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COMMISSAIRE AUX DROITS DE L'HOMME



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# 1<sup>ST</sup> QUARTERLY ACTIVITY REPORT 2014

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**Commissioner for Human Rights**

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Presented to the Committee of Ministers  
and the Parliamentary Assembly

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## 1. Overview

The first quarter of the year passed under the shadow of the worrying developments in Ukraine, which I and others at the Council of Europe followed with a growing sense of foreboding at the end of 2013 and the beginning of 2014. After seeing the human rights situation deteriorate from afar and meeting with a host of non-governmental organisations and the Ukrainian delegation to the Parliamentary Assembly of the Council of Europe (PACE) at the end of January, I decided that I could not wait. I decided that I had to go to Ukraine as soon as possible to assess the situation and assist in any way I could. Several days later, I was in Ukraine with a team of four advisers, including a forensic medical specialist, to examine the many serious allegations of torture and police violence against protestors.

My team and I interviewed scores of victims, persons in detention, defence lawyers, and medical personnel. We also encountered a considerable amount of information indicative of physical ill-treatment, including from the relevant medical records, and the forensic medical specialist in my team directly observed bruises, wounds and scars of a number of victims. I am quite confident that what we saw was the outcome of a mass use of disproportionate force, in which riot police systematically targeted the heads and faces of protestors. Police do not need to crack somebody's skull or knock out their teeth to arrest them. Even protestors throwing Molotov cocktails can be confronted without shooting their eyes out with plastic bullets. Particularly worrisome was the clear targeting of well-marked medical personnel and journalists. While police misconduct and impunity undermined confidence in law enforcement, a particularly dangerous practice was the widespread co-operation between police and masked, armed civilian thugs. This was one of the factors which led to an escalation of the situation, as many protestors concluded that they had no option but to arm themselves in self-defence.

While human rights violations by the police contributed to the crisis, so did serious shortcomings in the functioning of the judiciary. Many of my interlocutors spoke of a judiciary near the point of "collapse", a judiciary compromised by widespread corruption and political interference. The warning signs have been accumulating for some time – the European Court of Human Rights (the Court) has seen a 600% increase in cases from Ukraine in the last several years. Ukraine has also been lax in implementing many judgments of the Court. Several years ago the Court ruled that Ukraine lacked a legislative framework governing freedom of assembly. Thus, at the end of 2013 and the beginning of 2014, the authorities regularly banned various demonstrations, and then detained people for participating in "unsanctioned" protests.

I published my report on the visit to Ukraine in early March, at a time when President Yanukovich had just fled Ukraine and the country's sovereignty and territorial integrity were being actively undermined. Regardless of the volatile security situation, I decided that my report was of more than historical import. It does provide an independent assessment of several major human rights issues in the twilight period of the Yanukovich regime. However, it also helps understand why the crisis evolved the way it did. Moreover, the recommendations about investigating serious human rights abuses, reforming the police and judiciary, and enacting legislation on freedom of assembly remain valid to this day. Hopefully, the report can provide useful background material to the newly established international advisory panel.

Developments in and around Ukraine continue to evoke grave concern. Along with other Council of Europe bodies, I stand ready to assist Ukraine in rebuilding its institutions and crafting human rights oriented policies. In the near future, I intend to have a short-term human rights adviser on the ground in Ukraine. This adviser will work out of the Council of Europe office in Kyiv, report directly to me on human rights developments, ensure follow-up to my report, and assist me when I visit Ukraine. Once the territorial integrity of Ukraine has been assured and peace has been restored, it will be appropriate to engage in some longer-term human rights planning. Here, Ukraine may wish to follow the lead of a growing number of other European states and develop a national human rights action plan. Given the painful economic reforms that are in the offing, Ukraine could also learn from the best practices of other European countries in safeguarding human rights during times of austerity. As elaborated in an Issue Paper published by my Office, even in economic hard times, it is essential to guarantee access to justice for all, strengthen and involve national human rights structures in all phases of the economic policy cycle, pay special attention to the situation of vulnerable groups (e.g., children, persons with disabilities, older persons with small pensions), and establish minimum social protection floors for all.

## **2. Missions and Visits**

### ***Visit to Georgia***

The Commissioner visited Georgia from 20 to 25 January. The visit focused on the administration of justice and the protection of human rights in the justice system as well as issues pertaining to minorities, tolerance and non-discrimination.

In Tbilisi, the Commissioner met with the President of the Republic, Mr Giorgi Margvelashvili, the Speaker of Parliament, Mr Davit Usupashvili, the Minister of Reconciliation and Civic Equality, Mr Paata Zakareishvili, the Minister of Justice, Ms Tea Tsulukiani, the Minister of Foreign Affairs, Ms Maia Panjikidze, the Minister of Internal Affairs, Mr Alexander Tchikaidze, the Minister of Corrections, Mr Sozar Subari, the first Deputy Minister of Education, Ms Ketevan Natriashvili, the Chairman of the Supreme Court, Mr Konstantine Kublashvili, the Chief Prosecutor, Mr Giorgi Badashvili, the Adviser to the Prime Minister on Human Rights and Gender Equality Issues, Ms Tamar Chugoshvili, the Chairperson of the Parliamentary Committee on Human Rights and Civil Integration, Ms Eka Beselia, and with members of the parliamentary opposition. In addition, the Commissioner held discussions with the Public Defender (Ombudsman), Mr Ucha Nanuashvili, the Personal Data Protection Inspector, Ms Tamar Kaldani, lawyers, civil society representatives and the international community. While in Tbilisi, the Commissioner also met with the spiritual leader of the Georgian Orthodox Church, Catholicos-Patriarch of All Georgia Ilia II.

The Commissioner visited two regions of Georgia, Kvemo (Lower) Kartli (towns of Rustavi and Marneuli) and Samtskhe Javakheti (Akhaltikhe and Akhalkalaki), where there are compact communities of minorities. In each of the regions the Commissioner met with representatives of the regional and local authorities as well as regional representatives of the Public Defender and civil society actors.

While discussing reforms in the criminal justice system, the Commissioner stressed the importance of enhancing equality of arms and reforming the plea-bargaining system. He also highlighted the need to safeguard and reinforce judicial independence and shield judges from undue interference, as well as to ensure the effective functioning of the Office of the Chief Prosecutor.

The Commissioner positively assessed the efforts made to improve the treatment of prisoners and to enhance public scrutiny over the situation in prisons. He reiterated the importance of ensuring accountability of those responsible for ill-treatment. In relation to alleged deficiencies marring the criminal investigation and judicial processes in cases involving political opponents, the Commissioner expressed concern and recommended that action be taken at the systemic level to ensure fair trial guarantees for everyone. The Commissioner had the opportunity to discuss the processing of numerous complaints submitted after October 2012 and highlighted the importance of prioritising cases of serious human rights abuse. He welcomed the establishment of the Office of the Data protection Inspector and encouraged the Georgian authorities to address abuses resulting from the practice of extensive illegal surveillance.

The Commissioner encouraged the development of comprehensive anti-discrimination legislation and public awareness efforts in this respect. He emphasised the importance of effectively investigating hate crimes, which should be qualified as such by law enforcement bodies. With regard to ethnic minorities, integration efforts should be pursued while respecting the rights of minorities to maintain their language, culture and identity. The Commissioner expressed concern about the rise of intolerance and attacks against religious minorities, in particular against members of the Muslim community. He called on the Georgian authorities to ensure respect for religious freedoms and to foster dialogue and understanding between different religious communities.

The Commissioner's report on this visit was published on 12 May.

### ***Visit to Ukraine***

From 5 to 10 February, the Commissioner carried out a mission to Ukraine, where he travelled to Kyiv, Vinnytsia, Dnipropetrovsk and Zaporizhzhya. The decision to visit Ukraine was taken in the light of events taking place in the country since November 2013.

During his visit, the Commissioner had meetings with the Acting Minister of Foreign Affairs, Mr Leonid Kozhara, the Acting Minister of the Interior, Mr Vitaliy Zakharchenko, the Deputy Minister of Justice, Mr Maksym Rayko, the First Deputy Head of the Presidential Administration, Mr Andriy Portnov, and with heads and members of various parliamentary committees (rule of law and justice; legal policy; legislative provision of law enforcement activity; human rights, national minorities and inter-ethnic relations; freedom of expression and information; and the ad hoc commission on the events which took place in Kyiv on 18 May 2013). The Commissioner also had a meeting with the judges of the Constitutional Court of Ukraine, as well as with the Chairman of the Supreme Court and Chairmen of the High Specialised Courts (on Civil and Criminal Matters, and the Administrative and Commercial Courts). He met a group of senior prosecutorial authorities, including two Deputies of the Prosecutor General, Mr Hryhoriy Sereda and Ms Liliya Frolova. In addition, the Commissioner had meetings with the Parliamentary Commissioner for Human Rights (Ombudsperson), defence lawyers of the persons

detained/accused in relation to the events since the end of November 2013, civil society activists, journalists and medical staff.

The issues discussed related to allegations of serious human rights abuses (such as cases of severe ill-treatment, enforced disappearances, excessive use of force by the police); accountability for human rights violations; the situation in the judiciary and the protection of the right to peaceful assembly. The Commissioner also looked into the issue of alleged co-operation between police forces and groups of civilians who were frequently masked and armed with truncheons, bats or "traumatic" (riot-control) firearms.

The Commissioner and his team interviewed dozens of people who were injured and/or deprived of their liberty in connection with the demonstrations and violence. The medical expert in the delegation also had discussions with various health professionals who had treated people with injuries, and reviewed certain medical records.

The Commissioner's report on this visit was published on 4 March.

### ***Mission to Italy***

The Commissioner travelled to Rome, to attend an international conference entitled "What Europe stands for" held at the Chamber of Deputies on 13 and 14 March. During the conference, which was attended by representatives of the Parliaments of European Union member states and candidate countries, the European Parliament and the Parliamentary Assembly of the Council of Europe, the Commissioner delivered a keynote speech on ensuring respect for fundamental rights in EU member states.

In his speech, the Commissioner referred to his extensive human rights work in EU member states and the relations between the Council of Europe and the European Union. He highlighted his main concerns about the role of EU institutions in addressing human rights problems in member states, with specific reference to the issues of migration, the fiscal consolidation processes and austerity measures and their effects on human rights, the situation of persons with disabilities, and weak or incomplete anti-discrimination frameworks. In the Commissioner's view, in order to enhance its role in the protection and promotion of human rights, the EU needs to both enforce standards more stringently and consistently in areas where it has clear competence and, whenever it lacks the requisite competence, to appeal to external actors, with the Council of Europe being an obvious specialised and privileged partner. The text of the Commissioner's speech is available on his website.

The Commissioner also took the opportunity of his presence in Rome to follow up on the developments since his visit to Italy in July 2012 and the subsequent report focusing on the excessive length of court proceedings and the protection of the human rights of Roma and Sinti, as well as of migrants, including asylum seekers. The Commissioner met Ms Laura Boldrini, the Speaker of the Italian Chamber of Deputies, and Mr Luigi Manconi, the Chair of the Extraordinary Commission on Human Rights of the Italian Senate, as well as other members of this Commission. The Commissioner also held meetings with several human rights NGOs working on issues relating to the protection of the rights of Roma and Sinti, and of migrants and asylum seekers. Finally, the Commissioner met with representative organisations of Italian journalists, who shared their concerns about the situation regarding freedom of expression and freedom of the media in Italy, as well as the social and economic rights of journalists.

## ***Visit to Montenegro***

The Commissioner carried out a visit to Montenegro from 17 to 20 March, focusing on: issues pertaining to post-war justice, notably those relating to efforts to end impunity for war-time crimes and the human rights of internally displaced persons and refugees; action against discrimination, concerning in particular Roma, LGBTI persons and persons with disabilities; and freedom of the media. While in Podgorica, the Commissioner visited the Konik camp for displaced persons, primarily Roma, from Bosnia and Herzegovina, Croatia and Kosovo.\* He also visited the shelter for LGBTI youth and the LGBTI social centre, funded through the Council of Europe LGBTI project.

During his visit, the Commissioner held meetings with national authorities including the Minister of Health, Mr Miodrag Radunović, the Minister of Labour and Social Affairs, Mr Predrag Bošković, the Minister for Human and Minority Rights, Mr Suad Numanović, the Minister of the Interior, Mr Raško Konjević, the Acting Supreme State Prosecutor, Mr Veselin Vučković, the Assistant Minister of Justice, Ms Svetlana Rajković, the Assistant Minister of Education, Mr Mubera Kurpejović, the Director General of the Directorate for Media in the Ministry of Culture, Mr Željko Rutović and the Director of the Directorate for the Care of Refugees, Mr Željko Šofranac. The Commissioner also met with the Ombudsman, Mr Šučko Baković. He also held meetings with representatives of international organisations and media representatives, as well as with non-governmental organisations.

The Commissioner noted that Montenegro is still going through a transition period and needs to step up its efforts to provide full redress to all the victims of serious human rights violations that occurred during the wars in the 1990s, to eliminate discrimination, and to enhance media freedom. He stressed that there is a need to effectively prosecute war-time crimes, sanction the perpetrators, irrespective of their position in the command hierarchy, and ensure that all victims receive adequate and effective reparation. The Commissioner expressed his concern at the protracted displacement of more than 16 000 persons from Bosnia and Herzegovina, Croatia and Kosovo. He is particularly concerned by the situation of approximately 2 000 displaced persons, primarily Roma, living in substandard conditions in the Konik camp, and urged the authorities to close this camp. He encouraged the authorities to enhance their efforts aimed at facilitating access to personal identity documents for stateless persons and persons at risk of statelessness, facilitating their registration and defining the procedure of subsequent registration in birth registries of children born outside health facilities in Montenegro.

Commissioner Muižnieks noted with serious concern that media freedom has been under threat in Montenegro as illustrated by a number of violent attacks on journalists, including a murder. In this context, he welcomed the establishment in 2013 of a commission tasked with monitoring the work of the competent authorities in charge of investigating the cases of violence against journalists. He stressed that while the government should protect freedom of the media and avoid measures that would undermine freedom of expression, all media actors need to engage in a deeper discussion on how to promote ethical journalism and overcome existing divisions in the media sector.

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\* Throughout this text, all reference to Kosovo, whether to the territory, institutions or population shall be understood in full compliance with United Nations Security Council Resolution 1244 (1999) and without prejudice to the status of Kosovo.

The Commissioner welcomed the ongoing legislative initiatives aimed at improving the framework for action against discrimination, strengthening the role of the Ombudsman in this field, and fighting hate speech. Whilst welcoming the measures taken in recent years to improve access for Roma children to education, the Commissioner stressed that more needs to be done in this area as well as in the field of employment of Roma. As concerns the human rights of persons with disabilities, the Commissioner noted with regret that they still face a number of very serious barriers in their daily lives. Obstacles to physical access to public institutions, the institutionalisation of persons with mental disabilities and the lack of support services for community living are among the issues that the authorities need to effectively address.

Lastly, the Commissioner encouraged the government to continue its praiseworthy anti-discrimination policies and awareness raising activities in order to protect and promote the human rights of LGBTI persons.

The Commissioner's report following this visit is forthcoming.

### **3. Reports and continuous dialogue**

#### ***Letters to the Greek Ministers of Public Order and Citizen Protection and of Shipping and the Aegean***

On 14 January the Commissioner published two letters that had been addressed on 5 December 2013 to the Minister of Public Order and Citizen Protection, Mr Nikolaos Dendias, and the Minister of Shipping and the Aegean, Mr Miltiadis Varvitsiotis.

In his letters, the Commissioner noted the adoption of legislative measures aimed at protecting access to health and social care in initial reception centres for migrants, including for minors. However, he expressed his concern at the large number of reported collective expulsions of migrants by Greece, including a large number of Syrians fleeing war violence, and allegations of ill-treatment of migrants by members of the coast guard and of the border police. He called on the Greek authorities to carry out effective investigations into all recorded incidents and take all necessary measures in order to end and prevent recurrence of such practices. Commissioner Muižnieks underscored that collective expulsions of foreign nationals violate international and European human rights law and raise very serious issues of compatibility with the fundamental principle of *non-refoulement*, enshrined in the UN Refugee Convention, by which Greece is bound. The Commissioner further urged the Greek authorities to overhaul their migration policy and practice and welcomed as a first positive step the investigations into 'push-backs' and the alleged ill-treatment of migrants, as well as their commitment to informing him of the outcome of these investigations.

The letters are available on the Commissioner's website along with the Ministers' replies.



## ***Report on Albania***

On 16 January, the Commissioner published a report following his visit to Albania from 23 to 27 September 2013, focusing on major issues pertaining to the administration of justice and the role of law enforcement authorities in the protection of human rights.

In his report the Commissioner stressed that the high level of corruption in the judiciary seriously impedes the proper functioning of the judiciary and undermines public trust in justice and the rule of law in Albania. The Commissioner underlined that the national reform strategy and action plan to strengthen Albania's judiciary are encouraging measures, but more resolute action is needed, including more transparency and merit-based procedures in appointing and evaluating judges. In this context, the Commissioner recommended depoliticising the functioning of the judiciary, starting by strengthening the independence of the High Council of Justice, which ensures the integrity of Albania's judiciary. He recommended that the members of this Council be elected by a qualified majority in parliament and exert a more decisive influence on the appointment, promotion and disciplinary proceedings of judges, including those of the Supreme Court. The Commissioner also invited the authorities to adopt the necessary legislative measures which would provide for a qualified majority in the parliament's vote and consent concerning the appointment of the General Prosecutor by the President of the Republic.

Commissioner Muižnieks stressed that the very slow pace at which Albania implements a number of judgments of the European Court of Human Rights, notably those relating to the non-enforcement of domestic court and administrative decisions, is an additional factor which considerably weakens the rule of law in the country. He called on the government to promptly, fully and effectively implement all the judgements of the Court in respect of Albania. The authorities have also been called upon to address the persistent problem of excessive length of judicial proceedings, and create an effective domestic remedy in this regard.

As concerns access to justice, the Commissioner noted that the shortcomings in the implementation of the legal aid legislation continue to hinder effective access to justice, especially by vulnerable persons, such as Roma. He urged the authorities to address this issue in close co-operation with expert NGOs. While welcoming the authorities' plan to reduce court fees in order to ensure effective access to justice, the Commissioner underlined that clear guidance should nevertheless be provided to district and appeal judges concerning the implementation of the 2013 Constitutional Court decision relating to this subject.

The long-standing problem of ill-treatment and of impunity for serious human rights violations committed by law enforcement officers, including those relating to the violent events of 21 January 2011 in Tirana, continue to be an issue of serious concern to the Commissioner. He is particularly concerned at the increase in recorded incidents of ill-treatment, including torture. The Commissioner underlined that it is urgent to investigate all these cases along with the reported unlawful acts by law enforcement officers committed during and after the events of 21 January 2011 and to bring those responsible to justice.

Lastly, the Commissioner recommended improving access by detainees, including juveniles, to a lawyer and a medical doctor and ensuring that psychologists are always

present during criminal proceedings involving juveniles. He also expressed his concern at the over-reliance on remand in custody or detention during trial, recommending using this measure only as a last resort, prioritising existing alternatives to detention.

The report is available on the Commissioner's website, along with the authorities' comments.

### ***Letter to the Greek Minister of Shipping and the Aegean***

On 14 February the Commissioner published his reply to the letter of 28 January addressed to him by the Minister of Shipping and the Aegean, Mr Miltiadis Varvitsiotis, relating to the drowning of eleven migrants near the isle of Farmakonisi on 20 January.

In his letter, the Commissioner acknowledged the serious challenges that the Hellenic Coast Guard has been faced with and the numerous, praiseworthy sea rescue operations that have been carried out. He noted with satisfaction the apology for the deaths of the eleven migrants (8 children and 3 women) on 20 January, which was publicly expressed by the Head of the Coast Guard, as well as the initiation of a criminal investigation into the conditions of the coast guard intervention of 20 January that led to the rescue of 16 migrants and the deaths of the eleven others. The Commissioner expected this investigation to be prompt, to shed full light on the circumstances of this tragic event, and to lead to the identification, prosecution and effective sanctioning of every person responsible for these deaths, in compliance with the relevant standards developed by the European Court of Human Rights. He reiterated his call on the Greek authorities to establish an independent complaints mechanism covering the action of all law enforcement authorities, in accordance with his predecessor's Opinion concerning Independent and Effective Determination of Complaints against the Police of 2009. Lastly, he stressed the importance of the language which is publicly used with regard to irregular migration and expressed his preference for using the term 'irregular migrant', and 'irregular migration', given that this is more neutral and does not carry the stigma of the term 'illegal'.

The letter is available on the Commissioner's website.

### ***Report on Ukraine***

On 4 March, the Commissioner published his report on the visit to Ukraine from 5 to 10 February, which provides an independent analysis of the human rights issues observed until 28 February.

The report acknowledged that excessive force was used against protesters by law enforcement officers and the groups of civilians working with them. The Commissioner called on the authorities to ensure proper and effective investigations into cases of serious human rights violations and to bring those responsible to justice. The Commissioner also encouraged the authorities to publicly condemn all instances of torture, ill-treatment and other offences and misconduct by law enforcement officials, as well as to put a stop to any co-operation with civilians for the policing of demonstrations and other law enforcement functions, and to immediately distance themselves from such groups.

Impunity for human rights violations by law enforcement officials has been a long-standing and entrenched problem in Ukraine. The establishment of the National Preventive Mechanism was a positive development, but not sufficient to prevent the large-scale abuses which have been taking place in the context of the events taking place since November 2013. Therefore, the Commissioner encourages the authorities to undertake a comprehensive and all-encompassing reform of the police in Ukraine, which should be carried out immediately after the de-escalation of the tensions. The establishment of an effective and independent police complaints mechanism may further contribute to enhancing public trust and confidence in the police.

The Commissioner also called on the authorities to enact as a matter of priority legislation governing peaceful assemblies based on the standards enshrined in the European Convention on Human Rights.

With regard to the situation in the judiciary, the Commissioner highlighted an urgent need for the reform of the Prosecutor's Office, which should include its de-politicisation, as well as establishing clear and transparent criteria and procedures for the selection, appointment and promotion of individual prosecutors based on the qualifications and merits of individual candidates. Further efforts are needed to strengthen the independence of the judiciary, including individual judges, from any undue influence both from outside or inside the system.

The Commissioner also expressed his concern that the principle of equality of arms was not always respected in the case of certain judicial proceedings and over credible reports of numerous serious violations of procedural guarantees provided for in the Criminal Procedure Code, most notably referring to notification of custody, access to a lawyer and undue obstacles for obtaining forensic medical expert opinions in alleged cases of ill-treatment.

Finally, the Commissioner called on the authorities to ensure that human rights defenders are able to pursue their work freely, without undue impediments and that they are protected from any kind of harassment and pressure. He also encouraged the authorities to respect the integrity and independence of the Ombudsman institution in Ukraine.

The report is available on the Commissioner's website.

### ***Letter to the Prime Minister of the Czech Republic***

On 18 March the Commissioner published a letter sent on 28 February to the Prime Minister of the Czech Republic, Mr Bohuslav Sobotka, in which he expressed concern about the continuing trend of anti-Roma violence in the country.

Whilst welcoming the measures taken by the Ministry of the Interior to protect citizens from violence, the Commissioner considered that the increased frequency of these events and the consistent targeting of Roma call for a more comprehensive response by the authorities. The Commissioner urged the Czech authorities to give effect to the Council of Europe standards and those contained in the 1966 International Convention on the Elimination of All Forms of Racial Discrimination, especially Article 4 concerning the effective sanctioning of racist organisations and of activities promoting and inciting racial discrimination. As a first step, the authorities could consider banning

demonstrations in the vicinity of Roma neighbourhoods where there are indications that the participants intend to march towards these neighbourhoods with the aim of targeting Roma communities.

The Commissioner also considered that widespread discrimination and violence against Roma require overarching efforts to promote tolerance and anti-discriminatory attitudes throughout the majority population and stressed the essential role played by political and opinion leaders in promoting respect for human rights and social cohesion. Referring to his earlier recommendations made in the report following his visit to the Czech Republic in November 2012, the Commissioner called on the Czech authorities to clearly reassert their condemnation of racist manifestations and to take measures to prevent the recurrence of hate crimes against members of minority groups.

The letter is available on the Commissioner's website, along with the reply of Prime Minister Sobotka.

### ***Report on Denmark***

On 24 March, the Commissioner published a report on his visit to Denmark from 19 to 21 November 2013. The report focuses on the rights of asylum-seekers and immigrants and the rights of persons with disabilities.

With regard to the first aspect, the Commissioner paid particular attention to the rights of children in asylum and immigration proceedings. He highlighted a number of persisting challenges, despite the introduction, in 2012 and 2013, of a number of positive changes in Denmark's asylum and immigration policies. Prominent among these was the need to ensure that full consideration is given to the best interests of children in asylum and immigration policies and practices. In this context, the Commissioner referred in particular to some of the requirements imposed on children for family reunification and to return decisions affecting families. He also underlined the negative impact of prolonged residence in asylum centres on the enjoyment by children of their rights. The Commissioner also reviewed the treatment of unaccompanied minor migrants, who are in a highly vulnerable position, and called for a more child-sensitive approach to be applied in asylum proceedings.

While welcoming recent amendments strengthening the guarantees of fairness and effectiveness in asylum procedures, the Commissioner invited the Danish authorities to address a number of remaining shortcomings. The "legal limbo" in which rejected asylum-seekers whose deportation order cannot be implemented find themselves should be addressed through long-term solutions which do not impinge on the human rights of the persons concerned. When rejected asylum-seekers are returned, the utmost care should be taken to ensure thorough respect of their right not to be exposed to a real risk of treatment contrary to Article 3 of the ECHR. Detention of asylum-seekers and irregular migrants should be exceptional and of the shortest possible duration and should not apply to particularly vulnerable persons, such as children, persons with disabilities and victims of trafficking in human beings.

The Commissioner recommended a number of measures to ease the process of integration of refugees in Denmark. He also addressed public discourse and hate speech targeting ethnic and religious minority groups, particularly Muslims, a phenomenon which continues to be of concern to him in spite of the positive steps taken

by the authorities against hate speech and hate crime since 2011. The Commissioner warmly welcomed the setting up of an independent police complaints body and called on the authorities to ensure that law enforcement officials are easily identifiable, so as to facilitate the sanctioning of any perpetrators of abuse.

As regards the rights of persons with disabilities, the Commissioner noted that Denmark has developed positive policies regarding the provision of individualised support and services in the community in order to promote the autonomy of persons with disabilities. However, he expressed concern at the trend among local authorities to provide accommodation for persons with disabilities in large residences, which does not favour independent living and inclusion in the community. The Commissioner also underlined shortcomings in the legislation regarding legal capacity, notably the existence of a system of full guardianship for persons considered incapable of managing their own matters due to psycho-social or intellectual disabilities, which involves full deprivation of legal capacity, including the right to vote. The Commissioner urged for progress to be made towards replacing substituted decision-making, including guardianship, with supported decision-making.

Lastly, the Commissioner focused on the need to improve legislation and practices regarding coercion in psychiatry, including forced hospitalisation, forced treatment and the use of physical restraints. While welcoming the plans recently put forward by the Danish authorities to act in these fields, the Commissioner stressed the need to ensure a swift implementation.

The report is available on the Commissioner's website, along with the authorities' comments.

## **4. Themes**

### ***Human rights and national security services***

On 15 January the Commissioner organised an expert meeting on national security services and human rights, which aimed to identify specific issues on which further action may be needed. The meeting brought together Mr Adam Bodnar, Assistant Professor at the Human Rights Chair of the Warsaw University Faculty of Law and Administration, Mr Saša Janković, Protector of Citizens of the Republic of Serbia, Mr Jānis Kažociņš, former Director of the Constitution Protection Bureau (SAB) of Latvia, Mr Ian Leigh, Professor at Durham Law School, and Mr Aidan Wills, independent consultant.

The experts discussed with the Commissioner the issues of democratic oversight over national security services, access to effective remedies by victims of unlawful actions perpetrated by security services, and the protection of whistle-blowers. The participants stressed the need to consolidate existing standards on democratic oversight over national security services by highlighting principles and setting objectives to be achieved in this domain. With regard to access to effective remedies, the experts underlined the existence of extensive case-law of the European Court of Human Rights concerning the obligation of states to effectively investigate alleged violations of Articles 2 and 3 of the European Convention on Human Rights, as well as the right to an effective remedy

guaranteed by Article 13 of the Convention, whose effective implementation in cases related to national security services operations could be assessed by the Commissioner in his country work. Concerning the protection of whistle-blowers, the participants considered that the protection of whistle-blowers denouncing human rights violations perpetrated by national security services has not been sufficiently addressed at European level, and that particular attention should be paid to the public interest nature of information related to national security disclosed by whistle-blowers.

### ***The need to fight antisemitism in Europe***

On 23 January the Commissioner published a Human Rights Comment entitled “Europe still haunted by antisemitism” where he noted with concern that more than 70 years after the Holocaust, antisemitism is growing in Europe. Despite this trend, a survey carried out by the European Union’s Fundamental Rights Agency in 2012 showed that only half of the EU member states collect data on reported antisemitic incidents. The Commissioner underlined that state authorities must guard themselves against the trivialisation of antisemitic manifestations and stressed that antisemitism has served and still serves as a pretext and justification for discrimination and the use of violence.

The Commissioner further underlined the need for European states to adopt comprehensive measures to fight antisemitism, including online antisemitism. In this context, the Council of Europe “No hate speech” campaign represents a valuable opportunity to prepare young people for dealing with this phenomenon. States were also urged to check to what extent they have effectively implemented the Council of Europe Committee of Ministers Recommendation No. R (97) 20 on “hate speech”.

Lastly, Commissioner Muižnieks highlighted the importance for national authorities to intensify their efforts to fight ignorance and intolerance within current and future generations through systematic, on-going education, which should include the accurate teaching of the Holocaust.

### ***Gender equality***

On 15 January, the Commissioner published a Human Rights Comment (*Sex-selective abortions are discriminatory and should be banned*), in which he draws attention to skewed sex ratios at birth documented in a number of countries, which are widely believed to result from selective abortions of female fetuses. The Commissioner underlines that irrespective of one’s choice to view the problem either as violence against the foetus or the woman, sex-selective abortion is a clear case of discrimination with strong elements of physical and psychological violence, which must be vigorously countered and banned in law. Besides legislation, actions that governments and civil society need to engage in to counter this phenomenon include: collecting reliable data; developing guidelines on the ethical use of the relevant technologies; adopting support measures for girls and women; and addressing the root causes of the inequalities that drive sex-selection.

On 6 March, the Commissioner published a Human Rights Comment (*Hate speech against women should be specifically tackled*) to mark International Women’s Day. Against a background of proliferating hate speech, notably on the Internet, with daily calls for violence against women and threats of murder, sexual assault or rape, the Commissioner called on member states to prohibit by law any advocacy of gender

hatred that constitutes incitement to discrimination, hostility or violence. Provisions against hate speech in international human rights law do not specifically cover sexist discourse. However, some standards exist, including the Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention), which establishes for instance the obligation for state parties to encourage private companies and the media to set self-regulatory standards to limit any form of verbal or physical abuse of women, and the 2013 guidelines of the Committee of Ministers of the Council of Europe on gender equality and media. In addition, the Commissioner stressed that traditional and online media could better engage in exposing and marginalising sexist discourse and that political and opinion leaders in Europe should send a signal to the public which shows that violent discourse against women has no place in a democratic society and will not be tolerated.

### ***Excessive use of force by the police***

On 25 February the Commissioner published a Human Rights Comment entitled “Police abuse – a serious threat to the rule of law”, in which he observed that reported police misconduct in Europe has been multifaceted encompassing excessive use of force during demonstrations and/or apprehensions as well as ill-treatment of persons while in police detention, and violence targeting minorities. Such forms of abuse undermine public trust in the state, social cohesion, and effective law enforcement that relies upon a harmonious relationship between police and the local communities. The Commissioner stressed the need to eradicate impunity for the authors of these abuses, including through the creation of independent police complaints mechanisms, so that victims receive justice, future misconduct by law enforcement officials is deterred and public trust in and co-operation with law enforcement authorities can be strengthened. He finally urged states to strengthen safeguards and restore trust through concrete measures such as the development of clear guidelines concerning the proportionate use of force by police, as well as the adoption and implementation of the 2001 European Code of Police Ethics.

### ***Human rights of immigrants, refugees and asylum seekers***

On 4 March, the Commissioner was invited to lecture at the Institute for Human Rights of University College London’s Faculty of Laws, as a follow-up to his publication in 2013 of the Issue Paper *The right to leave a country*. The speech, entitled *Refugee Protection, Migration and Human Rights in Europe: Notes from the field*, focused on the difficulties faced by irregular migrants, including asylum seekers, coming to the EU in general and on the Syrian refugee crisis in particular. The Commissioner looked at the problems of racism and prejudice affecting migrants originating from European countries, including those from the Western Balkans and the new EU member states, placing the debate back into its correct context: the right of every person to leave a country. The speech is available online.

### ***Systematic implementation of human rights***

On 25 March, the Commissioner addressed the 26<sup>th</sup> Session of the Congress during a plenary meeting on best practices for implementing human rights at the local and regional levels. He emphasised that all levels of governance are responsible for the realisation of fundamental rights and that shared human rights duties between the authorities at national, regional and local levels necessitate close co-operation and

coordination. The implementation of national Roma strategies is a case in point: municipalities and regions have a key role in putting them into practice.

The Commissioner welcomed the Congress report on best practices for implementing human rights and underlined that it will be useful for raising awareness of the human rights duties of local and regional authorities and connecting their work with human rights standards. Municipalities and regions have a unique opportunity to coordinate the broad range of services provided to their residents in a rights-based and person-centred way. The Commissioner stressed that recognising members of local communities as holders of rights and striving to meet their individual needs through systematic and coordinated efforts is at the heart of the effective fulfilment of human rights.

On 27 and 28 March, the Commissioner's Office organised a workshop in Strasbourg on developing and implementing national action plans for human rights. A growing number of member states have adopted or are considering the development of a comprehensive action plan seeking to address a broad range of human rights in a coherent manner. National action plans have proved to be useful tools for clarifying the authorities' responsibilities and for identifying and addressing gaps in human rights protection with reference to European and international human rights standards. The workshop was aimed at taking stock of current initiatives in this area and encouraging the development of new action plans. It was attended by 27 invited participants from public administration, national human rights structures, civil society and international organisations associated with the implementation or preparation of recent action plans.

The workshop examined good practices in collecting data for the evidence base of action plans and highlighted inclusive and participatory approaches in their development and implementation. Multi-level coordination, connections between comprehensive and specialised action plans, and links with European and international monitoring mechanisms were also discussed. In addition, attention was devoted to the coordination of action plans with the budgetary process and the evaluation of their impact.

The workshop concluded that the benefits of the inclusive and participatory process of developing and implementing national action plans for human rights had already been vindicated. Human rights work has been made systematic and more efficient through action plans and their coordination mechanisms bringing the different duty bearers together. More efforts are needed to assess and measure the progress made in outcomes. The ultimate test of an action plan is whether it has had positive effects on the enjoyment of human rights. The conclusions of the workshop will be made available on the Commissioner's website.

### ***Trafficking in human beings***

On 18 February, the Commissioner participated in the Joint Council of Europe-OSCE Conference "Not for sale – joining forces against trafficking in human beings", organised on the occasion of the Austrian Chairmanship of the Council of Europe and the Swiss Chairmanship of the OSCE. In his speech, available on his website, the Commissioner draws the attention to a number of human rights issues of relevance when taking action against trafficking. In the field of migration, these include the need to open channels for legal migration and to better protect the rights of migrant workers. States should also refrain from prosecuting and detaining foreign victims of trafficking for violation of immigration laws. Given their particular vulnerability to trafficking, children require



specific attention and assistance tailored to their needs. Child victims of trafficking should not be seen as perpetrators of petty crime while they are in fact victims of exploitation by the real criminals. In the field of prevention, states should ensure that austerity measures do not impact negatively on groups who are vulnerable to exploitation and take measures against statelessness. Measures against racism, xenophobia and corruption should also be part and parcel of any effective anti-trafficking strategy, as these phenomena provide fertile ground for trafficking to flourish.

## **5. Other Meetings**

### ***OSCE Permanent Council (Vienna)***

On 27 February, the Commissioner addressed the Permanent Council of the OSCE in Vienna. In his speech, the Commissioner mentioned some major trends concerning human rights in Europe based on his analysis of the situation since the beginning of his mandate on April 2012.

On human rights and the rule of law, the Commissioner stressed that states must do more to ensure that their national judiciaries and law enforcement uphold human rights at all times.

The Commissioner stressed that delays or absence of implementation of decisions taken by national courts is one of the most insidious challenges to the rule of law. He also said that reforms to justice systems in some countries are needed to strengthen the independence and impartiality of national judiciaries. He added that if a judiciary becomes delegitimised by the elite, it leads to a lack of confidence on the part of the public and as a result, the public have little choice but to resort to non-legal means or to apply directly to the European Court of Human Rights which inevitably leads to a backlog of cases.

The Commissioner observed that issues related to police misconduct are becoming more and more relevant to his work at the moment. He recalled that it is a fundamental duty for states to combat impunity for human rights violations committed by law enforcement officials so that future misconduct is deterred and public trust in law enforcement is strengthened.

Finally, the Commissioner spoke about the need to protect and promote the human rights of Roma and migrants. He highlighted segregation in housing and education and ethnic profiling as particular problems.

## **6. Communication and Information work**

The Commissioner's activity in the first quarter of 2014 received wide coverage in national and international media. Among the most covered topics was the Commissioner's comment on the judicial bill and media freedom in Turkey, with articles and interviews published by *AFP, ANSA, Basler Zeitung, BBC, Cihan, Der Standard, Deutsche Welle, Ethnos, Financial Times, Hürriyet, Il Giornale, International New York Times, Press TV, Reuters, Tageblatt, The Moscow Times, Today's Zaman, Capital, OLJ,*

*La Stampa, Today's Zaman, Euronews, Voice of America, CNN Türk, Europolitics, and Italia Oggi.*

The Commissioner's visit and report on Ukraine were covered by *Bsanna news, Daily ua, Delfi, Dnevnik, Euronews, Euroua, Fakty, Focus news, Glavred info, Gordon, Handelsbaltt, hromadske.tv, Interfax, Ipress, Kommersant, KP, Kyiv Post, MediaPort, NewsRu, Nezavisimaya Gazeta, PL, Polskieradio, Pravda, Profi-forex, RBC, RIA, Ria Novosti, Rosbalt, Russian planet, SUD, Svodka, Telegraf, Ukrainian week, Ukrinform, Unian, ZN.UA, ANSA, ITAR-TASS, Politiken, Obozrevatel, Glavnoe, Swissinfo, Liga, Rakurs, Gordon, Polit Online, Podrobnosti, TSN, Publica, LB, Glavred, Vesti, APA, and Tiroler Tageszeitung.*

Another major topic was the Commissioner's concern about the situation of migrants in Europe, in particular concerning migration tragedies which occurred near Farmakonisi and in Ceuta (*AVGI, La informacion, Capital, Ekathimerini, Il Friuli, Ceutaldia, To Vima, iNews, New post, Paraskhnio, AVGI, Agence Europe, ANSAmed, Associated Press, EFE, Efsyn, Ekathimerini, El Pais, Eleftherotypia, La Vanguardia, Le Courier des Balkans, New Europe, New Post, Patras Time, Ta Nea, The Guardian, Washington Post, Enet English, the Press Project, ANA-MPA, CAN, the Foreigner, Topontiki, Kar, Ethnikismos, Tribune, Nooz, New Post, News Beast, Axortagos, Infomobile, Zougla, Capital, and Gazeta Wyborcza.*)

The Commissioner's concerns about the Law on Public order in Spain continued to be covered by *EFE, EURONEWS* and *Europa Press*, while the German magazine *Focus* published and *France 3* broadcast interviews with the Commissioner on Syrian refugees.

The Danish newspaper *Politiken* published three articles quoting the Commissioner's observations on the rights of persons with disabilities in Denmark criticising the trend to build new, large facilities which perpetuate their isolation and prevent them from fully integrating in society. Further coverage in Denmark concerned the report published in March, in particular the chapter on the rights of migrant children, which was among the main focuses of several TV and radio news (*Sir, DR DK, Ekstra Bladet, Radio P1, TV DR2 Morgen, Sigmalive, West info, Mdac, The Copenhagen Post, Jylland-Postens, Information, Fyens, and The Foreigner*).

The Human Rights Comment on the rise of antisemitism in Europe was covered by *AFP, ASCA, EPD, Il Giornale di Sicilia, Il Sole 24 Ore, Itar-Tass, Jüdische Allgemein, L'Unione Sarda, L'Essentiel, and Sud Ouest*, while the one on sex-selective abortions received attention by *Kathweb, Balkansinsight, Der Standard, Le Figaro, Radio Free Europe, Radio Sarajevo* and the French specialised website *Genethique*.

The visit to Georgia was well covered by the main national media which attended the press conference, including *Prime-News* and *Rustavi2*.

The report on the judiciary in Albania was covered by the main national media plus *ANSA, Balkans Insight* and *Gazeta Tema*.

Additional coverage concerned prison conditions in Cyprus (*Cyprus News Agency, Famagusta Gazette, and New Post*), human rights in the EU (*B92 and Tanjug*), austerity measures (*El Pais*), Roma (*Agenzia Radicale*), Belarus (*The Telegraph*) and freedom of expression (*Index of Censorship*).

The tweet on the situation of ill detainees in a Greek prison was covered by *Associated Press*, *The Atlanta Journal*, *METRO*, and *France 24*, while the Human Rights Comment on police violence was quoted by *Hurriyet Daily News*, *Euronews* and *Hirado*.

An op-ed on the rule of law was published on the website of *Open Democracy*. *El Diario* quoted the Commissioner's concerns about a draft law in Spain which risks curtailing freedom of assembly.

*Rozhlas*, *Novinky*, *Zpravy*, *ABC*, and *Prague Daily Monitor* reported on the letter to the Prime Minister of the Czech Republic on Roma rights. *ANSA*, *L'Espresso* and *Le Monde Diplomatique* referred to the Commissioner's comments on the situation of Roma in Italy.

The visit to Montenegro was covered by *Pbjeda*, *Vijesti*, *Analitika*, *Balceni Caucaso* and *MINA*.

Further coverage concerned the Human Rights Comment on hate speech against women (*ANSA* and *Gazzetta del Sud*), police violence (*Hurriyet Daily News* and *Zaman*), prisons and defamation in Italy (Il manifesto, TVXS and EURActiv).

The number of followers on Twitter and readers on Facebook continued to grow, reflecting an increasing interest generated on social media by the Commissioner's activities. More than 6 000 unique visitors per month visited the Commissioner's website.

## 7. Next three months

### April

31/03-04/04	Visit to Romania
10-11/04	"Human Rights and Disability" conference of the CoE and the Austrian Federal Ministry of Labour, Social Affairs and Consumer Protection (Vienna)

### May

05-06/05	124th Session of the Committee of Ministers (Vienna)
13-14/05	2 <sup>nd</sup> European IDAHO Forum (Valletta)
16/05	"Child-friendly justice: what it means and how it is realized" conference on the occasion of the 25th anniversary of the adoption of the Convention on the Rights of the Child (Stockholm)
19-23/05	Visit to The Netherlands

## June

- 03-05/06 Meetings with OHCHR, UNHCR, ILO and IMO (Geneva)
- 10-11/06 “The OSCE and Human Rights Defenders: The Budapest Document 20 years on” conference jointly organised by the Swiss OSCE Chairmanship and the OSCE Office for Democratic Institutions and Human Rights – ODIHR (Berne)
- 12/06 EuroDIG 2014 (Berlin)

## **8. Observations and reflections**

In several of my country visits at the end of 2013 and the beginning of 2014, I focused on anti-discrimination legislation and policy, as well as the human rights situation of the vulnerable groups that are frequently targets of discrimination. These include Roma, other ethnic and/or religious minorities, LGBTI persons and persons with disabilities. I find it a bit strange that this area of work requires so much attention. Non-discrimination is one of the areas where international standards are quite well elaborated, starting with the United Nations instruments down to Article 14 of the European Convention and Protocol 12 thereto. Council of Europe member states that are also members or candidate countries of the European Union have had to transpose the far-reaching anti-discrimination directives of the EU and establish independent bodies to review complaints, conduct research and provide assistance to victims.

We have crafted excellent standards, created specialised institutions, engaged in data-collection, research, education and awareness-raising. However, victim surveys – including by the European Union’s Fundamental Rights Agency - suggest that discrimination remains very widespread throughout Europe, but the reporting and jurisprudence remain relatively meagre. Why is this the case? I think there are a number of reasons. First, many victims of discrimination are not aware of available complaint mechanisms or do not trust the courts, equality bodies, and law enforcement more generally. Rather than complain, victims suffer in silence. Secondly, access to justice is sometimes hindered through limitations on standing before courts for NGOs or equality bodies. Thirdly, the collection of data disaggregated by ethnicity, religion, gender and other grounds – so essential for proving indirect discrimination – is still the exception rather than the rule, as some states invoke historical sensitivities surrounding ethnic data. Fourthly, protection against discrimination often varies depending on the ground in question, with gender and ethnicity/race better protected than, for instance, sexual orientation, age or disability. Finally, discrimination continues to take place not only because perpetrators often get away with it, but also because the social context breeding discrimination has remained intact regardless of laws and policies.

What kind of context breeds discrimination? Social science research suggests that stereotypes and prejudices cannot be used to predict the incidence of discrimination, but they can increase the probability of discrimination taking place. This means that we must address the breeding grounds of stereotypes and prejudices, as well as the means through which they are reproduced, spread and kept alive. Research suggests that

social distance – the lack of meaningful contact between persons belonging to different groups – can lead to the emergence of negative stereotypes, emotions, and images of other groups. Social distance grows in contexts of segregation – when racial, ethnic or religious minorities live, go to school or work separately from the majority without significant interaction with it either because of discrimination or self-isolation. Social distance also grows when persons with disabilities or older persons are kept secluded in institutions and are not included in the community. This means that we must address all contexts of segregation or the seclusion of groups of people sharing certain characteristics from the majority population.

Stereotypes and prejudices are conveyed in many ways – through family upbringing, in schoolbooks, in popular culture and advertising, in public and media discourse, and elsewhere. When the bias is of such severity that it constitutes discrimination, hate crime or hate speech, it should be sanctioned by law. More often, though, intolerance does not cross this boundary and sometimes remains implicit, embedded in coded language. Here, it becomes as much a question of ethics – ethical journalism, advertising, political speech – where education and self-regulation are the more appropriate response.

I will continue to call on member states to improve their anti-discrimination legislation, to ensure the true independence and effectiveness of equality bodies, and to bring their legislation to life through various measures. At the same time, we need to overcome segregation and confront stereotypes and prejudices wherever we see or hear them. Otherwise, our excellent standards will remain a dead letter and discrimination will continue unabated.