



COMMISSIONER FOR HUMAN RIGHTS
COMMISSAIRE AUX DROITS DE L'HOMME



Strasbourg, 10 November 2010

CommDH(2010)44

3RD QUARTERLY ACTIVITY REPORT 2010

**by Thomas Hammarberg
Commissioner for Human Rights**

1 July to 30 September 2010

Presented to the Committee of Ministers
and the Parliamentary Assembly

CONTENTS

1. Overview	3
2. Missions and Visits	4
3. Reports and continuous dialogue	5
4. Themes	9
5. Communication and Information work	15
6. Observations and reflections	18
7. Next three months.....	20
Appendix	21

1. Overview

Human rights for *Roma* individuals were one of my priorities during the past three months. In early September I expressed concern about statements by politicians which might promote further prejudice against Roma communities and “legitimise” negative activities by extremist groups.

In a Human Rights Comment a week later I wrote that instead of stigmatising Roma, notably through generalisations about criminality, the facts that push some members of the Roma communities toward crime should be tackled. Also, the reasons behind Roma migration – abject poverty, discrimination across all areas of life, statelessness and a bitter history of repression – should be recognised and addressed.

I published a longer article on the history of the Roma in the journal *New Europe* and spoke at well attended meetings on policies towards Roma at the Centre for Political Studies in Brussels and at the ABF in Stockholm. Together with the OSCE High Commissioner on National Minorities we decided to update and republish the report “Recent Migration of Roma in Europe”.

The acute problem of statelessness and lack of personal identity documents among the Roma in some parts of Europe was another issue that my Office raised during this period. This was also a follow up to the constructive meeting which was co-organised by the chair government in Skopje in June.

Constructive dialogue through exchanges of letters was pursued on *migration and refugee issues* with several governments, including the Cypriot, French, Italian and Turkish authorities. I was asked to give an oral presentation as a third party before the European Court of Human Rights in a case relating to the EU Dublin Regulation, highlighting the problem which has arisen due to dysfunctional asylum procedures in Greece. The same problem was later discussed in a Human Rights Comment. I have welcomed the fact that some governments have now decided not to return asylum seekers to Greece until the Court has delivered its ruling on the situation.

The problem of refugee minors was raised both in connection with the continued involuntary returns to Kosovo and also in relation to the need for safeguards to protect asylum seeking children. These activities have in part been based on co-operation with UNICEF as well as UNHCR.

In late September I published a report on Monitoring of investigations into cases of missing persons during and after the August 2008 armed conflict in Georgia. The report was based on work by two international experts in the field of police investigations into serious crimes who worked on my behalf for several months on the difficult cases which had been identified. The conclusions of the report were critical and required serious action on both sides. At the time of writing I am expecting positive replies to my recommendations.

A status report on the implementation of the six urgent humanitarian and human rights principles was worked upon during this period in order to be published in early October (and will be reported upon in the next Quarterly Report).

As usual nowadays the Office was in contact with a number of *Ombudsmen* – for example, I saw the Dutch Ombudsman in his office during a visit to the Senate in The Hague. A meeting for and with representatives of equality bodies was held in Strasbourg in early July in order to prepare for a document on their situation. I expressed on several occasions the need to protect these structures from drastic budget cuts in a period when the protection of vulnerable persons is particularly relevant.

Among other initiatives, I would like to mention here the call for the protection of *the rights of elderly people* and the proposals to ensure *access of ordinary citizens to what should be public information*. Both of these issues should be given higher priority in political discourse.

2. Missions and Visits

Visit to the Netherlands

On 28 September 2010, the Commissioner paid a visit to the Dutch Senate where he delivered a speech before the Committee of Justice. He spoke about certain important developments in the field of human rights that have taken place in the Netherlands since the publication, on 11 March 2009, of the Commissioner's report following his visit to the country between 21 and 25 September 2008 and the Dutch Government's comments. The Commissioner subsequently engaged in a discussion with the members of the Senate on the human rights challenges currently faced by the Netherlands, as well as by other Council of Europe member states.

The Commissioner expressed his concern about the rising tendencies of racism and xenophobia in the Netherlands and other European countries. He noted that some European politicians resort to discriminatory rhetoric and shape their policies accordingly, and urged political leaders to oppose any xenophobic speech in public discourse. He also raised concerns about recent reports regarding the collection by some local authorities in the Netherlands of sensitive personal data on persons of Roma origin and the creation of special databases with comprehensive information about Roma people living in the municipality.

Noting the amendments to the asylum procedure, which entered into force on 1 July 2010, the Commissioner cautioned against the use of the accelerated asylum procedure for complex cases which require a scrupulous and extensive examination. He expressed concerns at the large numbers of asylum seekers, including vulnerable persons, being detained in the Netherlands, and recommended that rejected asylum seekers be provided with shelter until the outcome of the appeal procedure. The Commissioner commended the authorities for deciding to suspend the return of Somali asylum seekers to Greece, but expressed his concern about recent reports of forced returns of asylum seekers to Somalia and Iraq.

The Commissioner expressed the hope that the Dutch authorities would provide shelter to migrant children unlawfully present in the Netherlands, in line with the decision of the European Committee of Social Rights of 20 October 2009. He was concerned at the large number of unaccompanied minors being held in administrative detention and the significant number of children kept in pre-trial detention. As regards juvenile justice in

particular, he recommended that the age of criminal law responsibility be increased in line with the majority of European states.

During his visit to the Netherlands, the Commissioner also met with the National Ombudsman, with whom he discussed recent developments in the country.

3. Reports and continuous dialogue

Letters to the Ministers of Foreign Affairs and of the Interior of Italy

On 6 July, the Commissioner published two letters addressed to the Italian Ministers of Foreign Affairs and of the Interior, Franco Frattini and Roberto Maroni. The letters, sent on 2 July, followed reports received by the Commissioner according to which a group of Eritrean migrants, including asylum seekers, detained in Libya had been ill treated and were possibly faced with a forced return to Eritrea. The Commissioner was concerned in particular at the risk of serious human rights violations to which these persons would be exposed if sent back to Eritrea. According to the reports, the group included persons who had attempted to reach Italy to seek international protection and had been returned to Libya without being given a possibility of doing so. Noting the recent decision of the Libyan authorities to discontinue UNHCR's activities in the country, in his letters the Commissioner asked for the co-operation of the Italian authorities to urgently clarify the situation and asked to be kept informed about the results of the investigations.

Letters to the Ministers of Justice and of the Interior of Turkey

On 8 July, the Commissioner published two letters addressed to the Minister of Justice and to the Minister of the Interior of Turkey. The letters followed up on a visit to Turkey carried out by the Commissioner from 23 to 26 May, during which he discussed issues relating to, *inter alia*, juvenile justice, implementation of anti-terrorist laws, access of local human rights boards to places of detention, the protection of the human rights of asylum seekers, return of internally displaced persons and the village guard system.

In the letter addressed to the Minister of Justice, Mr Sadullah Ergin, whilst welcoming the law reforms undertaken regarding the juvenile justice, the Commissioner expressed his deep concern at the practice of arresting, detaining and prosecuting children pursuant to anti-terrorist legislation, particularly in east and south-east Turkey and stressed the need to reform the anti-terrorist law, and bring it into line with international and European standards. The Commissioner raised further concerns regarding the arrest and detention of a number of elected local representatives, mainly in south-east Turkey, most of whom awaited an indictment for several months. Finally he welcomed the legislative amendment following which local human rights boards could have access to places of detention without seeking prior authorisation from public prosecutors, and recommended the dissemination of this information to all provinces.

In the letter addressed to the Minister of the Interior, Mr Beşir Atalay, the Commissioner welcomed the plans of the government to enact new immigration and asylum legislation in accordance with the European Court of Human Rights' judgments, as well as the adoption of two relevant ministerial circulars in March 2010. He further addressed the improvements concerning the detention of asylum seekers, their access to asylum

procedures and their exemption from residence fees in certain provinces and asked the authorities to closely monitor the situation with a view to ensuring coherent practice across the country. The Commissioner noted the progress made regarding the situation of persons coming from European conflict areas and the authorities' efforts to build new reception centres for asylum seekers. In his letter, the Commissioner also addressed the question of internally displaced persons and the need to fully respect their right to return home in safety and dignity, resettle or integrate locally.

The replies by the Ministers of Justice and the Interior can be found on the Commissioner's website.

Letter to the Minister of the Interior of Cyprus

On 26 July, the Commissioner published a letter he addressed to the Minister of the Interior of Cyprus, Mr Neoklis Sylikiotis, following a visit to Cyprus on 10 June. The letter focused on trafficking in human beings and the protection of the human rights of asylum seekers and refugees.

In his letter, the Commissioner welcomed the measures taken by Cyprus to combat trafficking in human beings, in particular the abolition of the 'cabaret artist visa' and the introduction of a new action plan 2010 - 2012. At the same time, he called on the Cypriot authorities to remain vigilant against organised crime and ensure that no type of visa or working permit can be abused for such unlawful purposes as trafficking in human beings. The Commissioner also recommended that measures be taken to address the issue of demand for sexual services. He commended the government-run shelter for victims of trafficking and called on the Cypriot authorities to ensure that budgetary cuts planned to face the economic crisis will not affect the provision of adequate assistance to victims.

As regards the protection of the human rights of asylum seekers and refugees, the Commissioner expressed appreciation for improvements in asylum seekers' access to health care, the labour market and legal aid and called for the removal of remaining administrative obstacles which might hamper the full enjoyment of these rights. The Commissioner expressed his concern at the long periods of detention which some rejected asylum seekers face and urged the Cypriot authorities to ensure an individual examination of each case in order to assess the purpose and proportionality of detention. The Minister's reply can be found on the Commissioner's web site.

Letter to the Prime Minister of "the former Yugoslav Republic of Macedonia"

On 7 September, the Commissioner published a letter he wrote to the Prime Minister of "the former Yugoslav Republic of Macedonia", Mr Nikola Gruevski on the situation of Kosovar refugees in the country. The Commissioner noted that around 1 500 displaced persons from Kosovo,¹ including persons with subsidiary protection and leave to stay, still live in "the Former Yugoslav Republic of Macedonia" without clear and long-term perspectives for local integration and adequate access to human rights, including social and economic rights. These persons, most of whom are Roma, have lived in the country for more than ten years and many of their children were born and raised there. The

¹ All reference to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

Commissioner stressed that the identification and effective implementation of durable solutions for these persons can no longer be postponed and that the best possible solution for Roma unable to return home in safety and dignity is local integration through a process which will ultimately lead to the acquisition of nationality. The Prime Minister's reply is available on the Commissioner's website.

Letter to the French Minister for Immigration, Integration, National Identity and Development Solidarity

On 21 September, the Commissioner published a letter addressed to Minister Eric Besson concerning the human rights of migrants in France. On 19 May, the Commissioner visited Calais and its surrounding area and met with migrants and NGOs as well as local authorities. The next day he met and had an exchange of views with Minister Eric Besson in Paris.

The Commissioner's letter stressed the specific situation in Calais and its region and the police pressure to prevent the establishment of irregular camps of migrants. The Commissioner urged the authorities to treat migrants with full respect for their human dignity and their human rights including the one to seek and enjoy asylum if necessary.

Recalling his 2008 recommendations which had been addressed to the French government, the Commissioner highlighted the lack of progress in certain areas, including the policy of fixing annual targets for the number of irregular migrants to be deported. The detention of irregular migrants, particularly of children, continues to be of concern to the Commissioner.

Whilst welcoming the recognition of the right for all asylum seekers to adequate accommodation and financial support, the Commissioner highlighted that, in practice, many of them continue to experience difficult living conditions.

As regards the draft immigration Bill, the Commissioner expressed concern at a number of its provisions, such as those concerning the intention to substantively reduce judicial review of the detention of migrants as well as to resort to accelerated procedures in a larger number of asylum applications. Moreover, the Commissioner noted that the proposal to grant Prefects the power to prohibit a migrant from entering the Schengen area for a period of three years could raise questions of compliance with the European Convention on Human Rights.

Finally, the Commissioner called on the French authorities to suspend returns of asylum seekers to Greece until the Greek national asylum system becomes fully operational and in line with European standards. The Minister's reply is available on the Commissioner's website.

Monitoring of investigations into cases of missing persons during and after the August 2008 armed conflict in Georgia

On 29 September, the Commissioner published a report on Monitoring of investigations into cases of missing persons during and after the August 2008 armed conflict in Georgia. The report is based on the work of Bruce Pegg and Nicolas Sébire, two international experts in the field of police investigations into serious crimes. The work of

the experts in Georgia was carried out from the beginning of March until the end of June 2010.

The cases which the experts were asked to include in their work had all been published with some photographic evidence in the form of video recordings on the Internet. One of the cases related to three young Ossetians (Alan Khachirov, Alan Khugaev, and Soltan Pliev) who had gone missing on 13 October 2008, i.e. two months after the August 2008 conflict, close to the administrative boundary line (ABL). The other cases concerned disappearances which occurred during or immediately after the August 2008 hostilities. One case related to the fate of Radik Ikaev, who was reported to have been captured by Georgian troops on 8 August 2008, and who later disappeared.

The Georgian Ministry of Internal Affairs requested that the experts endeavour to find out what work had been done in Tskhinvali to clarify the fate of Giorgi Romelashvili, a Georgian soldier who had disappeared along with two other soldiers who had been members of the same tank crew on 8 August 2008. The Ministry also provided a video showing a soldier, Giorgi Antsukhelidze, being subjected to serious ill-treatment during an interrogation. Subsequently, an application concerning this case was brought to the European Court of Human Rights. Another case raised by the Ministry of Internal Affairs related to Kakha Khubuluri, who was shown on a video in a group with other captive soldiers. The bodies of Antsukhelidze and of Khubuluri had been handed over by the de facto authorities of South Ossetia to the Georgian authorities.

The report of the experts highlighted some serious shortcomings in the process of clarifying the fate of missing persons and ensuring accountability for the perpetrators of illegal acts. The experts encountered a situation where a variety of obstacles blocked the path to the truth.

In the cases of Khachirov, Khugaev and Pliev, the experts found that very little activity had taken place to investigate this case in spite of prompting by the EUMM, the Georgian Young Lawyers Association and the parents of the missing persons during the period of almost a year and a half which had elapsed since the disappearance. Though some steps were subsequently taken on the advice of the experts, including the possibility for the mothers of the missing to give testimony to prosecutorial authorities, there continued to be a number of technical shortcomings in the investigation. A major problem related to the very integrity and impartiality of the investigation: though there had been serious allegations implicating the involvement of law enforcement officials in the disappearances, the operational execution of the investigation was not kept separate from the service to which the implicated officials belonged. The experts therefore recommended that the necessary steps be taken to ensure that the investigation be fully independent and effective.

In the case of Radik Ikaev, the experts noted that it is well established that Ikaev was captured and detained by Georgian military personnel, that he was seen by witnesses while in captivity, and that he then disappeared. Obviously, these circumstances call for a criminal investigation.

During the work of the experts, it emerged that the man shown on the video recording provided to them, and identified as Giorgi Romelashvili, was not recognised by the mother of Giorgi Romelashvili as her missing son. The experts nevertheless sought to contribute to the clarification of the fate of Giorgi Romelashvili, and concluded that the

tank of which he was a crew member had been completely destroyed on 8 August 2008. It is important to clarify the circumstances of this matter more precisely, as well as to determine the real identity of the soldier on the video in question.

The video recordings depicting Georgian soldiers (Giorgi Antsukhelidze and Kakha Khubuluri) captured by opposing forces were discussed by the experts with representatives of the de facto authorities in Tskhinvali. The experts reported that the position of Tskhinvali was that the cases concerned did not involve disappearances (the bodies of the persons had been delivered to the Georgian authorities) and were therefore outside of the purview of the work of the experts. The experts therefore deduced that there has not been any attempt to ensure accountability of the persons who are shown perpetrating violent acts against Antsukhelidze, nor has there been any attempt to clarify how Khubuluri apparently came to die while in captivity.

Ensuring the humane treatment of detained persons is a principle which must not be abandoned. Any crimes against such persons must be thoroughly investigated. Whether such crimes occur during armed conflict makes no difference in this regard. Ill-treatment of prisoners constitutes a violation of both human rights and international humanitarian law.

4. Themes

Human Rights of Roma and Travellers

The Commissioner has followed closely the implementation of a policy to repatriate Roma from France to Romania and Bulgaria over the summer of 2010 and the ensuing debate in the political arena, the media and society at large. He gave interviews and made statements on this subject which continues to be of concern to him. The Commissioner has noted the challenges with which European countries are faced after having received Roma migrants. A number of states have failed to address negative attitudes towards Roma on the part of the general population, often stoked by hostile media reports. On certain occasions such negative attitudes have been encouraged by statements made by leading politicians. The Commissioner has underlined that ignorance frequently prevails at national or local level regarding the obligations arising from states' human rights commitments provided for notably by the European Convention on Human Rights.

On 17 August, the Commissioner published a Human Rights Comment entitled "Stateless Roma: no documents – no rights". The Comment addressed the situation of tens of thousands of Roma who are stateless or at risk of statelessness in Europe, especially in the Western Balkans. Without personal documents, these persons are often denied basic rights such as education, healthcare, social assistance and the right to vote. The Commissioner praised the invaluable work of UNHCR which has enabled approximately 11 000 Roma to obtain personal documents and gain access to rights in the Western Balkans. He also stressed that the primary responsibility to solve the problem lies with the governments of the countries in the region. Referring to the June 2010 Conference organised in Skopje by the current Chairmanship of the Council of Europe on the subject, the Commissioner highlighted the need for: the adoption of action plans that include efforts to map out the situation of stateless Roma; the simplification of

legislation and procedures regarding civil registration; the provision of free legal aid and waiving of fees, as necessary, for registration proceedings; and the ratification and implementation of the relevant international instruments.

Statement on anti-Roma rhetoric in Europe

In a statement issued on 9 September, the Commissioner recalled that politicians should be very careful about using language which can promote further prejudice against Roma communities. The Commissioner stressed that as part of the recent French government campaign against crime, Roma from other EU countries have been targeted as a “threat against public security” and no clear distinction has been made between the few who had committed crimes and the whole group of Roma immigrants. The Commissioner underlined that this is particularly dangerous as extremist political groups are ready to exploit existing anti-Gypsyism and distorted minds may understand the political messages as an encouragement for action.

On 15 September, the Commissioner published a Human Rights Comment entitled “Do not stigmatise Roma”. The Commissioner stressed that meaningful reforms to protect the human rights of Roma would not be possible while hate speech from politicians and others continued to prevent the dialogue that is a precondition to these reforms. Instead of stigmatising Roma, notably through generalisations about criminality, the factors that push some members of the Roma communities toward crime should be tackled. Similarly, instead of pushing Roma families between EU member states, as France, Italy, Denmark and Sweden for instance have done, the reasons behind Roma migration – abject poverty, discrimination across all areas of life, statelessness and a bitter history of repression – should be recognised and addressed.

On 19 September, an article by the Commissioner entitled “History teaches us that anti-Roma rhetoric is playing with fire” was published in *New Europe*. The text of this article, which concerns Roma history, is reproduced in the appendix to this report.

Centre for European Policy Studies lunchtime meeting on Roma and ABF seminar on Roma (Stockholm)

On 29 and 30 September, the Commissioner participated in two events focusing on issues relating to the protection of the human rights of Roma: a lunchtime meeting (“The situation of Roma in the EU: A Challenge for the EU’s Area of Freedom, Security and Justice?”) organised in Brussels by the Centre for European Policy Studies and the European Economic and Social Committee; and a seminar on Roma rights organised by the ABF-Workers’ Educational Association in Stockholm. In the speeches delivered at these events, the Commissioner recalled that Europe, with its recent past of certain state policies of forced sterilisation of Roma women, persisting segregation of Roma children in schools and little or no progress in enhancing the socio-economic status of Roma, cannot be proud of its record on protecting the rights of Roma.

The Commissioner emphasised the crucial role of anti-Gypsyism in this context and stressed the need for states to tackle this by promoting Roma culture, knowledge of Roma history and combating hate speech. Highlighting recent cases of anti-Roma speech in France, Hungary and Italy, followed by violent actions against Roma in these last two countries, the Commissioner stressed that politicians have a key responsibility to foster mutual understanding and avoid actions or statements that breed intolerance and

extremism. The Commissioner further underlined the need for increased protection of Roma in the context of their migration or exercise of freedom of movement in Europe, as well as the need to provide a significant number of them with identity papers. Finally the Commissioner recalled that viable solutions are available and that the question of whether Europe can stamp out discrimination against this part of its population is essentially a matter of political will.

Re-publication of CommHR/OSCE HCNM Study on Recent Migration of Roma in Europe

In September the Commissioner decided, together with the OSCE High Commissioner on National Minorities, Mr Knut Vollebaek, to re-publish the study “Recent Migration of Roma in Europe” they jointly released in April 2009. The re-publication, which includes a joint preface by Commissioner Hammarberg and High Commissioner Vollebaek and a new executive summary, responds to a continuing need in Europe for a constructive approach to Roma migration. The study provides an analysis of the existing human rights standards concerning migration in Europe and highlights discriminatory practices that Roma migrants still face. It concludes with a set of recommendations for action by member states in order to enhance the effective protection of the human rights of Roma migrants in Europe.

Human rights of refugees

On 22 September, the Commissioner published a Human Rights Comment entitled “The ‘Dublin Regulation’ undermines refugee rights”. The Commissioner stressed that the Dublin system should be revised since it does not ensure that asylum seekers have access to adequate asylum procedures in Europe, and responsibility for them is not shared among member states. Transfers of asylum seekers to countries that are under excessive migration pressures or face difficulties in ensuring adequate asylum procedures should be halted. He regretted the absence of willingness on the part of some European states to use the “sovereignty clause” to avoid transfers to those countries. The Commissioner also warned of the negative side effects of the Dublin system, such as heavy burdening of national courts and of the European Court of Human Rights, and the increase in the use of detention for asylum seekers pending transfer decisions. The Commissioner concluded by noting that a fair and efficient system that would fully guarantee the human rights of asylum seekers in Europe is still wanting.

Children’s rights

On 9 July, the Commissioner published a Human Rights Comment entitled “Children victimised when families are forced to return to Kosovo”. As reported by UNICEF, children are the ones most affected by these forced returns. Having been born or lived almost all their life in a country, children are suddenly taken away from their schools, friends and surroundings, and are sent to a place they do not know and whose language they do not speak. In addition to this trauma, the Commissioner noted that Kosovo is not yet able to offer humane living conditions to returnees. He called for the re-evaluation of forcible return policies to Kosovo as they are ineffective, cause human suffering and waste resources.

Moreover, the Commissioner called for a better consideration of children in asylum procedures in another Human Rights Comment entitled “Refugee children should have a

genuine chance to seek asylum”, published on 24 August. Children are often not listened to and rather treated as “belongings” of their parents. When they are separated or unaccompanied, state authorities frequently only aim to reunify them with their parents. The Commissioner insisted that children can also have their own reasons for seeking international protection. They should be interviewed by trained asylum officers with due respect for their vulnerability.

Lesbian, gay, bisexual and transgender (LGBT) rights

On 31 August, the Commissioner published a Human Rights Comment entitled 'Forced divorce and sterilisation – a reality for many transgender persons'. The Commissioner expressed his concern at legal provisions in many Council of Europe member states which demand that transgender persons divorce and undergo sterilisation in order to exercise their right to change their gender in birth registers. He called for an immediate ban of such requirements and for expeditious and transparent procedures for changing the name and gender of a transgender person on official documents, in accordance with the case-law of the European Court of Human Rights.

On 24 September, the Office of the Commissioner participated in an *Information session on Gender Identity and Transgender Issues* organised by DG Employment, Social Affairs and Equal Opportunities of the European Commission in Brussels. The Commissioner's *Issue Paper on Gender Identity and Human Rights* served as one of the key documents for this meeting, which aimed at informing Commission officials on the specific problems and discrimination transgender persons face in everyday life. Over 35 Commission staff from different DGs including External Affairs, Sanco, Employment, and lawyers from the legal unit were present.

On 30 September and 1 October, the Office participated in the Roundtable on Asylum-Seekers and Refugees Seeking Protection on Account of their Sexual Orientation and Gender Identity, organised by the office of the United Nations High Commissioner for Refugees in Geneva. The roundtable discussion focused on the existing legal and policy frameworks with respect to the protection of lesbian, gay, bisexual, transgender and intersex (LGBTI) asylum-seekers and refugees. The roundtable participants aimed to identify the protection gaps in all the stages of forced displacement and to formulate recommendations that could be used by UNHCR in the context of its legal and operational guidance.

Human rights of persons with disabilities

The Office of the Commissioner was represented at the European Co-ordination Forum for the Council of Europe Disability Action Plan 2006-2015 (CAHPAH) which took place from 27 to 29 September in Strasbourg. A presentation was given to the members of CAHPAH.

In September, the Office of the Commissioner also sent a contribution to the thematic study undertaken by the Office of the UN High Commissioner for Human Rights in relation to the UN Convention on Rights of Persons with Disabilities and its Optional Protocol.

Social and economic rights

On 5 August, the Commissioner published a Human Rights Comment entitled 'Elderly across Europe live in extreme hardship and poverty'. In it the Commissioner focused on the human rights situation of elderly persons across Europe. In the wake of the global economic crisis, the Commissioner argued that many elderly persons suffer from poverty. He pointed to the impact of the reform of pension systems in member states on poverty among the elderly. Making reference to the standards of the European Social Charter he called upon member states to guarantee a decent standard of living for elderly persons, by linking the pension system with average wage levels and the overall cost of living. He also drew attention to particularly vulnerable groups among the elderly: women, persons with disabilities and migrant families.

Relations with National Human Rights Structures

Expert workshop on “Effective and independent structures for promoting equality”

On 8-9 July, the Commissioner's Office organised an Expert workshop on “Effective and independent structures for promoting equality”. The workshop explored the role of equality bodies and other national human rights structures in combating discrimination and promoting equality. It reviewed their structure, mandate, function, powers, resources and practices to gauge their effectiveness and independence. The equality bodies' outreach and accessibility among the public as well as their interaction with other human rights structures were highlighted. The central question was to outline what is needed for them to carry out their unique role as independent statutory bodies defending and advancing standards of non-discrimination and equality. The workshop shared experiences from different countries and discussed good practices and challenges regarding the different models. The impact of the economic crisis on the work of equality bodies was also raised.

The participants included representatives of equality bodies, national human rights institutions, ombudsmen, European Network of Equality Bodies (Equinet), European Group of National Human Rights Institutions, national authorities, NGOs, international organisations and academic experts. The Commissioner will issue an Opinion on the theme next year. The report of the workshop is available at the Commissioner's website.

International Ombudsman's Conference organised by the Office of the Public Defender of Georgia

The Commissioner transmitted a message to the participants of the International Ombudsman's Conference organised by the Office of the Public Defender of Georgia on “the role and influence of the Ombudsman's institution on the improvement of the condition of human rights protection”, which took place on 23 and 24 September in Tbilisi. The issues discussed related the Ombudsman's role in the oversight of existing legislation and practice, advantages and disadvantages of granting to the Ombudsman the power of oversight of procedural and administrative activities of courts, as well as good practices and challenges with regard to the impact and effectiveness of Ombudsman institutions.

Round Table with the Ombudsmen of the Russian Federation

The Commissioner also transmitted a message to the participants of the Round Table with the Ombudsmen of the Russian Federation (28-29 September 2010, Pushkin/St. Petersburg), referring to the specific ways in which the federal and regional Ombudsmen could exercise their role with a view to preventing human rights violations

Right of access to information

On 27 September, the Commissioner published a Human Rights Comment on the right of access to information, where he called for more transparency on the part of public authorities. He stressed that while authorities collect more and more data on individuals, the tendency of preventing the public from having access to government information is a threat against democracy and an urgent human rights concern. The Commissioner underlined the media's vital role as a safety valve against the abuse of power in both public and private enterprises, and recalled that the transparency of public authorities should be regarded as an important element of freedom of information – with a bearing on freedom of expression, as guaranteed by Article 10 of European Convention on Human Rights. The Commissioner called upon member states to ratify the Council of Europe Convention on Access to Official Documents and to regulate properly the right of access to information in light of Council of Europe standards and best state practices.

European Court of Human Rights

Third party intervention

On 1 September, the Commissioner intervened orally during the hearing before the Grand Chamber of the European Court of Human Rights in the case of *M.S.S. v. Belgium and Greece*. This case concerns the transfer of an Afghan asylum seeker from Belgium to Greece pursuant to the EU 'Dublin Regulation'. In his first-ever oral intervention as a third party before the Court, the Commissioner provided his observations on major issues concerning refugee protection in Greece, including asylum procedures and human rights safeguards, as well as asylum seekers' reception and detention conditions, thereby complementing the written observations he submitted to the Court on 31 May 2010.

On this occasion, the Commissioner stressed that EU member states should halt all transfers of asylum seekers to Greece, as the asylum law and practice of the state are not in compliance with human rights standards, and persons sent back to Greece face extremely harsh conditions.

Other

Natalia Estemirova

In July, the Commissioner issued a Human Rights Comment to commemorate the first anniversary of the murder of Natalia Estemirova, a leading member of the NGO Memorial, whose courage and personal dedication to the protection of human rights in the Chechen Republic were unique. The Commissioner stressed the need to bring to justice those who had committed and ordered this killing, which provoked widespread

condemnation as well as raising serious concerns about the viability and safety of the work of human rights NGOs in the North Caucasus.

Belarus and the Baltic States

A member of the Commissioner's Office took part in an International conference on human rights, with an emphasis on the situation in Belarus and the Baltic States, and in the Belarusian human rights defenders' forum, which were organised by the Human Rights House network and took place in Vilnius on 24 and 25 September 2010. The conference aimed at expressing support to human rights defenders as well as discussing concrete mechanisms to protect and raise awareness about the importance of their activities.

5. Communication and Information work

Approximately 400 news items from 48 countries on 18 different themes were published during this quarter.

The most widely covered topics were the situation of Roma, rights of migrants and asylum-seekers, the report on Azerbaijan (published at the end of the last quarter), the letters to the Turkish authorities and the Commissioner's Comment on the anniversary of the murder of Natalia Estemirova.

The Commissioner's statements on the situation of Roma and Travellers in Europe received wide media coverage. The main media which covered them included *AFP, Le Monde, France 24, Europe 1, L'Humanité, DNA, EU Observer, Curierul National, L'expression, RFI, Dagens Nyheter, Swedish TV, Financial Times Deutschland, Rzeczpospolita, DPA, Ottawa Citizen, Die Tageszeitung, Business Magazin, Europaportalen, Helsingin Sanomat, Welt kompakt, Radio Romania, FENA, STA, Kurir, Glas Javnosti, Wprost, APCOM, Le Parisien, L'Express, Le Point, DNA, EFE, La Vanguardia, TAZ, Focus news agency, Radio Serbia, Focus, Libération, Les Echos, SDA/ATS, Basler Zeitung, Eleftherotypia, ADN Kronos, Zaman, France 2, TF1, ZDF / 3Sat, Al Jazeera, Deutsche Welle, NTV, RTVE, ANSA, Le Soir, Le Figaro, Huffington Post, Reuters, Bulgarian National Radio, Il Giornale, Telegraaf, De Standaard, Reuters, ONASA, Agence Europe, Le Temps, and Norwegian public broadcasting NZZ*. The Commissioner was also the guest of two online debates organised by *Dagens Nyheter* and *Le Monde.fr* on this issue. *Il Manifesto* published on the cover page the Commissioner's Human Rights Comment on Roma and *New Europe* the op-ed on Roma history.

Extensive media coverage was also devoted to the Commissioner's position on migration policies. The Commissioner's letters to the Italian authorities asking them to clarify urgently the situation of more than 200 Eritreans in detention in Libya - some of whom had apparently tried to enter Italy before being sent back to Libya where they were allegedly subjected to ill-treatment - were reported mainly by *ANSA, Reuters, La Stampa, Corriere della Sera, EFE, ABC, Rai TG 3, Il Manifesto, Libero, El Financiero, Il Giorno - La Nazione, La Repubblica, Radio Rai, El Pais, APCOM, Europa Press, Radio Svizzera Italiana, AGI, Rai News 24, Avvenire, Information, NZZ, Il Giornale, and SIR*. *Swedish Radio, the Guardian, ANSA* and *Il Messaggero* referred to positions expressed

by the Commissioner concerning the situation of migrants and asylum seekers in Sweden, the UK and Libya. The *Times of Malta* published an opinion in which the Commissioner's concerns about the management of migration were mentioned. The media also covered the Commissioner's oral participation as a third party before the European Court of Human Rights in the case of an Afghan asylum seeker returned from Belgium to Greece (*EU Observer*, *The Irish Times*, *ANSA*, *Expatica*, *AFP*, *Belga*, *Metro*, *De Morgen*, *ABC*, *EFE*). *ImmigrazioneOggi*, *OmVärlden*. The Commissioner's letter to the French Minister for Immigration, Integration, National Identity and Development Solidarity, Eric Besson, as well as his Human Rights Comment on the Dublin II regulation were covered in particular by *Le Monde*, *Libération*, *Danish Radio*, *AFP*, *ANSA*, *EFE*, *Reuters*, *DPA* *Times of Malta*, *Agence Europe*, *The Malta Independent*, *Athens Plus*, *Le Temps*, *Nieuwsuur*, *Le Progrès*, *The Malta Independent*, and *Jylland Posten*. The *Danish Radio* aired a news item concerning the decision to send back to Greece migrants whose asylum applications have been rejected, referring to the Commissioner's observations on asylum law and practice in Greece.

The report on Azerbaijan was covered mainly by *The Guardian*, *Radio Free Europe*, *EurasiaNet*, *Turan*, *Zerkalo*, *APA*, *News*, *Trend*, *Ria Novosti*, *Vesti*, *Focus*, *Apa*, *Today.Az*, *Aysor*, *Panorama*, *Der Standard*, *News*, *Voice of America*, *Reporters without borders*, *Carta*.

The Human Rights Comment on landmines was published, sometimes in full, by various media including *New Europe*, *ONASA* and *Hurriyet*, *Itar Tass*, *Ria Novosti*, *Day*, *News*, *The Sofia Echo*, *Global Perspective Magazine*, *Australia News*, *Trend*, and *Vita*.

The Swedish news agency *TT* and *AFP* published news items on gender identity, referring to the Commissioner's work. *Dagbladet* published an editorial where the Commissioner's position on the situation of LGBT persons was mentioned.

The publication of the letters to the Turkish Ministers of Justice and of the Interior were covered by *Milliyet*, *Reuters*, *SIR*, *ANSA*, *Le JDD*, *FOCUS News Agency*, and *Svenska Dagbladet*. In particular, the detention of children in Turkey triggered media coverage in connection with the reform adopted by the Turkish Parliament on juvenile justice (*Reuters*, *TASR*, *AFP*, *Edmonton journal*, *Nouvelles d'Armenie*, *El Mundo* and *EFE*).

Le Monde published an article on the non-respect of Rule 39 of the European Court of Human Rights, quoting the Commissioner's interview and Human Rights Comment.

The Comment on the anniversary of Estemirova's murder was quoted by *The New York Times*, *Kommersant*, *New Europe*, *The Moscow Times*, *The Epoch Times*, *Zerkalo*, *NZZ*, *Zerkalo*, *Deutsche Welle*, *ANSA*, *SIR*, *SDA/ATS*, *DPA*, *Trend*, *Ria Novosti*. *Novaya Gazeta* published the whole comment in its Friday edition.

The publication of the letter to the Minister of the Interior of Cyprus, concerning trafficking and the human rights of asylum seekers and refugees, received good media attention, in particular at national level (*Agence Europe*, *Cyprus mail*, *Cyprus news report*, *SIR* and *Focus News*.)

Europa press quoted the Commissioner's opposition to the ban of the burqa in the context of the Spanish debate and vote in Parliament. *Il Resto del Carlino* referred to the Commissioner's message sent to the concert dedicated to human rights organised by

Italian NGOs, at which an award was given to a song on the rights of the child. The Dutch paper *Volkskrant* published an interview with the outgoing Human Rights Ambassador Arjan Hamburger who mentioned the Commissioner's report and his assessment and recommendations related to Dutch asylum policy, in particular with respect to refugee children. The Human Rights Comment on migrant children was covered by *Vita* and *Focus news agency*,

Le Monde published an article on French prisons, mentioning the Commissioner's concerns, while the Slovenian daily *Dnevnik* referred to the Commissioner's position as regards the responsibility of international organisations.

The Human Rights Comment on the situation of elderly people in Europe was covered by *Delfi*, *Saarländische Online-Zeitung*, *RIA Novosti*, *MIGnews*, *STA*, *Bianet*, *FOCUS*, *Bayerischer Rundfunk* and *Zurnal 24*). *Danish radio* also featured an interview with the Commissioner on this subject.

Ria Novosti, *Civil Georgia*, *the Messenger*, *The Voice of Russia*, and *Itar-Tass* published news on missing people in South Ossetia referring to the discussions between David Sanakoev (de facto ombudsman) and the Commissioner.

A thematic page on Roma rights was created on the Commissioner's website on 10 September. It contains regularly-updated information on the Commissioner's activities as well as the documents he publishes on the situation of Roma. Other "thematic" pages introduced on the Commissioner's website focus on migrants' rights and non-discrimination. Additional web pages are under preparation, which will cover all the thematic activities of the Commissioner.

The list of Human Rights Comments published thus far is as follows:

*Children victimised when families are forced to return to Kosovo** – 09 July 2010

Those responsible for the death of Natalia Estemirova must be brought to justice – 13 July 2010

Landmines still kill in Europe: Time for an absolute ban – 26 July 2010

Elderly across Europe live in extreme hardship and poverty – 5 August 2010

Stateless Roma: no documents – no rights – 17 August 2010

Refugee children should have a genuine chance to seek asylum – 24 August 2010

Forced divorce and sterilisation – a reality for many transgender persons – 31 August 2010

Do not stigmatise Roma – 15 September 2010

The 'Dublin Regulation' undermines refugee rights – 22 September 2010

The public has the right to know what those they elected are doing – 27 September 2010

6. Observations and reflections

I welcome the fact that the human rights of the Roma people have now been given priority on the political agenda and that the relevance of the Council of Europe has been broadly recognised in this context. It is important that this opening be well used and that significant steps be taken towards putting an end to anti-Gypsyism and ensuring the rights to education, health care, decent employment and housing for the Roma.

- It is crucial that the *history of Roma* be made more widely known. The dossier with fact sheets produced by the Council of Europe in co-operation with the university of Graz is of high quality and should be translated and further disseminated. An official recognition of past violations should be made through a serious process. The incorporation of this history – both the national and the European versions – into school curricula should be ensured.
- National human rights structures, such as *Ombudsmen and equality bodies*, should receive sufficient resources and be encouraged to pay more attention to the hidden discrimination of Roma communities. Surveys have demonstrated that many Roma are not aware of their possibilities to file complaints.
- The *case law of the ECtHR* regarding cases of discrimination against Roma – for instance, on segregated schooling and on anti-Roma violence – should be fully executed. It should also be more actively disseminated.
- The *police* has an important role to play in relation to the Roma. Two things appear particularly crucial: that attempts be made to recruit more Roma individuals into the police corps (as is tried in Romania); and that there be a serious effort in police education and training to spread unbiased information about the situation of this minority and their rights.
- National action plans need to be real and put emphasis on the importance of the *local authorities*. A major drive must be undertaken to improve housing standards and basic facilities such as electricity, water, and sewage. The employment of school and health mediators should be strongly encouraged. Good practices in promoting the employment of Roma should be studied and reproduced in other countries.
- The *participation of Roma* in both the planning and the execution of projects must be ensured. The EU should streamline its bureaucracy in relation to project applications in order to make it possible for non-governmental groups, including those with a Roma constituency, to seek and absorb EU funds.
- The problems of *statelessness and lack of personal ID documentation* must be tackled with greater energy. Tens of thousands of Roma are still victims of this phenomenon which has very serious negative repercussions on their daily lives. The good work of UNHCR in this area should be given more support.
- *Politicians, other opinion makers and media outlets* must be more careful about their rhetoric on the Roma. No doubt, the unfortunate statements made in France in the late summer had a negative impact, not least in Romania. There have

been other bad examples in other countries. Hopefully, lessons have now been learned.

Attempts are being made to protect and give further energy to genuine Roma culture. There are *cultural centres* in several countries, including in Spain and Romania. Their further development would have several advantages, including in the field of education. They should be supported.

Dosta!

7. Next three months

October

1 October	Anniversary conference Red Cross Centre for Tortured Refugees (Stockholm)
4 October	European Conference General Assembly of the International Ombudsman Institute (Barcelona)
4-8 October	PACE 4 th part
8 October	European Network of Ombudspersons for Children Annual Meeting (Strasbourg)
11 October	Conference "Local Government Responses to Recession across Europe" (Strasbourg)
12-14 October	Visit to Romania
19 October	60 th Anniversary of the European Convention on Human Rights (Strasbourg)
20 October	Council of Europe High Level Meeting on Roma (Strasbourg)
27 October	60 th anniversary of the European Convention on Human Rights and high-level meetings (Berlin)
29-30 October	Human Rights Foundation of Turkey anniversary conference and meetings with NGOs (Istanbul)

November

15 November	Swedish Forum for Human Rights (Örebro)
17-19 November	Visit to Czech Republic
22-23 November	Visit to Turkey
24-26 November	CoE Ministers of Justice Conference (Istanbul)
28-30 November	Visit to Bosnia and Herzegovina

December

1-2 December	CommHR Roundtable on Human Rights Defenders in the Balkans (Sarajevo)
8-9 December	Lecture at the Centre for the Study of Human Rights, London School of Economics and Political Science, and meetings INGOs (London)
10-14 December	Visit to Russian Federation (Moscow)
15 December	Sakharov Exhibition, European Parliament (Strasbourg)

Appendix

History teaches us that anti-Roma rhetoric is playing with fire

Article by Thomas Hammarberg, *New Europe*, 19 September 2010

Prejudices against the Roma are still widespread and continue to fuel discrimination and hate crimes. This is why it is particularly important that politicians and other opinion makers avoid any rhetoric which feed the stigmatisation of Roma communities. Repression of the Roma in the past has been the product of racism and intolerance. We must learn from history and not repeat the terrible mistakes.

Only a few thousand Roma in Germany survived the Holocaust and the concentration camps. They faced enormous difficulties when trying to build up their lives again, having lost so many of their family members and relatives, and having had their properties destroyed or confiscated. Many of them had their health ruined. When some of them tried to obtain compensation, their claims were rejected for years.

For these survivors no justice came with the post-Hitler era. Significantly, the mass killing of the Roma people was not an issue at the Nürnberg trial. The genocide of the Roma – Samudaripe or Porrajmos – was hardly recognised in the public discourse.

This passive denial of the grim facts could not have been surprising to the Roma themselves, as for generations they had been treated as a people without history. The violations they had suffered were quickly forgotten, if even recognised.

This history goes back several hundred years, in fact ever since the various Roma groups arrived in Europe following the long migration from India. The methods of repression have varied between enslavement, enforced assimilation, expulsion, internment and mass killings.

The ‘reasons’ for these policies have, however, been similar. The Roma were seen as unreliable, dangerous, criminal, and undesirable. They were the outsiders who could easily be used as scapegoats when things went wrong and the locals did not want to take responsibility.

In Wallachia and Moldavia (today’s Romania) the Roma lived in slavery and bondage for centuries up to 1855 when the last Roma slaves were finally emancipated.

In Spain more than ten thousand Roma were rounded up in a well planned military-police action one day in 1749. The purpose according to a leading clergyman who advised the government was to ‘root out this bad race, which is hateful to God and pernicious to man’. The result was devastating to the Roma community – the deportations, detentions, forced labour and killings destroyed much of the original Roma culture.

In the Austro-Hungarian Empire during the 18th century the rulers applied a policy of enforced assimilation. Roma children were taken from their parents and instructions

went out that no Roma was allowed to marry another Roma. Furthermore, the Romani language was banned. This policy was brutally enforced. For instance, the use of the 'Gypsy' language was to be punishable by flogging.

Fascists in the 20th century turned also against the Roma. In Italy a circular went out in 1926 which ordered the expulsion of all foreign Roma in order to 'cleanse the country of Gypsy caravans which needless to recall, constitute a risk to safety and public health by virtue of the characteristic Gypsy lifestyle'.

The order made clear that the aim was to 'strike at the heart of the Gypsy organism'. What followed in fascist Italy for the Roma was discrimination and persecution. Many were detained in special camps; others were sent to Germany or Austria and later exterminated.

The fascist 'Iron Guard' regime in Romania started deportations in 1942. Like many Jews, about 30,000 Roma were brought across the river Dniester where they suffered hunger, disease and death. Only about half of them managed to survive the two years of extreme hardship before the policy changed.

In France about 6,000 Roma were interned during the war, the majority of them in the occupied zone. Unlike other victims, the Roma were not systematically released upon the German retreat. The new French authorities saw internment as a means of forcing them to settle.

In the Baltic States a large number of the Roma inhabitants were killed by the German invasion forces and their local supporters within the police. Only 5-10% of the Roma in Estonia survived. In Latvia about half of the Roma were shot while it is estimated that a vast majority of those in Lithuania were also killed.

In fact, all countries in Europe were affected by the racist ideas of the time. In the neutral Sweden the authorities had encouraged a sterilisation program already in the twenties which primarily targeted the Roma (and which continued up to the seventies). Also in Norway pressure was exerted on Roma to sterilise.

The German Nazi regime defined the Roma (including the Sinti) as 'racially inferior' with an 'asocial behaviour' which was deemed hereditary. This, in fact, was a development of old and widespread prejudices in both Germany and Austria. The so-called Nürnberg race laws of 1935 deprived the Roma of their nationality and citizen's rights. It was demanded that they should be interned into labour camps and sterilised by force.

An earlier plan of Nazi racists to keep some of the 'racially pure' Roma in a sort of anthropological museum was forgotten, while some Roma, not least children, were singled out for Josef Mengele's cruel medical experiments. A policy of forced sterilisation was implemented, often without anaesthesia.

The systematic murder of Roma started in the summer 1941 when German troops attacked the Soviet Union. They were seen as spies (like many Jews) for the 'Jewish Bolshevism' and were shot by the German army and the SS in mass executions. Indeed, in all areas occupied by the Nazis there were executions of Roma people.

Figures are uncertain, but it is estimated that far more than hundred thousand were executed in those situations, including in the Balkans where the killings were supported by local fascists. The Ustascha militia in Croatia ran camps but also organised deportations and carried out mass executions.

In December 1942, the Nazi regime decided that all Roma in the 'German Reich' should be deported to Auschwitz. There they had to wear a dark triangle and a Z was tattooed to their arm. Of all camp inmates they had the highest death rate: 19,300 lost their lives there. Of them 5,600 were gassed and 13,700 died from hunger, disease or following medical experiments.

It is still not known how many Roma in total fell victim to the Nazi persecution. Not all Roma were registered as Roma and the records are incomplete. The fact that there was no reliable statistics about the number of Roma in these areas before the mass killings makes it even more difficult to estimate the actual number of casualties. Careful estimates are that the number was at least 250,000. Other credible studies indicate that more than 500,000 Roma lost their lives, perhaps many more.

There has still not been any recognition in several countries that this minority has been repressed in the past and no official apology has been given. One good example to the contrary was the decision by the government Bucharest in 2003 to establish a commission on the Holocaust which later published an important report on the repression and killings in Romania during the fascist period.

Council of Europe has tried to fill the knowledge gap about this tragic history through making public a series of fact sheets which hopefully will be translated into national languages and used in schools all over Europe. Any serious reader would understand that it is not surprising that there is a lack of trust amongst many Roma towards the majority society and that some of them see the authorities as a threat. When told to register or to be fingerprinted they fear the worst.

The fact sheets also illustrate that the Roma have not migrated for devious reasons or because travelling is "in their blood". When it has been possible they have indeed settled but for long they have had to move between or within countries to avoid repression or simply because they were not allowed to stay. The other main reason was that the kind of employment or jobs which were open to them required their moving.

I hope the present generation of active politicians would take lessons from this tragic history. Reviving age-old stereotypes about the Roma is to play with fire. For instance, distinction must be made between a few criminals and the overwhelming majority of the Roma population. Collective scapegoating must stop.