External Relations, Head of the Department of Methodology, Office of the Commissioner on Human Rights. Executive Director of the Center for Parliamentarism and Human Rights.

¹ It should be noted, however, that this progress has not spread to all areas, and, in many important issues (e.g., freedom of information), in the past few years, certain negative tendencies have been encountered. Chechnya, as many people in the west have come to recognize, has become a 'black hole' in the human rights situation in Russia.

gone a complete transformation into a state based on the rule of law, providing its citizens with all-encompassing guarantees of protection of human rights and freedoms. The social and economic situation of today's Russia is characterized by the degradation of living standards of the majority of population in combination with still uncertain outcome of economic reforms. This presents a serious danger for the full-scale formation of democratic institutions. The country lacks an effective long-term practice of functioning of such institutions and this could lead to serious conflicts between the branches of power. The "checks and balances" system typical for a developed democratic society has not been completed neither in the legal nor in the political sense.

The federal structure of the Russian State faces serious difficulties in the process of its formation. The right to establish the Human Rights Commissioners in the regions (subjects) of the Russian Federation, provided by the Federal Constitutional Law, has been realized up to now only in 23 Federal subjects (in 4 other subjects – out of the all in all existing 89 – the relevant laws have been adopted, but the Commissioners on Human Rights have not been appointed up to now due to various reasons).

The tendency of further criminalization of society which Russia witnessed during the past years leads to mass violation of human rights, which, in turn, cultivates negative attitudes of the people towards democracy as a system. Certain forces see the only option of fighting this phenomenon in returning to old methods, typical for the totalitarian system.

The development of democratic reforms is being slowed down due to the conservatism of existing administrative and legal institutions, which often appear to be obstacles in the way of application and realization of rules and procedures provided by modern legislation. Disrespect of law, disregard of the rights and legitimate interests of the citizens have a negative influence on the situation in the society as a whole, cause people's distrust of the state, its authorities and officials, give rise to civil apathy.

Russia lacks a duly elaborated comprehensive concept of human rights protection, accepted and supported by all the branches of power, by the regions, the local authorities, the mass media, by the society as a whole.

Serious and in some cases wide-scale violations of civil, political and especially social and economic rights and freedoms of Russian citizens are still happening. The rights of refugees and forced migrants

are being violated, an intolerable situation remains in the penitentiary system, the rights of military servicemen are being infringed systematically, the danger of extremism, fascism and anti-Semitism exists.

In the face of all these serious problems, which give the Commissioner on Human Rights in the Russian Federation the reason to characterize the present situation with human rights in the country as unsatisfactory, the matter of choice of the most suitable forms and methods of democratic protection of human rights and freedoms is on the agenda.

The existing situation, according to the Commissioner's opinion, highlights the necessity of further development and strengthening of the institution of the Commissioner on Human Rights in the Russian Federation.

Founded for the first time almost two hundred years ago in Sweden, the Ombudsman institution has demonstrated its significance as the most important body in the system of constitutional protection of civil rights and freedoms in the states with developed democracy. Not by chance by the beginning of the third millennium the ombudsman (or similar to them – public protector, parliamentary controller, moderator, commissioner on humans rights, to name just a few) institutions were created in the majority of the countries in Europe, South and North America, in Australia and New Zealand, in some states of Asia – their total number today is more than 90.

The experience of the national human rights institutions in different countries, especially in the countries of Eastern Europe also undergoing the process of democratic reform (e.g., Albania, Hungary, Moldova, Poland, Slovenia, Ukraine), shows that the creation of such institutions in the majority of cases provides the “missing link” in the gap in the relationship between the state authorities and the people and promotes the construction of democratic and human rights institutions.

The post of the Commissioner on Human Rights in the Russian Federation was established by the Constitution of the Russian Federation of 1993. According to point “d”, paragraph 1 of Article 103, the State Duma has the right to appoint or dismiss the Commissioner on Human Rights in the Russian Federation, who acts within the frameworks of the Federal Constitutional Law.

The Federal Constitutional Law “On the Commissioner on Human Rights in the Russian Federation” was adopted by the State Duma on the 25th of December 1996, approved by the Federation Council on the 12th of February 1997, signed by the President of the Russian Federation on the 26th of February 1997 and entered into force on the 4th of March 1997. It determines the procedure of the

appointment to the post and dismissal from the post of the Commissioner on Human Rights in the Russian Federation, his jurisdiction, organizational forms and the conditions of his activity.

The post of the Commissioner on Human Rights in the Russian Federation has been established with the aim of providing the guarantees of the protection by the state of civil rights and freedoms, their observance and respect by the state bodies, institutions of local self-government and officials. The Commissioner in discharging his duties is independent and is not accountable to any state bodies or officials. The activity of the Commissioner supplements the existing means of protection of human rights and freedoms, does not revoke and does not entail the revision of the competence of state bodies that provide the protection and restoration of violated rights and freedoms.

While fulfilling his duties the Commissioner possesses immunity and privileges comparable to those provided by Article 40 of the Statute of the Council of Europe, and the agreements and conventions concluded on its basis.

In his human rights protecting activities, the Commissioner is guided by the Constitution of the Russian Federation, the legislation of the Russian Federation, as well as by the principles and norms of international law and international treaties.

The institution of the Commissioner on Human Rights in the Russian Federation presented all the Russian citizens for the first time with the untraditional, unusual and unique possibility – to get their voices to be heard irrespective of their position in the state hierarchy, and their violated rights to be rehabilitated despite still existing traditionalistic bureaucratic system.

The main directions of the Commissioner's activities (in accordance with the Federal Constitutional Law and the recently established practices) are the following:

- The examination of complaints and pleas dealing with violations of human rights and liberties, the adoption of measures aimed at their reinstatement, including the presentation of Special Reports, Conclusions and Recommendations containing analysis of the legal, political and economic issues leading to human rights violations and pointing out the means for their correction²;

² Some of these documents (prepared by the author of the current article), are presented in the annex.

- The analysis of the legislation of the Russian Federation in the area of human and civil rights, the preparation of recommendations in its improvement and bringing it into line with universally recognized principles and norms of international law;
- The development of international co-operation in the area of human rights, primarily with the national Ombudsmen of foreign countries and international human rights organizations³;
- The legal education on the issues of human rights and liberties, the forms and methods of their safeguarding;
- The information to the state authorities and the general public about the situation with the observance of civil rights and liberties in the Russian Federation;
- The establishment of contacts with the human rights NGO community and with mass media on issues of common and societal interest.

The Commissioner prepares an annual report about his activities (up to now five such reports have been published dealing with the developments in 1998-2002) and submits to the State Duma special reports on specific aspects of observance of human rights (eight have been prepared and submitted to the State Duma: On the Conditions of the Mentally Ill; On Human Rights Violations in the Armed services (Hazing); On Freedom of Migration and Choice of Place of Habitation; On Human rights Violations by the Officers of the Ministry of the Interior and the Correction System of the Ministry of Justice; On the Rights and Opportunities of the Disabled; On the Implementation by Russia of its Obligations Towards the Council of Europe; Ecology and Human Rights; On the protection of the Rights of the Victims of Terrorist Attacks and Other Crimes).

To support the activities of the Commissioner on Human Rights the Office of the Commissioner has been established. The Office consists of three Directorates – on Restoration of the Violated Human Rights; on Legal Education, Information and External Relations and on Organizational and Technical Matters. The Directorates consist of Departments specialized according to the branches of law (constitutional and administrative law, civil law and housing legislation, land disputes, labor law, criminal law, the investigation of complaints from military servicemen, complaints from refugees and forced migrants,

³ Council of Europe, Amnesty International, Human Rights Watch and the like.

etc.) as well as divisions dealing with relations with the Federal Subjects and the human rights NGOs; international relations; ethnic and religious issues; legal education; mass media; improvement of legislation, codification and legal information; information and analysis.

Under the auspices of the Commissioner on Human Rights in the Russian Federation the Council of Experts has been established. It gives the opportunity for legal specialists and prominent human rights activists to contribute to the activities of the Commissioner on Human Rights by providing expert evaluations, informational and analytical materials.

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In 1998-2003 the activities of the Commissioner on Human Rights in the Russian Federation were directed towards the consolidation of the status of this constitutional body in the state and in the society, increase of its role as a state mechanism protecting human rights and freedoms, information of the various strata of the society about the objectives and prerogatives of the Commissioner, provision of his openness for all Russian citizens whose rights were violated or are being violated. Consistent defense of the rights of citizens enables to raise the quality of life of the population, helping to solve the complicated problems of the country today and in the future.

In this connection, the Commissioner on Human Rights encounters the following priorities:

- To contribute towards the elimination of mass violations of human rights related with the delay of salary payments, pensions, social benefits;
- To express recommendations on the correction of the activities of the militia and of other law enforcement bodies in order to form a civilized law-guided style of dealing with people;
- To keep the state bodies, officials, mass media and all the citizens of the Russian Federation constantly informed about the institution of the Commissioner on Human Rights;
- To pursue the aim of active interaction of all branches of power with the institution of the Commissioner on Human Rights as a control organ and instrument of asserting the rights of citizens before the bureaucratic institutions;
- To promote bringing the Russian legislation into line with the highest international and European standards of human rights and

freedoms, to monitor the draft laws and international treaties submitted to the Federal Assembly;

- To develop cooperation between the Commissioner's Office and the Subjects of the Russian Federation, including the co-operation with the regional Commissioners on Human Rights, Commissions on Human Rights and the regional human rights NGOs;

- To pay permanent attention to the persons detained in investigation wards, prisons and psychiatric facilities with the aim of bringing the living conditions there into line with the European norms;

- To carry out dissemination and distribution of publications and periodicals on the activities of the Federal Commissioner on Human Rights;

- To continue the establishment of functional contacts with the international organizations active in the field of human rights protection and with the national Ombudsman institutions of foreign countries.

The years 1998-2003 have had an essential importance for the formation of the institution of the Commissioner on Human Rights in the Russian Federation. By the end of this period, the main elements of the existing structure of the Commissioner's Office were created and the basic mechanisms of realization of the objectives within his jurisdiction were set up. At the same time, the practical activities devoted to rehabilitation of the violated rights of citizens, improvement of the national legislation, legal education and development of international cooperation in the human rights area continued and developed. These five years give evidence that the institution of the Commissioner on Human Rights in the Russian Federation became a real and tangible factor in the life of the society and the state.

During these years the Federal Commissioner and his Office carried out practical steps aimed at normalizing the human rights situation in the country and ensuring that the newly created mechanism took a worthy place among other constitutional bodies and made a proper contribution to the state protection of human rights and freedoms. Despite the evident problems and difficulties linked with the process of formation of an institution absolutely new for Russia, it is at this point possible to state that the decisive stage has already been passed and the institution of the Commissioner on Human Rights in the Russian Federation has come into existence.

ANNEX

Examples of Documents Issued by the Commissioner on Human Rights in the Russian Federation, 1998-2003

1.

The Federal Law "On the Freedom of Conscience and on the Religious Associations" and the International Legal Obligations of the Russian Federation

The Conclusion of the Commissioner on Human Rights in the Russian Federation (1999)

The Federal Law "On the Freedom of Conscience and on the Religious Associations", adopted on September 26, 1997, generally conforms to the international legal obligations of Russia, undertaken as a member state of the International Covenant on Civil and Political Rights and of the European Convention on Human Rights and Fundamental Freedoms. The preamble of the Law (par. 1-3), just like Articles 28,19 (part 2) and 29 (part 2) of the Constitution of the Russian Federation, confirms the right of everyone to freedom of conscience and to freedom of religion, and also the right of an individual to equality before the law independently of his attitude towards religion and his beliefs.

At the same time, several provisions of this Law come into contradiction with the principles established by the above mentioned international legal documents, and, accordingly, may be contested by the citizens when they appeal to the European Court on Human Rights. In fact, these norms cannot be applied on the territory of the Russian Federation, based on the superiority of regulations established by international agreements over the provisions of domestic legislation, which is specified by the Russian Constitution (Article 15, part 4).

1. In comparison with the general international legal principle of equality of all religions, fixed in the Constitution of the Russian Federation (according to Article 14, part 1, "no religion can be established as state or obligatory", and according to part 2 of the same Article "religious associations... are equal before the law"), in the Law on the Freedom of Conscience the privileged status of some confessions is in fact secured.

In the preamble of the Law (par. 4-5) there is a reference to "the

particular role of Orthodoxy in the history of Russia, in the formation and development of its spirituality and culture” and to *the respect* towards “Christianity, Islam, Buddhism, Judaism and other religions that constitute an inalienable part of the historical heritage of Russia”.

Two questions present themselves. Firstly, which religions come under the definition of “other” – Catholicism, the Uniat Church or, for example, the pentacostalists and molokans, who can also be considered to be a part of the Russian historical heritage. Secondly, whether it means *the disrespect* to other religions, which are not mentioned in the Law – Confucianism, Hinduism and so on – that are not a part of this heritage. The current text of the preamble does not provide a clear legal answer to these questions.

2. The Law on the Freedom of Conscience (Article 3 par. 3) indicates that the establishment of any advantages, restrictions or other forms of discrimination, that depend on the attitude towards religion, is prohibited. However, besides the privileged status of some confessions declared in the preamble, norms established by several other provisions of this Law actually lead to the discrimination of some confessions in practice.

The distinction between *religious associations* and *religious groups* that is recognized by this Law (Articles 6 and 7), contradicts both the European Convention and the precedents of the bodies of the Council of Europe, which represent important sources of the “European” law. According to Article 7 (part 1) of this Law, religious groups, in contrast to religious associations, are not subject to state registration and do not possess the rights of a legal person.

Besides, this Law draws a distinction between “traditional” religious organizations and those organizations that do not possess “a document that confirms their existence on a specific territory for not less than 15 years” (Article 9, part 1).

“Non-traditional” religious organizations are deprived of many rights and according to point 3 of Article 27 are not able:

- to appeal to the President of the Russian Federation for the deferment from conscription and for the exemption of their clergymen from military training, and also do not have a right to the substitution of the military service with alternative service for the followers of this confession;
- to establish educational institutions;
- to teach religion to the children outside of the framework of the educational program;

- to house the representation office of a foreign religious association;
- to conduct religious ceremonies in medical institutions and hospitals, boarding schools, hostels for aged and handicapped people, and in penal institutions;
- to produce, purchase, export, import and distribute religious literature, publications, audio – and video materials and other religious items;
- to establish any organizations specializing in the publishing liturgical literature and producing the religious items;
- to establish educational institutions and mass media agencies;
- to create institutions of professional religious education for the training of the clergymen and other religious personnel;
- to invite foreign citizens with the aim of engaging in professional religious activities, including preaching.

Part 2 of Article 13, that reads: “the representation of a foreign religious organization cannot exercise religious and other activities, and the status of the religious association doesn’t apply to it”, is also discriminatory and is contrary to both the European Convention and The International Covenant on Civil and Political Rights.

3. According to part 2 of Article 3 of the Law on the Freedom of Conscience “the right of a person and citizen to the freedom of conscience can be limited by the Federal Law only to the extent that is necessary for the protection of the fundamentals of the constitutional order, morality, health, rights and lawful interests of a person and citizen, for guaranteeing the defense and security of the state”.

This last provision comes into contradiction with part 2 of Article 3 of the European Convention on Human Rights, that reads: “the freedom to profess any faith is subject only to those restrictions which are established by the law and are necessary in a democratic society in the interests of public order, social order, health and morality or for the protection of the rights and freedoms of others persons”. This represents an exhaustive list of the legal restrictions of the right to the freedom of religion that are specified in the Convention. As distinct from some other rights and freedoms, guaranteed, in particular, by Articles 8, 10, 11, the Convention does not envisage any restrictions of the freedom of religion for the reasons of “state security”.

4. Article 16 (parts 3 and 4) of the Law on the Freedom of Conscience provides the possibility to perform religious ceremonies in military camps, prisons and places of custody. However, practical guaran-

tees of the realization of these rights are absent. It is not clear what is implied by "taking into account the requirements of military regulations" and "the observance of the requirements of criminal judicial legislation", which this Article refers to.

Taking into consideration the foregoing remarks the Federal Law "On the Freedom of Conscience and on the Religious Associations" can be brought into line with the universally recognized principles and norms of international law and international treaties of the Russian Federation.

2.

About the Discrepancy of the Provisions of the Law "On Militia", Tolerating the Use of Force, with Article 3 of the European Convention on Human Rights and Fundamental Freedoms

The Conclusion of the Commissioner on Human Rights in the Russian Federation (1999)

Article 3 of the European Convention on Human Rights and Fundamental Freedoms prohibits torture and inhuman or humiliating human dignity treatment or punishment. Article 15 (part) of the Convention does not stipulate any exclusions or reservations to its observance.

In the questions of application of Article 3 there exist a number of precedents based on the experience of the Council of Europe's bodies, particularly in the cases concerning Greece, Northern Ireland and Turkey, where mass infringements of its provisions by police authorities took place.

Inhuman treatment or punishment in the interpretation of the European Court on Human Rights means the infliction of deep physical or mental suffering; the treatment or punishment that humiliates dignity means bad treatment, aimed at causing the feeling of fright, depression and inferiority, in order to insult, humiliate and break the victims physically and morally.

The task of the European Court in any case presented under Article 3 consists of determining whether the facts that had been revealed point to the existence of an established administrative practice of the infringement of the Convention. Two elements are necessary to discover the existence of such a practice: the recurrence of actions and official tolerance.

“The recurrence of actions” means a considerable number of incidents of bad treatment that reflect the general situation. The pattern of these actions can signify that the officials of the same police or military authority exercise them.

“Official tolerance” means that although the acts of bad treatment are absolutely illegal, they are partly accepted because the superiors of the people who bear first-hand responsibility are aware of these acts, and nevertheless do not undertake any actions in order to punish for them or not to allow their repetition. This can also mean that the higher authorities, although in possession of numerous facts, display indifference, refuse to carry out the appropriate investigations in order to verify these facts; or that there is no unprejudiced court hearing of these complaints.

In case if Russian citizens appeal to the European Court on Human Rights, the patterns of the existing activity of the Russian militia (police) authorities may entail a court decision stating presence of an administrative practice of inhuman and humiliating human dignity treatment. Flaws in legislation in part determine these problems.

Although paragraph 2 of Article 5 of the RSFSR Law “On Militia” directly states that the militia cannot use treatment humiliating human dignity, its Article 13 makes the provision that militia officers have the right to use physical force, including fighting techniques, for preventing crimes and administrative infringements, for detention of culprits, and for overcoming the resistance to lawful demands, if non-violent methods do not ensure the performance of militia duties. Article 14 of this law also gives to the police officers the right to use the available special devices means, in particular, for the discovering of persons suspected of committing crimes.

Apparently, these provisions in their present state are extremely general and may lead to different interpretation, thus creating the conditions for the infringement of Article 3 of the European Convention. In particular, such administrative infringements as traffic violations may be interpreted by the militia officers as giving them the right to use physical force, including fighting techniques, that fall under the definition of inhuman treatment and treatment humiliating human dignity. The responsibility of senior militia authorities for such actions, falling under the definition of “administrative practice” of infringement of Article 3 in the interpretation of the European Court, is not recognized.

Unfortunately, the Federal Law of March 31, 1999 “On the Amendment of the RSFSR Law “On Militia” doesn’t take into ac-

count the demands of the European Convention. It simply adds to the list of allowed special devices electric shock implements.

In this connection, it is necessary to make more precise the provisions of the Law "On Militia" reserving to the militia officers considerable freedom of action and of subjective evaluation of the situation.

To achieve this, it is necessary to supplement the Law with the provisions stating that the use of physical force and special devices in cases entailing limited public danger is qualified as inhuman treatment or treatment humiliating human dignity and brings about responsibility, fixed by the law; and that the senior militia authorities tolerating repetition of such cases bear the same responsibility. Simultaneously, it is necessary to insert into this law the definitions of terms "non-violent means" and "limited public danger", for instance by determining the inclusive list of the administrative infringements, that do not permit the use of force and referring to the appropriate provisions of the Code on Administrative Infringements.

3.

*Statement
by the Commissioner on Human Rights
in the Russian Federation*

RESTORATION OF CIVIL RIGHTS AND FREEDOMS ON THE TERRITORY OF THE CHECHEN REPUBLIC IS A COMPLEX TASK FOR RUSSIA AND THE WHOLE EUROPEAN COMMUNI- TY (2000)

Notwithstanding the encouraging statements of the authorities that the situation in the liberated areas of Chechnya is stabilizing, the actual circumstances still give cause for alarm. The problems that have a negative effect on the general human rights environment in the region and could potentially undermine the international authority and security of Russia and the whole European community still remain unsolved.

During the visits by the Federal Commissioner and members of his staff to Northern Caucasus hundreds of people in Ingushetia and the Chechen Republic presented complaints due to frustration and disastrous material circumstances. Tens of thousands of refugees, hiding from the war in tent camps, lack valid documents proving their

identity, therefore formally their citizenship, which, in the conditions of a virtual state of emergency in the region, presents a serious limitation of their rights to travel, migration and job placement.

Numerous addresses by the people living in tent camps to the representatives of various delegations, demanding first of all their return to Grozny and other places of permanent residence in the territory of the Chechen Republic, supply of elementary needs in food, clothing and footwear, have not brought noticeable results. The number of forced migrants is not decreasing. They experience lack of heating, foodstuffs and medicines. Infectious diseases and common colds are spreading in all the centers where the forced migrants are being housed. Their dissatisfaction with the federal authorities, enhanced by the prolonged war and the deaths of relatives and acquaintances, is growing from day to day.

Notwithstanding all these problems that came to the fore as the result of the present conflict, one has to bear in mind that systematic violations of human rights in Chechnya have in fact been continuing for the past ten years. Under the Dudayev and Maskhadov regimes the people lacked jobs, the schools and hospitals were shut, the pensions and child support were not paid. The attempts to introduce the so-called "Islamic legislation" brought about grave mass violations of the rights to life and personal immunity that are universally recognized by the world community.

The war is fizzling out, the cessation of large-scale military activities is not far away. Russia faces the most complex and essential tasks of normalizing the day-to-day life in this federal subject. How to occupy 300 thousand men who are out of habit of work and do not know anything besides using their weapons? A whole generation is left illiterate as a result of the denial of its access to schools and institutions of higher education. Hundreds of thousands of peaceful citizens will for a long time be experiencing post-traumatic shock.

It becomes evident that with the ending of the anti-terrorist operation the "Chechen problem" cannot be settled finally. Russia is both geopolitically and geostrategically interested in a predictable Chechnya, in predictable actions of its future leadership. It is essential to use the real factors – the interest of the Chechens in preserving their ethnic identity, their national uniqueness. Even in the current circumstances the idea of national singularity cannot die. The Chechen people's feeling of self-respect has to be restored; they must have the opportunity to sense the solidarity and support of the federal center and of all the

regions of the country towards the cause of national rehabilitation and adaptation.

For the situation in Chechnya to change for the better a wise social and economic policy on behalf of the federal authorities is needed more than ever. The people must feel in practice that the federal authorities have come to reconstruct their homes, to compensate for the property lost, to organize the work of the enterprises, the schools, the hospitals, to pay out the pensions – in short, to do everything which is supposed by the philosophy and practice of human rights and fundamental freedoms. Only then will they believe that Russia desires peace and well being to this region of the country.

For the constitutional order to triumph over the territory of the long-suffering Chechen Republic and for human rights to be reliably protected there, a series of emergency extraordinary measures, supported by the international and European community, has to be carried out. The Council of Europe should not attempt to “isolate” or “punish” Russia. Instead, by using specific and purposeful help it should contribute to relieve the sufferings of people in the war-torn region, to perform the return to peaceful, stable and civilized life.

Today Europe faces its choice – whether to follow the way of recreation of the “iron” and other curtains, or to make use of this historical chance and in close cooperation with the Russian authorities, without fear of the financial expenses, to make a practical contribution towards solving this complex humanitarian problem. Not only the situation in Chechnya and in Russia in general, but also the future shape of the relationships on the continent, the possibility of preserving and strengthening the climate of confidence between the Europeans, depends upon the choice that Europe makes today.

4.

TEN PRINCIPLES OF REINSTATEMENT OF CONSTITUTIONAL ORDER, RESTORATION OF HUMAN RIGHTS AND FREEDOMS IN THE CHECHEN REPUBLIC (2000)

1. Large-scale military actions are close to completion. Today the most important task is the transition from military means to political, the reinstatement of constitutional order in Chechnya, the creation of

the conditions for the observance of fundamental civil and human rights and freedoms.

2. An important step towards normalizing the situation would be the introduction of direct presidential rule: the healthiest political forces in the Chechen Republic have already stressed the importance of such a measure. For this model to be implemented within the constitutional framework and for it to serve for reestablishment of structures and institutions of authority and administration, traditional for a federal subject, the prompt adoption of a new Law on the State of Emergency is essential.

3. The Federal center as well as the regions must make a direct contribution towards the stabilization and normalization of the situation. It is necessary to quickly get rid of the corrupt bureaucrats belonging to the federal and regional structures, those representatives of private business, who, while speaking of solving the problems of the Chechen Republic and the Chechen people, in reality are interested in conserving the current state of affairs, in prolonging and stagnating the armed conflict. The development of effective means and measures aimed at unblocking the "Chechen knot" depends on the people of Russia, their intellectual potential.

4. Prompt measures aimed at complete disarmament of the terrorists and militants should be instituted; amnesty should be extended for those of them who voluntarily lay down their arms. All the armaments should be at the disposal of federal forces and local militia or should be destroyed under the control of international observers.

5. Vigorous actions aimed the restoration of the economy of the Chechen Republic and assistance to the peaceful population in its creative efforts must be accompanied by measures directed towards the liquidation of corrupt enterprises operated by the Mafia. This will need oriented support from the subjects of the Russian Federation, the European and international community.

6. It is essential to guarantee and protect the rights of all without exception ethnic, religious and social groups of the population, to create the conditions for the realization of rights to national and confessional identity, for the restoration of national image and self-respect. This, and only this, will be the prerequisite for the recreation of durable systems of authority both at the republican and the local level.

7. All of the so-called "Islamic legislation", which formed the foundation for the anti-popular terrorist regime, or which established discrimination on the basis of religion or political beliefs, should be

revoked. Legal means should be imposed in order to put to an end to the criminal practice of taking hostages.

8. All the criminals and all of those who participated in the planning and carrying out of terrorist attacks should be arrested and brought before the court of law. Everyone hostile towards the causes of national restoration of the Chechen Republic as a subject of the Russian Federation should be relieved of important state and public posts.

9. Parallel to the recreation of the structures of local self-government, the courts and the law-enforcement bodies, the process of training and retraining of new national cadres, sharing the common civilized values of democratic society and human rights, should go on.

10. The realization of the tasks of reinstatement of the constitutional order, of restoration of human rights and freedoms in the Chechen Republic is impossible without effective participation in this process of the European and international community, of all the multilateral and non-governmental organizations that cherish humanitarian values.

5.

THE DECLARATION ON CHECHNYA AND HUMAN RIGHTS (2003)

The historical experience witnesses that the approval of the Constitutions that determined the future development of nations and states was often preceded by the adoption of Declarations that formulated the fundamental principles of national and state construction. Such is the historical experience of France, of the United States, of Russia. The sufferings during the nearly ten-year long war of all the peoples living in the territory of the Chechen Republic convince that the rehabilitation and prosperity of Chechnya as part of the Russian Federation to a significant extent depend upon the determination of key principles of protection of human rights and freedoms within the territory of this Subject of the Russian Federation. This will be an important prerequisite for the holding of the referendum and the adoption of the new Constitution of the Chechen Republic.

1. A person abiding within the territory of the Chechen Republic

shall exercise the rights and freedoms fully conforming to the rights and freedoms of every citizen of the Russian Federation abiding within the territory of any of the Subjects of the Russian Federation.

2. Any person found illegally bearing arms within the territory of the Chechen Republic shall be considered from the point of view of universally recognized principles and norms of international law as a person committing a crime against humanity and violating the fundamental right to life.

3. Any use or attempted use by any units or individuals of military force against the civilian population within the territory of the Chechen Republic shall be considered as a grave crime against humanity subject to persecution in accordance with the Laws of the Russian Federation and international norms.

4. Every person abiding within the territory of the Chechen Republic shall make an essential contribution to the political, economic, cultural and moral rehabilitation of the Chechen Republic and of the peoples abiding in its territory.

Any activities provoking national and religious discord shall be persecuted in accordance with law.

5. The adoption by way of a referendum of the Constitution of the Chechen Republic conforming to the Constitution of the Russian Federation will create additional guarantees of human rights and freedoms, will strengthen all the branches of authority, will help restore normal life in the Republic and resolve the present complicated situation.

January 22, 2003

The Commissioner on Human Rights in the Russian Federation
Oleg Mironov

Fra tutti i tipi di difensore civico presenti nei paesi europei, e risalenti in vario modo al comune modello storico dell'Ombudsman della tradizione scandinava, il Commissario ai Diritti Umani della Federazione Russa è uno dei più interessanti. Questo sia per i molteplici e incisivi poteri di cui è dotato, che per il ruolo politico che ha cercato di ricoprire nel drammatico processo di democratizzazione del paese, intervenendo in problemi delicati come il trattamento dei detenuti, quello dei militari, la libertà di stampa, la guerra in Cecenia. Da decenni le istituzioni di questo genere hanno rivelato la propria utilità nella difesa politico-istituzionale dei diritti umani in situazioni di

transizione dai regimi autoritari alla democrazia. Si pensi al caso del Defensor del Pueblo spagnolo, o alle figure di difensore civico nazionale o sub-nazionale soprattutto nei paesi dell'Est europeo, come l'Ombudsman della Bosnia e Erzegovina e appunto il Commissario per i Diritti Umani nella Federazione Russa.

In origine, nella Costituzione svedese del 1809, l'Ombudsman era concepito letteralmente come un "uomo di fiducia" del Parlamento, cioè come un Pubblico Ministero di nomina parlamentare, specializzato nel perseguire i casi di abuso d'ufficio da parte di funzionari. Era un ufficio destinato a perfezionare il regime parlamentare, costituendo un baluardo contro l'assolutismo e rafforzando i principi della *rule of law* e della buona amministrazione. Questa prima versione dell'Ombudsman doveva quindi consentire al Parlamento di sorvegliare la macchina amministrativa, soprattutto dal punto di vista del rispetto della legalità e della distinzione dei poteri. Attualmente invece l'Ombudsman ha quasi ovunque in Europa perso la funzione di Pubblico Ministero, e ha anche guadagnato una certa indipendenza rispetto allo stesso Parlamento. Esso si propone invece come un ufficio indipendente e accessibile, che funziona sia da mediatore istituzionale fra cittadini e pubblica amministrazione, che da tutore dei diritti e delle libertà. Nel passaggio dallo Stato di diritto agli odierni regimi costituzionali, l'istituto si è arricchito di competenze più estese. L'Ombudsman riesce ad intervenire oggi anche in settori che tradizionalmente sfuggivano alla *rule of law*, per l'insufficiente definizione dei diritti e per la mancanza di un'efficace protezione giuridica del cittadino contro gli arbitri e le violazioni di legge: si pensi agli ospedali psichiatrici, alle forze armate o all'amministrazione penitenziaria. Tipicamente l'Ombudsman esamina reclami, propone riforme, indirizza raccomandazioni e relazioni, fra le quali assume una particolare rilevanza il rapporto annuale al Parlamento. Per la natura del suo incarico, interviene anche in casi nei quali non si ravvisa una vera e propria violazione delle leggi, ma una più generica *maladministration*, mancanza di equità o scarsa trasparenza delle istituzioni. Quindi in concreto egli agisce il più delle volte come un alleato del cittadino, che è costretto a relazionarsi costantemente con le istituzioni pubbliche per soddisfare le sue necessità, ma molto spesso si imbatte in abusi, lentezze burocratiche, oscurità delle norme e delle procedure.

Naturalmente, perché un Ombudsman possa svolgere una funzione efficace e autonoma, occorre che sia dotato di un proprio ufficio, provvisto di mezzi adeguati (staff, finanziamenti, strutture) e sostenuto dalla volontà delle istituzioni pubbliche di tenere conto delle sue osservazioni. La legge costituzionale federale adottata dalla Duma il 25 dicembre 1996, approvata dal Consiglio Federale il 12 febbraio 1997, ha istituito la figura del Commissario ai Diritti Umani della Federazione Russa, determinando le procedure per l'incarico, i suoi poteri, l'organizzazione del suo ufficio e le forme della sua attività. Il suo compito è la tutela dei diritti e libertà dei cittadini, e la sorve-

gianza sul loro rispetto da parte delle istituzioni statali e locali e dai pubblici ufficiali. Egli inoltre deve contribuire al ripristino dei diritti violati, promuovere la legislazione in materia (in accordo con i principi e le norme internazionali), sviluppare la cooperazione internazionale in materia di DU, l'educazione giuridica in materia, le forme e i metodi di tutela. Il Commissario è nominato (ed eventualmente deposto) dalla Duma. In genere gli Ombudsman non possono intervenire nei processi, tranne nell'area scandinava e in Russia. Da questo punto di vista, il Commissario russo ha poteri decisamente più incisivi della media europea, in quanto può sottoporre il caso a un tribunale, partecipare al processo personalmente o mediante rappresentanti, chiedere provvedimenti disciplinari o amministrativi, chiedere a un tribunale o all'ufficio del procuratore di verificare una sentenza, rivolgersi alla Corte Costituzionale (art. 29 della legge istitutiva). Nel caso della Federazione Russa, il Commissario ha uno specifico potere di procedura d'ufficio in casi particolari, come violazioni massicce dei diritti umani (art. 21 della legge costituzionale federale del 1997).

L'articolo del Prof. Lebedev che qui di seguito riportiamo è un prezioso contributo alla comprensione del ruolo dell'Ombudsman russo nell'ordinamento giuridico e nella prassi politica. Esso testimonia un impegno scientifico e politico di grande rilievo (l'autore è stato capo di gabinetto del Commissario Mironov, primo Ombudsman della Federazione) in un momento molto difficile della storia russa.

GIUSEPPE GILIBERTI (Centro per lo Sviluppo Istituzionale, Università di Urbino)