



COMMISSIONER FOR HUMAN RIGHTS
COMMISSAIRE AUX DROITS DE L'HOMME



CommDH/Speech(2013)10
English only

“Human Rights Diplomacy: Notes from the field”

Public Lecture by Nils Muižnieks
Council of Europe Commissioner for Human Rights

Riga Graduate School of Law
Riga, 10 October 2013

Ladies and Gentlemen,

It is a great pleasure for me to be here in Latvia today, and in an academic setting. It gives me a rare opportunity to reflect on my work, and analyse it in different academic categories. I have been in office now for a year and a half, and I have travelled extensively throughout the Council of Europe member states during this short time.

So far I have carried out no less than 14 country missions, ranging in length from 3 to 10 days, followed by substantive reports. There have been 12 shorter contact visits to attend conferences, Ministerial meetings, training sessions and briefings, and many trips to Brussels, Vienna and Geneva to meet with the EU, OSCE and the UN.

The breadth of my mandate means that I see contrasting situations every day, and can be dealing with the administration of justice one day, the impact of the economic crisis the next, then police violence, child labour – I am learning every day.

If diplomacy is the art of persuasion, then the Commissioner for Human Rights is certainly a diplomat. My job is to try to persuade governments, parliaments and judiciaries to do more for human rights.

As Commissioner, I am something of an unconventional diplomat, in that my mandate is totally independent. I receive no instructions from member states, from the Secretary General of the Council of Europe, or from any other institution or person. Four times a year, I report to the Committee of Ministers of the Council of Europe, and once a year to the Parliamentary Assembly. My mandate is for 6 years and is non-renewable – I do not have to please anyone or to think about my future campaign.

Some of the working methods at my disposal are typical of diplomats.

I can call in Ambassadors and MPs to express my concern, ask for information and urge action on their part. I can use public expressions of concern such as statements and media interventions. I also use social media to get my message across with Facebook posts and tweets which have proven to be effective.

Writing letters to Ministers and MPs is another way I can try to have an impact, and I have been informed that in one specific case, MPs used one of my letters to change legislation.

Another important part of my mandate is supporting human rights defenders. I have visited some of these people in prisons and pushed for investigations into their situations.

What sets the CoE apart from other organisations? Its legally binding norms and the European Court of Human Rights. But despite the binding nature of the norms, some still try to contest them:

- LGBT issues. There is a growing mass of case-law on these issues, and a wide margin is accorded to states regarding same sex partnerships or marriage. There is less of a margin for adoption issues, and none at all for freedom of expression and assembly and acts of violence against LGBT persons or supporters. There had been a broad consensus on the Committee of Ministers' Recommendation on this subject but now the debate has become more polarised, with an active minority challenging these rights. The Russian Federation invokes the protection of children's rights, but this position is not supported by the case-law of the Court.
- Migration issues. There was controversy recently when the former Permanent Representative of Malta to the CoE harshly criticised the Court, the Commissioner and the Committee for the Prevention of Torture regarding migration. He claimed that they were manipulated by NGOs, that the Court had overstepped its authority on Interim Measures and the detention of migrants. The Secretary General immediately defended the Council of Europe, and the Maltese government stressed that this was not its position.
- The most serious contest currently comes from the UK, which is challenging the very right of the Court to "impose" decisions on the "sovereign" parliament. This has mostly to do with the right of prisoners to vote in elections. The Court has ruled that the blanket ban in place in the UK violates the Convention in a pilot judgment concerning some 2500 cases. The UK Prime Minister has repeatedly stated his opposition to this judgment and the situation is such that the UK is faced with either implementing the judgment or withdrawing from the Convention. As yet it is unclear how this will be resolved.

I see my role as assisting the Court. Two-thirds of all of the cases brought before the Court originate from five or six member states – Italy, Romania, Russia, Serbia, Turkey and Ukraine. I try to focus on the structural problems which are leading to these huge numbers of cases being brought before the Court – I have dealt with these in my recent report on Italy, and will do also in my forthcoming reports on Russia and Turkey. I push for the implementation of judgments, raise the issues with officials, in the media and in my reports. Sometimes a visit is even organised around a judgment, as was the case with *DH vs the Czech Republic*.

The Court's case-law serves as a platform for me – some in terms of best practice and other only for legal obligations. I try to raise the profile of pilot judgments which should be treated as a matter of priority. I have raised this with Štefan Füle, EU Commissioner for Enlargement and Neighbourhood Policy, with EU Delegations, the European Parliament and with the EU Fundamental Rights Agency.

I also conduct legal analyses to try to help member states prevent applications to the Court - such as my Opinion on the NGO law in Russia, which has been used in courts.

Access to justice is another important issue which I have tried to bring to the forefront in some member states. It has been affected by the economic crisis in many countries – for example, court fees have been increased in Estonia. In many countries, the legal aid systems are dysfunctional. I engaged in a dialogue on this subject with the Albanian authorities which led to the reform of the legislation in place.

National Human Rights Structures (NHRs) are also affected by this issue, especially in Greece, the UK, Ireland and Latvia. I recently attended a gathering of European NHRs in Vienna, and I see my role as giving them political support. If they come under attack I can raise the issues of their funding and mandate.

An interesting aspect of Human Rights Diplomacy is the interaction with external partners, in particular the EU, OSCE and UN.

The EU can seem like a contradictory player since most of its work on human rights is for external relations – ie it concerns states outside the EU. It has limited competence within its borders. Its competence covers issues such as gender equality, racial discrimination, data protection (except for national security), disability (EU acceded to UNCRPD) and some aspects of asylum and immigration. This leads to a situation where it is often accused of double standards by states which are not members of the EU.

My co-operation with the EU includes working with the Fundamental Rights Agency (FRA), confronting member states with data, urging the EU to do better where it does have competence, criticise problematic areas such as the detention of migrants. Outside of the EU it depends on the context. In some cases I tend to distance myself, but I work in close co-ordination with them regarding the Western Balkans and the Eastern Partnership.

With the OSCE, there is some overlap with the CoE on issues such as elections, hate crime, training etc but their key added values are media, minorities and their field presence. I worked with the OSCE Representative on Freedom of the Media, Dunja Mijatović in Azerbaijan earlier this year. I share information with the OSCE on Roma and other minority issues and we enjoy fruitful co-operation in terms of information gathering.

My closest co-operation with the UN is with UNHCR, especially in the field. I have good relations with the Special Rapporteurs.

These are just preliminary observations – I still have four and half years left of my mandate. My work schedule for the end of this year includes a full visit to Denmark which will be followed by a report; participation in a Chairmanship event and bilateral meetings in Armenia; the Conference of Ministers Responsible for Media in Serbia; participation in the launching of a Human Rights Action Plan in Scotland.

I will also be publishing an Issue Paper on the Right to Leave a Country, an Issue Paper on Human Rights and the economic crisis, and developing my work on the security sector and human rights – surveillance, democratic oversight, ill-treatment, etc.

I will carry out a full country visit to Latvia, but not until after the next elections and the issues to be covered remain to be decided. I am not the Commissioner for Latvia, but for the whole Council of Europe. Latvia is a small country, and my experience of and sensitivity to double standards, knowledge of the post-communist context and of the Russian language are useful to me in my work as Commissioner.

Thank you for your attention.