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1. Overview

Roma rights were a major priority during the last quarter of 2010. I visited Roma communities and held lengthy discussions with their representatives in Romania, Turkey, Czech Republic and Bosnia and Herzegovina. While in Berlin I discussed the deportation from Germany of Roma migrants from Kosovo.*

I sought to contribute to the Council of Europe High Level Meeting on Roma in Strasbourg and stressed two points in particular: the absolute need to address urgently the problem of statelessness and lack of personal identity documents for Roma; and to make known the history of the Roma people (using also the excellent Council of Europe fact sheets).

The rights of children was another priority. The office launched a thematic webpage which reflects the different activities in this area. I spoke at a meeting of the European Network of Ombudsmen for Children (ENOC) on the importance of listening to children and the importance of offering more opportunities for children to express their views. I also met the new Children's Ombudsman in the Russian Federation. In a Human Rights Comment I discussed the risk that the austerity budgets now being approved by some European parliaments would have a negative impact on child protection.

While in Moscow in December I raised two issues in particular. One was the repeated assaults on journalists and the need to put an end to such violent acts. The other question was the need to avoid police brutality against peaceful demonstrators (referring especially to the rallies organised by "Strategy 31").

Several times I appealed to individual governments to co-operate more constructively with the United Nations' refugee agency, UNHCR, which clearly is the authoritative international expert body in the field of refugees and stateless persons. I suggested in a Human Rights Comment that European governments should be more co-operative with the UNHCR resettlement program in order to offer a solution to those refugees who cannot return to their country of origin.

Furthermore, I recommended that member states set up and support national monitoring bodies to oversee the situation in institutions where persons with disabilities are kept. This is in line with the UN Convention on the Rights of Persons with Disabilities which most European countries have now ratified. The Convention also prescribes that people with mental health problems and intellectual disabilities should have the right to independent living and to participate in communities. In a Human Rights Comment I suggested in particular more action to prevent the inhuman treatment of persons with disabilities in institutions.

The seemingly growing problem of Islamophobia was raised on several occasions, including in a lecture at the London School of Economics. A Human Rights Comment expressing concern about the stigmatisation of Muslims in populist rhetoric was published.

* 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 (1999) and without prejudice to the status of Kosovo.

A final report was published on the implementation of the Six Human Rights and Humanitarian Principles that we formulated after the August 2008 war in Georgia. Though some positive steps had been taken, I had to express my deep concern about the lack of progress in regard to the right to return for the displaced persons and the fact that people were still apprehended and kept detained for having crossed the administrative boundary line.

Activities to disseminate the messages of Andrei Sakharov continued. The exhibition was set up in Sarajevo in connection with a seminar my Office organised on human rights activism with representatives of non-governmental organisations. The book with Sakharov's writings on human rights was presented at a meeting in mid-December in Strasbourg.

2. Missions and Visits

Visit to Romania

The Commissioner visited Romania between 12 and 14 October with the aim of assessing the human rights situation of Roma in the country. During the mission he met with a number of national authorities, including the Minister of Foreign Affairs, Mr Teodor Baconschi, the State Secretary at the Ministry for Labour, Family and Social Affairs, Mr Valentin Mocanu and the State Secretary at the Ministry for Administration and Interior, Mr Dan Fătuloiu. The Commissioner also met with non-governmental organisations and other representatives of civil society advocating Roma rights. The Commissioner also paid a visit to Roma communities in the municipality of Barbulesti and the Bucharest neighbourhood of Ferentari.

While commending the authorities for the establishment of the necessary legal and institutional framework for fighting discrimination, the Commissioner was concerned that Roma continue to face persistent poverty and remain marginalised and socially excluded. Prejudices among the majority population and anti-Roma rhetoric in the media and public discourse further exacerbate the discrimination suffered by Roma.

The Commissioner noted the important role of local administrations and non-governmental organisations in fostering Roma inclusion. He also stressed that local authorities must be active and efficient in developing projects for the improvement of the situation of the Roma, which necessarily entails having the appropriate capacities and resources.

Following the visit, a letter from the Commissioner to the Prime Minister of Romania, together with the reply from the latter, was published on 16 December 2010 (see page 9).

Visit to Germany

On 27 October the Commissioner paid a visit to Berlin to inaugurate, together with the Foreign Minister, Mr Guido Westerwelle, and the Federal Minister of Justice, Ms Sabine Leutheusser-Schnarrenberger, an exhibition in the Ministry of Foreign Affairs celebrating

the 60th anniversary of the European Convention on Human Rights. In his speech, the Commissioner highlighted the important role played by the Convention in protecting human rights in Europe, and how crucial the Strasbourg Court has been in making justice a reality for people who have exhausted domestic remedies.

During the visit, the Commissioner met with the State Secretary of Justice, Mr Max Stadler, the State Secretary of the Interior, Mr Ole Schröder, and members of the Parliamentary Committee on Human Rights and Humanitarian Affairs including its Chair, Mr Tom Koenigs. Discussing domestic anti-discrimination legislation and practice, the Commissioner encouraged the authorities to evaluate the existing federal and regional mechanisms dealing with anti-discrimination to get a better understanding of their effectiveness, and recommended the ratification by Germany of Protocol No. 12 to the European Convention on Human Rights. Moreover, the Commissioner shared his concern about the situation of the Roma in Europe who continue to face discrimination and marginalisation throughout the continent.

In addition, the Commissioner held discussions on the issue of forced returns to Kosovo*. He pointed out that many of the returnees, in particular Roma, Ashkali and Egyptian families and their children, continue to face discrimination, marginalisation and risks to their safety. The Commissioner also had an exchange with the authorities on the conduct of law enforcement officials and existing practice to deal with complaints of alleged police ill-treatment.

Lastly, the Commissioner met with the Director of Political Affairs of the Foreign Ministry and the staff of the German Human Rights Institute.

Following the visit, a letter from the Commissioner to the Federal Minister of the Interior, Mr Thomas de Maizière, was published on 9 December (see page 9).

Mission to Turkey

From 28 to 31 October, the Commissioner visited Istanbul and delivered a keynote speech at an international conference organised by the Human Rights Foundation of Turkey, on the occasion of its 20th anniversary. The meeting was attended by representatives of a number of European non-governmental human rights organisations.

The Commissioner's speech focused on the absolute prohibition of torture and other forms of ill-treatment and the need to enforce this principle at all times and in all circumstances. The Commissioner underlined the significance of national preventive mechanisms and of effective police complaints mechanisms in the fight against all forms of ill-treatment. The Commissioner's speech, which is available on his website in English and in Turkish, was followed by a discussion. Both the speech and the follow-up discussion indicated the importance of a solid underpinning of the principle of the prohibition of torture in Council of Europe member states.

During his stay in Istanbul, the Commissioner also held meetings with representatives of minority groups and non-governmental organisations.

Visit to the Czech Republic

The Commissioner visited the Czech Republic from 17 to 19 November to discuss issues relating to the fight against discrimination, racism and extremism and the protection of the human rights of Roma. During the visit, the Commissioner met with the Minister of the Interior, Mr Radek John, the Minister of Foreign Affairs, Mr Karel Schwarzenberg, the Deputy Minister of Justice, Mr Marek Ženíšek, the Deputy Minister of Education, Mr Ladislav Němec and the Deputy Minister of Health, Mr Martin Plíšek. He also met with the Deputy Ombudsperson, Mrs Jitka Seitlová and a number of civil society organisations, and visited Roma communities in two different localities in Kladno, near Prague.

As regards the fight against discrimination, racism and extremism, the Commissioner discussed the action taken by the Czech authorities against offences committed by members of extremist groups and the need to sustain and build upon efforts made in this field. He also discussed the legal and institutional framework in place to combat discrimination, racism and extremism and the need to keep the adequacy and effectiveness of this framework under review using the Council of Europe standards pertaining to this field.

As regards the protection of the human rights of Roma, the Commissioner discussed in particular the urgent need to make tangible progress in addressing discrimination and segregation of Roma children in education and secure the full execution of the relevant judgment of the Grand Chamber of the European Court of Human Rights in the case of *D.H. and Others*. He also discussed the need to ensure an effective official response, in particular by the criminal justice system, to all cases of violent hate crimes, which still have Roma as one of their main targets.

Furthermore, the Commissioner discussed issues of the sterilisation of women, in particular of Roma origin, without their full and informed consent, including the need to create avenues so that reparation, including compensation, is available to these women, in accordance with international law standards. Other areas covered by the Commissioner during his discussions include: combating anti-Gypsyism in public and political discourse, including the media and the Internet; addressing the segregation of Roma in localities excluded from mainstream society and substandard housing conditions affecting Roma; the placement of children in institutional care and of disproportionate representation of Roma children in these institutions.

A report following this visit is forthcoming.

Visit to Bosnia and Herzegovina

The Commissioner visited Bosnia and Herzegovina from 27 November to 1 December to discuss issues relating to the fight against discrimination, the human rights of displaced persons and refugees and post-war justice. During the visit he met with the State and Entity authorities, including the member of the Presidency, Mr Bakir Izetbegovic, and the Chairman of the Council of Ministers, Mr Nikola Spiric. The Commissioner also held meetings with international and non-governmental organisations as well as national human rights structures and representatives of minority groups.

The Commissioner called on the authorities of Bosnia and Herzegovina to strengthen their efforts in order to eliminate discrimination towards members of national minorities by bringing the Constitution and the Election Law fully into line with the European Convention on Human Rights, in light of the European Court of Human Rights' judgment in the case of *Sejdic and Finci*. The Commissioner encouraged the authorities to step up their efforts to ensure the effective implementation of anti-discrimination legislation and to raise public awareness of this law.

With regard to a collective centre for displaced persons in Lukavica, near Sarajevo, that he visited, the Commissioner expressed his serious concern about its substandard living conditions. He stressed that it is not acceptable that more than seven thousand people, many of them elderly and in ill health, continue to live in 130 collective centres in Bosnia and Herzegovina, in conditions that may not be considered as humane in today's Europe.

Noting with satisfaction the efforts made so far by the authorities to improve the situation of Roma, the Commissioner stressed the need for more systematic work to improve access of Roma to quality education and employment for Roma. Furthermore, the Commissioner stressed that return is not an option for the Roma who have been forcibly displaced from Kosovo* and who have now lived for many years with their families in Bosnia and Herzegovina, and that they are still in need of international protection.

As regards post-war justice, during his meetings with the authorities the Commissioner underlined the need to effectively investigate and take action against all persons responsible for gross human rights violations and serious international humanitarian law violations. He stressed that women who have suffered from sexual violence during the war should have effective access to justice and reparation. In this regard, he underlined the need to reinforce the witness protection system and enable all witnesses to contribute in safety and dignity to post-war justice and reconciliation. The Commissioner also highlighted the need to continue with determination the efforts aimed at identifying the approximately 10 000 pending cases of missing persons.

Lastly, the Commissioner noted with satisfaction the interest shown during the meetings by leading politicians at State and Entity level in resolving the 220 pending cases concerning police officers barred from police service following a vetting process of the UN International Police Task Force in the late 1990s.

A report following this visit is forthcoming.

Visit to the Russian Federation

In the course of his visit to Moscow between 10 and 14 December 2010, the Commissioner met the Deputy Minister of Foreign Affairs, Mr Grigory Karasin, the Acting Head of the Investigating Committee of the Russian Federation, Mr Alexander Bastrykin, the recently-appointed Adviser to the President of the Russian Federation and Chairperson of the Presidential Council for the development of civil society and human rights, Mr Mikhail Fedotov, and the Children's Ombudsman, Mr Pavel Astakhov. The Commissioner also met with representatives of non-governmental organisations. The Commissioner's discussions in Moscow centred on various human rights matters, including the situation in the North Caucasus, investigations into crimes against human rights activists and journalists, measures taken to enforce the judgments of the

European Court of Human Rights, freedom of assembly, and the protection of children. The recent attacks on journalists in Russia prompted the Commissioner to meet with representatives of the Russian Union of Journalists and the editor-in-chief of the newspaper *Kommersant*, Mr Mikhail Mikhailin. The Commissioner also attended a ceremony in Moscow organised on the occasion of Human Rights Day (10 December) by the Russian Federation Ombudsman, Mr Vladimir Lukin, during which a number of different personalities and organisations were honoured for their contributions to defending the rights and improving the lives of others, as well as preserving the memory of those who have suffered human rights violations in the past.

3. Reports and continuous dialogue

Report on human rights issues following the August 2008 armed conflict in Georgia

On 7 October the Commissioner published a report on human rights issues following the August 2008 armed conflict in Georgia based on a series of visits which he carried out in late 2009 and early 2010. The report takes stock of the implementation of the six principles for urgent human rights and humanitarian protection, which the Commissioner formulated in the aftermath of the August 2008 conflict.

The Commissioner noted with regret that hardly any progress had been achieved with regard to returns of persons who fled South Ossetia in August 2008. He emphasised once more the right of internally displaced persons and other conflict-affected individuals to care and support, including access to food, water, sanitation and basic services, as well as the need to secure durable housing solutions based on the principle of provision of information to and consultations of those directly concerned. The Commissioner welcomed the fact that almost all remnants of war had been removed from the areas affected by the conflict. He reiterated the need to establish viable security arrangements, including the good-faith implementation of the Incident Prevention and Response Mechanism, and the institution of confidence-building measures for the population on all sides. While the Commissioner welcomed the releases of detainees which had taken place, he urged the sides to refrain from arresting and detaining people who cross the administrative boundary line. All persons detained by the opposing sides as a consequence of the conflict should be released, and the process of clarifying the fate of missing persons and returning mortal remains should continue. The Commissioner expressed regret about the lack of progress with regard to humanitarian access to the areas affected by the conflict and called on all actors to facilitate the establishment of a human rights presence in the areas affected by the conflict.

The Office of the Commissioner for Human Rights will continue to follow the situation in the conflict-affected areas, including the implementation of the concrete recommendations formulated in the report.

Letter to the Prime Minister of Bulgaria

On 4 November, the Commissioner published a letter addressed to the Prime Minister of Bulgaria, Mr Boyko Borisov, concerning the human rights of national and religious minorities. In his letter, the Commissioner urged the authorities to review on a regular

basis all programmes and plans adopted with the aim of improving the situation of Roma in the country. Furthermore, noting the repeated refusal of the Bulgarian authorities to register the election results of consecutive National Muslim Conferences, as well as the decision of the Supreme Court of Cassation of last May to remove the Chief Mufti who had been elected during the Conferences, the Commissioner called upon the government to fully guarantee to all religious minorities effective respect for their freedom of religion. Lastly, the Commissioner reiterated his recommendation that freedom of association and assembly of the Macedonian minority be fully and effectively safeguarded, and stressed the importance of respect for the freedom of ethnic self-identification, which should be effectively applied to national, religious and linguistic minorities.

The reply of the Prime Minister of Bulgaria is available on the Commissioner's website.

Letter to the Minister of the Interior of France

On 2 November, the Commissioner published a letter sent to the French Minister of the Interior, Mr Brice Hortefeux, as well as the Minister's reply. In his dialogue with the French authorities, Commissioner Hammarberg expressed his concern regarding the number of desecrated cemeteries in France. Four Jewish or Muslim cemeteries were desecrated in the first nine months of 2010 in the greater Strasbourg area alone. Noting that states have an obligation to protect religious buildings from any damage or destruction, the Commissioner underlined that appropriate technical and human resources should be made available to find the perpetrators of these acts. Improving the quality and the reliability of data collected about racist or xenophobic offences could also better target areas of prevention.

Letter to the Federal Minister of the Interior of Germany

On 9 December, the Commissioner published his letter of 15 November, sent to the German Federal Minister of the Interior, Mr Thomas de Maizière. Following up on his dialogue with the German authorities during the visit to Berlin on 27 October, the Commissioner wrote about the issue of forced returns to Kosovo* and the conduct of law enforcement officials. He stressed that the infrastructure and resources available in Kosovo* are not adequate for the sustainable return and integration of returnees. The Commissioner noted that many of them, in particular Roma, Ashkali and Egyptian families with children, have been severely affected, not least because of discrimination, marginalisation and fear for their safety. He added that he remains worried about the lead-contaminated camps of Osterode and Leposavic, in northern Mitrovica, where some returnees from western European countries, including Germany, have ended up.

In the meantime, the Commissioner took note of the temporary measure taken by the Minister of the Interior of North Rhine-Westphalia on 1 December 2010 to put a hold on forced returns to Kosovo* of Roma, Ashkalis and Egyptians living in the region of North Rhine-Westphalia until 31 March 2011. The Commissioner understands that individuals who have been convicted of a criminal offence and received a large fine or a more serious punishment are exempted from this temporary measure.

Concerning the conduct of law enforcement officials, the Commissioner, in his letter, encouraged the German federal and regional authorities to consider developing the existing mechanisms by introducing an independent police complaints body.

Letter to the Prime Minister of Montenegro

On 8 December, the Commissioner published a letter addressed to the Prime Minister of Montenegro.

In his letter, whilst welcoming the adoption of the Law on Anti-Discrimination and the inclusion of sexual orientation and gender identity as grounds of discrimination banned under the Law, the Commissioner expressed his concern at the apparent lack of effective measures in response to a number of public statements made by certain officials and opinion makers in 2009 and 2010, manifesting intolerance and hostility towards LGBT persons. The Commissioner urged the Montenegro authorities to take all necessary steps in order to raise awareness among authorities and the public regarding the principles contained in the aforementioned Law on Anti-Discrimination.

The reply by the Prime Minister of Montenegro is available on the Commissioner's website.

Letter to the Prime Minister of Romania

On 16 December, the Commissioner published a letter addressed to the Prime Minister of Romania, Mr Emil Boc. The letter followed the Commissioner's visit to Romania in October, which focused on the human rights of Roma.

In his letter, whilst welcoming the different measures undertaken by the authorities to improve the situation of Roma, the Commissioner expressed his concern about pervasive discrimination faced by Roma in various sectors. Noting the anti-Roma manifestations in the country, he urged the authorities to take swift action to fight racism and intolerance, and to ensure the effective enforcement of the existing anti-discrimination legislation.

As regards housing, the Commissioner was particularly concerned about reports of forced evictions of Roma families without the provision of adequate alternative shelter. He noted further that a great number of Roma live in communities segregated from the rest of the population, in houses which are overcrowded and frequently lack access to basic facilities.

Recognising the role of local administrations and non-governmental organisations in improving the situation of Roma, the Commissioner urged the government to undertake all possible measures to strengthen the capacity of municipalities to develop and implement community projects aimed at enhancing Roma inclusion.

As regards the high unemployment rate among Roma, the Commissioner called upon the authorities to prioritise the long-term integration of Roma into the labour market. The Commissioner also took note of the low school attendance figures and the high school drop-out rate among Roma children, as well as the ineffective implementation of the anti-discrimination and anti-segregation rules in the educational system.

Finally, the Commissioner stressed the importance of teaching Roma history as a crucial tool in fostering understanding and tolerance among the majority population. He

recommended in this respect the systematic use in schools of the Council of Europe's *Fact Sheets on Roma History*.

The reply of the Prime Minister of Romania is available on the Commissioner's website.

4. Themes

Strasbourg high-level meeting on Roma

The Commissioner participated in the High-Level Meeting on Roma which took place in Strasbourg on 20 October at the initiative of the Secretary General of the Council of Europe. In the speech he delivered at the informal working lunch, the Commissioner emphasised in particular that in order to effectively tackle Roma exclusion and marginalisation, anti-Gypsyism must end. In this connection, the Commissioner noted that sweeping and stigmatising statements linking Roma with criminality and blaming them for their own social misery and unwillingness to integrate had not been based on facts and had had dangerous consequences. The Commissioner underlined the need for efforts by member states to raise awareness of the history of the Roma and the persecution they have suffered in the past in Europe.

Resources should also be given to equality bodies and ombudsmen to take action against anti-Roma hate speech and discrimination, including the institutionalised discrimination which affects Roma. The Commissioner called for efforts to address the problem of statelessness, which continues to have an impact on the life of tens of thousands of Roma in Europe, and to promote the recruitment of Roma as police officers, teachers and mediators between the services and the Roma communities. Finally, the Commissioner stressed the need to ensure participation of the Roma in the planning and management of all initiatives that concern them.

Human rights of migrants including refugees and asylum seekers

On 12 October, the Commissioner published a Human Rights Comment entitled 'Airlines are not immigration authorities'. The Commissioner is concerned by the sanctions on airlines and other transport companies established by European states in order to reduce irregular immigration. Such measures pass responsibility on to the carriers in order to limit access to states' territories, this being a serious barrier for persons in need of international protection. Travel personnel, who cannot possibly have the appropriate competencies for ensuring the rights of refugees under international law, have been made to decide if someone should be allowed to board an airplane or ship – or not. The Commissioner also drew attention to the side effects of this policy, since refugees may instead be obliged to use the services of smugglers in order to get around the vigilance of the carriers. He concluded that it is necessary that European states overhaul their migration control mechanisms.

On 23 November, the Commissioner published a Human Rights Comment entitled 'Europe should accept more refugees in need of safe resettlement'. According to UNHCR estimates, there are currently around 800 000 refugees worldwide in need of resettlement. However, the number of resettlement places is not keeping pace with the corresponding needs, and only a limited number of refugees find a safe haven in a

resettlement country. While the USA, Canada and Australia have implemented significant resettlement programmes, European countries have set much lower quotas for receiving refugees. According to UNHCR estimates, all European states together resettle seven times less refugees than the USA alone. Some European countries have established continuous resettlement programmes, and others have resettled refugees on an *ad hoc* basis. However, European states need to be much more involved in resettlement, and should actively assist UNHCR in this task and increase their annual quotas.

Children's rights

On 8 October, the Commissioner gave a speech on 'the value of listening to children' during the joint annual meeting in Strasbourg of the European Network of Ombudsmen for Children (ENOC) and the European Network of Young Advisors (ENYA). To make child participation truly effective, he insisted on the necessity of offering more opportunities for children to express their views. Participation in schools should, therefore, be improved and children should have the possibility of participating in the decision-making processes. He also called for an improvement in child participation in every decision affecting their lives. The Commissioner took part in a debate following presentations made by children on violence, schools, education and health.

On 21 December, the Commissioner published a Human Rights Comment "Austerity budgets will cause further child poverty", in which he highlighted the dramatic impact of the economic crisis on child protection. Children cannot be blamed for being born into a poor family and solutions do exist. It is a question of political priority. He highlighted that general welfare services such as health care and day-care centres are crucial for poor children. Free access to education is a necessity for reducing child poverty.

On the same day, the Commissioner launched a thematic webpage on his work regarding children's rights. This webpage contains all the thematic publications made by the Commissioner in relation to children, including issue papers, speeches, viewpoints and Human Rights Comments. It also includes a positions paper that summarises his conclusions and recommendations concerning children's rights as well as a list of country reports that focus on children's issues.

Missing persons in the region of former Yugoslavia

On 14 December, the Commissioner published a Human Rights Comment entitled 'Countries of the former Yugoslavia need to step up their efforts to resolve cases of missing persons'. The Human Rights Comment addressed the issue of 14 500 unresolved cases of missing persons from the conflicts involving Croatia, Bosnia and Herzegovina, Serbia and Kosovo*. The Commissioner stressed the importance of regional co-operation to resolve pending cases of missing persons. He stressed that the recent meetings of the presidents of Serbia and Croatia, with the issue of missing persons high on their agenda, had very encouraging developments, and that other politicians from the region should follow their example. Referring to the steps suggested by the International Committee of the Red Cross to solve this issue, the Commissioner highlighted that countries in the region need to: initiate an extensive search for gravesite locations and information on the fate of missing persons in the state archives; speed up the identification of already exhumed bodies; provide increased resources to national

commissions on missing persons and their forensic structures; and exchange information unconditionally on the whereabouts of missing persons.

Combating hate speech, hate crimes and intolerance

Concerned about the increasing number of acts of desecration of cemeteries and sprayed hate messages on religious and other symbolic places, the Commissioner published a Human Rights Comment on 30 November. Desecrations of cemeteries are hate crimes that exacerbate intolerance. Considering these offences as 'low social harms' is a mistake. These cases should receive priority in terms of investigation and prosecution and they should not remain unpunished. They do not only target individuals but also the community. The Commissioner considered that the best way to combat ignorance and fear is to inform and educate. Political leaders have a vital role to play in continually denouncing these offences and by contributing to the promotion of tolerance and open-mindedness.

On 28 October, the Commissioner published a Human Rights Comment entitled 'European Muslims are stigmatised by populist rhetoric', where he expressed concern at increasing expressions of intolerance towards Muslims in European politics and societies. While the aggressively Islamophobic election campaigns carried out by extremist political parties are of concern, the Commissioner finds it particularly worrying that established democratic parties have tended to compromise and legitimise these intolerant views. In a context where terrorist attacks have rendered the fight against Islamophobic stereotypes both more difficult and more necessary, the Commissioner regrets that serious efforts to establish clear distinctions between the evildoers and the overwhelming majority of Muslims have rarely been made. It is a bad sign that as a result, large parts of European public opinion appear to support limitations of Muslim's religious freedom. In this connection, the Commissioner underlined that instead of focusing on how to sanction women for wearing the niqab or prevent the building of minarets, public debate should address the crucial question of integration as a two-way process, based on mutual understanding and reflecting the reality that Islam is an integral part of European culture.

Human rights of Lesbian, gay, bisexual and transgender (LGBT) persons

On 27 October, the Office of the Commissioner was represented at the 5th Roundtable of National Government Focal Points on LGBT Equality Mainstreaming Policies, which took place in The Hague. This network aims to exchange national experiences among policy makers and civil servants from Council of Europe member states on mainstreaming LGBT equality and human rights issues. A presentation was given by a member of the Office of the Commissioner on the progress of the *Comparative study on the situation concerning homophobia, transphobia and discrimination on grounds of sexual orientation and gender identity in the Council of Europe member states*, which is forthcoming.

Human rights of persons with disabilities

On 21 October, the Commissioner published a Human Rights Comment concerning inhuman treatment of persons with disabilities in institutions. In the Human Rights Comment he expressed his concerns regarding the thousands of people with disabilities who are kept in large and remote institutions, and often placed under guardianship and

with their legal capacity removed. The Commissioner drew attention to the UN Convention on the Rights of Persons with Disabilities, emphasising that persons with disabilities, including people with mental health problems or intellectual disabilities, should have the right to independent living and to participate in their communities. Finally, he reminded states that they have an obligation to set up and support independent national monitoring bodies to oversee the situation in such institutions and to ensure them adequate resources.

Freedom of Assembly

On 26 October, the Commissioner published a Human Rights Comment entitled “Freedom to demonstrate is a human right – even when the message is critical”. The Commissioner stressed that the right to peaceful freedom of assembly, enshrined in Article 11 of the European Convention on Human Rights, is a fundamental right in a democratic society, belonging to all people, not just to the majority or to those advocating views pleasing to those in power. In most European countries, the prevailing legislation merely requires the organisers of a meeting to notify the authorities of their intention to hold a meeting. However, in many countries where the law foresees a notification procedure for assemblies, the authorities incorrectly regard such notifications as requests for permission to hold a rally and, by extension, as a possibility for them to deny such permission and to consider a rally as “unauthorised”. Even when there is no explicit “rejection”, local authorities have, in several countries, often resorted to other ways of curbing the impact of a demonstration, for example by allowing or even encouraging alternative events at the same time and venue, sometimes by hostile groups. The Commissioner underlined that the overarching principle is the need for authorities to respect the peaceful and collective expression of opinions by people on a broad range of topics, be they political, religious, cultural, social, or anything else. The European Court of Human Rights has made it clear that the state has a duty to protect participants in peaceful demonstrations, specifying that “this obligation is of particular importance for persons holding unpopular views or belonging to minorities, because they are more vulnerable to victimisation”. A general ban on a peaceful demonstration can only be justified if there is a real danger of disorder that cannot be prevented by reasonable and appropriate measures.

Prevention of torture

On 1 October, the Commissioner participated in the 25th anniversary conference of the Red Cross Centre for Tortured Refugees in Stockholm, Sweden, which focused on the treatment of tortured and war-traumatised refugees. In his speech delivered to participants, the Commissioner recalled that the prohibition of torture and other cruel, inhuman or degrading treatment or punishment is absolute. He emphasised the need to pay particular attention to victims of torture or ill-treatment seeking refugee status or asylum in European states and drew attention to the existing legal instruments which require States to refrain from deporting persons to states in which they face a risk of being tortured or ill-treated. The Commissioner also spoke about his experience of meeting persons affected by the August 2008 armed conflict in Georgia.

Non-discrimination

On 8 December in Brussels, the Commissioner's Office participated in a round-table organised by the European Network of Equality Bodies (Equinet) to discuss the

usefulness of equality legislation for transgender persons. The Commissioner's Issue Paper on human rights and gender identity was highlighted as a reference document on the issue. Equality bodies were encouraged to take up issues related to the human rights of transgender persons among their daily activities.

Human rights implementation

Speech at the Conference on local government responses to recession across Europe

On 11 October, the Commissioner addressed the conference "Local government: responses to recession across Europe" in Strasbourg. The Conference was jointly organised by the Council of Europe and the Local Government and Public Service Reform Initiative of the Open Society Foundation. The Commissioner reiterated the need to put human rights at the heart of economic recovery plans, outlining the inequalities that result from a reduction of social programmes. Vulnerable groups are more deeply affected by the crisis, in particular the elderly, persons with disabilities, homeless people, migrants, women and children. Commissioner Hammarberg also stressed that "the economic crisis has contributed to an increased use of racist, xenophobic and otherwise intolerant discourse in politics and the media all over Europe." As local and regional authorities are at the forefront in facing this emergency, enhanced co-operation among all state levels is crucial. The Commissioner pointed out the need for concrete national programmes that promote social cohesion without watering down agreed human rights standards. Human rights budgeting allows elected representatives and officials to allocate resources in a non-discriminatory manner. The Commissioner concluded that "finding viable solutions to enable all people to enjoy equal access to rights should be a priority for international, national and local actors. Co-operation and solidarity between and within States is not only possible: it is simply necessary."

Message to the Forum on the Future of Democracy

On 19 October, the Commissioner addressed the Council of Europe Forum on the Future of Democracy in Yerevan, Armenia, via video link. He stressed that elected officials must rule in a democratic spirit and accept limits to their power, including the principle of the separation of powers and the independence of the judiciary. Commissioner Hammarberg highlighted the major problem "that a large portion of the population is not part of the democratic processes at all. Poor and marginalised people have in reality very little say in the running of their country, district or municipality." He also referred to xenophobic remarks - made by some politicians - which had resulted in further prejudices against Roma, migrants, Muslims and other minorities. The Commissioner concluded by stating that "the fact that we have some democracy and some protection for human rights is no reason for complacency. We need to be self-critical. Only then can the remaining gaps be filled."

UN International Human Rights Day Lecture

On 9 December, the Commissioner gave the UN International Human Rights Day Lecture at the London School of Economics and Political Science (LSE) Centre for the Study of Human Rights. The Commissioner spoke on "European democracies and human rights: from present failures to future protection". He discussed the gap between human rights standards and the realities in Europe. The speech was published on the

Commissioner's website on Human Rights Day (10 December) and the podcast is available on the Centre's website.

European Union Institutions

Meeting with Fundamental Rights Agency (FRA) Board Chairperson and Director

On 2 November in Strasbourg, the Commissioner met with Ms Ilze Brands Kehris, Chairperson of the European Union Agency for Fundamental Rights Management Board, and Mr Morten Kjaerum, Director of FRA. The discussions focused on the situation of Roma, migrants and asylum seekers. The Fundamental Rights Agency's data collection on these themes was highlighted.

Meetings with Commissioner Andor and Commissioner Füle

On 15 December in Strasbourg, the Commissioner held meetings with European Commissioners László Andor - Employment, Social Affairs and Inclusion - and Štefan Füle - Enlargement and Neighbourhood Policy. Discussions with Mr Andor focused on the situation of Roma and the new Commission initiative, The European Platform against Poverty and Social Exclusion. The need to use European Union funding efficiently at national level to address the situation of Roma was stressed. Information regarding the human rights situation in Armenia, Azerbaijan, Croatia, Georgia and Turkey was exchanged with Commissioner Füle. Contacts with civil society and the protection of human rights defenders were highlighted by the Commissioners.

5. Other Meetings

International Ombudsman Institute (IOI) European Chapter Conference

On 4 October, the Commissioner participated in the opening session of the IOI conference "Europe as an Open Society: Migrants and Rights", organised in Barcelona. In his intervention, the Commissioner stressed that an open society cannot exist if people from different origins, with different languages and different colours are denied full participation in society. Intercultural dialogue and open-mindedness should be encouraged by adopting measures based on trust and mutual respect, instead of on fear and suspicion. Our dependence on one another, including on migrants, needs to be highlighted in public debate, and the benefits of such interdependence made visible. The Commissioner added that we therefore still have a long way to go in order to shape and maintain Europe as an open society.

Swedish Forum for Human Rights (MR-dagarna)

On 15 November, the Commissioner took part in the Swedish Forum for Human Rights - MR-dagarna - held in Örebro. This year the theme of the event was "From words to action" and the Commissioner spoke at the opening ceremony. He also took part in a seminar on torture organised by the Swedish Red Cross.

30th Council of Europe Conference of Ministers of Justice

The Commissioner took part in the Conference of Ministers of Justice held in Istanbul on 24-26 November. Under the theme “Modernising Justice in the Third Millennium”, the conference considered the issues of “transparent and efficient justice” and of “prisons in today’s Europe”. In his address at the opening session of the conference, the Commissioner noted that modern information and communication technologies (ICT) are a key aspect of the process of modernising justice and can be used to improve transparency and interaction between public authorities and the public. Such technologies are an essential tool for allowing the justice systems to keep pace with current information and communication practices. However, the concept of transparent and efficient justice goes beyond the question of efficient information processing systems. The Commissioner focused on the problems of the independence of the judiciary; corruption; and effective access of the public to information on the functioning of the judicial system. On prisons, the Commissioner appealed that each deprivation of liberty be guided by two underlying principles: respect for human dignity and respect for the rule of law. He also underlined the necessity of further discussion on alternative measures to imprisonment and other forms of custodial measures or sanctions, and said that it is crucial to examine all possibilities which will help achieve rehabilitation.

During the conference, the Commissioner also held bilateral meetings with some of the Ministers of Justice from member states present in Istanbul.

Speech at the Conference on Nationality

On 17 December, the Commissioner addressed the 4th Council of Europe Conference on Nationality in Strasbourg. He said that “more than six hundred thousand Europeans are stateless and denied their right to citizenship” and added that a “large number of the stateless persons in Europe are living in precarious circumstances”. The Commissioner stressed that stateless persons were usually excluded from participation in the political process, undermining the reciprocal relationship between duties and rights. Many of them face discrimination in their daily lives; they are disadvantaged in relation to employment, housing, education and health care. Commissioner Hammarberg pointed out that many stateless persons were Roma who had no valid personal identification documents. He urged member states to fully restore the rights of stateless persons.

6. Human rights defenders

Round-Table on Human Rights Defenders in South East Europe

The Office of the Council of Europe Commissioner for Human Rights organised a Round-Table on Human Rights Defenders in South East Europe on 1 and 2 December in Sarajevo, Bosnia and Herzegovina.

The Round-Table brought together representatives of international and regional inter-governmental organisations and international non-governmental organisations (NGOs), as well as national human rights defenders (including members of human rights NGOs, journalists, lawyers and independent experts) from Bosnia and Herzegovina, Bulgaria,

Croatia, Greece, “the former Yugoslav Republic of Macedonia”, Montenegro, Romania, Slovenia, Serbia and Turkey.

The event, which was led by the Commissioner, provided an opportunity to exchange information on the situation of human rights defenders and their work environment. Specific themes discussed included: challenges to freedom of expression and ways to overcome them; the security of human rights defenders and ways to improve the efficiency of protection strategies; and the participation of human rights defenders in decision-making processes.

Participants also discussed the possibility of forming a regional network of human rights defenders for South East Europe, following the presentation from the Coordinator of the South Caucasus Network of Human Rights Defenders.

The Commissioner would like to express his sincere gratitude to all those who were present in Sarajevo.

Third “inter-mechanisms” meeting on the protection of human rights defenders

The Office of the Commissioner for Human Rights participated in the third “inter-mechanisms” meeting organised by the Observatory for the protection of human rights defenders and hosted by the OSCE Office for Democratic Institutions and Human Rights (ODIHR) in Warsaw on 8 and 9 December. On this occasion, international and regional mechanisms and programmes on the protection of human rights defenders within the United Nations, the African Commission for Human Rights and Peoples’ Rights, the Council of Europe, the European Union, the Inter-American Commission on Human Rights, and ODIHR, joined by *L’Organisation Internationale de la Francophonie*, shared their respective experiences and explored ways to enhance their co-operation.

Participants discussed concrete issues and possible co-ordinated activities in the field of publicity of actions, treatment of individual cases, preventive actions and emergency protection measures, information-sharing on country visits and trial observation. Participants also discussed the increasing involvement of non-state actors in the harassment and attacks against human rights defenders. Co-operation with the newly-established United Nations Special Procedure on freedom of association and freedom of assembly was also considered.

Sakharov project

Within the period covered by the report, the Andrei Sakharov exhibition Alarm and Hope travelled to Bosnia and Herzegovina, Estonia, France, Latvia and Slovakia. The exhibition was also displayed from 13 to 16 December 2010 at the European Parliament, and featured an “inauguration” event on 15 December presented jointly by the Vice-President of the European Parliament, Mr McMillan Scott, and Commissioner Hammarberg. On this occasion, the book “Andrei Sakharov and human rights” containing a selection of Sakharov’s writings was released.

7. European Court of Human Rights

Follow-up to the Interlaken Declaration

While the Interlaken Declaration and Action Plan, adopted at the close of the High-level Conference on the future of the European Court of Human Rights in February 2010, does not expressly mention the Commissioner for Human Rights, the latter is among the Council of Europe institutions which play an active role in the implementation of this Declaration.

The Commissioner is particularly involved in the second part of the Action Plan, concerning the implementation of the European Convention on Human Rights at national level. His action aims to increase the awareness of national authorities of the Convention standards, ensure the application of those standards, and to help states in remedying any structural problems revealed by a judgment, in order to prevent repetitive applications before the Court.

During the visits carried out in Council of Europe member states and in the framework of his ongoing dialogue with the authorities, the Commissioner can draw the authorities' attention to the need for the prompt implementation of judgments issued by the European Court, which are being supervised by the Committee of Ministers of the Council of Europe. This requires a co-ordinated approach with other entities of the Council of Europe, notably the Department for the execution of the Court's judgments.

For instance, during his visit to the Czech Republic, the Commissioner addressed the issue of equal education for Roma children, which is directly linked to the execution of the landmark judgment *D.H. and Others v. the Czech Republic*, in which the European Court found that the country had discriminated against Roma children by educating them in schools for children with mental disabilities. The Commissioner stressed on this occasion that the implementation of this judgment should be a priority for the Czech authorities. The Commissioner also expressed concern regarding the high number of children, and particularly Roma children, placed in institutional care solely on grounds relating to the poor housing conditions or financial situation of their family. He called upon the Czech authorities to implement the relevant judgments of the Court, which found this practice to be at variance with the Convention in two cases (*Havelka and Others v. the Czech Republic* and *Wallová and Walla v. the Czech Republic*).

In a letter published on 4 November, the Commissioner called upon the Bulgarian government to fully guarantee to all religious minorities in Bulgaria respect for their freedom of religion, as enshrined in Article 9 of the Convention, stressing that the European Court already found a violation of this article in two cases relating to the internal organisation of the divided Muslim community (*Hasan and Chaush v. Bulgaria* and *Supreme Holy Council of the Muslim Community v. Bulgaria*). The Commissioner also reiterated his recommendation that the right to freedom of association and assembly of the Macedonian minority be fully and effectively safeguarded, noting with concern that the judgments concerning the "OMO-Ilinden" association remain under supervision by the Committee of Ministers, and that new applications had been lodged with the Court in this respect.

Finally, during his recent visit to Bosnia and Herzegovina, the Commissioner held talks with the authorities at State and Entity levels and called upon them to end discrimination towards members of national minorities. This includes executing the judgment *Sejdić and Finci v. Bosnia and Herzegovina*, in which the Court found that the distinction made between two categories of citizens (the “constituent peoples” and the “others”) in the electoral system put in place in Bosnia and Herzegovina was discriminatory and breached the electoral rights of persons not belonging to the “constituent peoples”.

8. Communication and Information work

At least 173 news items from 33 countries on 26 different themes were published during this trimester.

The most widely covered topics were the Commissioner’s activities in relation to the situation of the Roma, the conflict in Georgia, the visit to Bosnia and Herzegovina, Islamophobia, and the rights of migrants and asylum-seekers.

The Commissioner’s speech on the human rights of Roma in the context of the PACE fourth part session was widely covered by *DPA, FOCUS News, DNA, Swedish Radio, PAP, Radio Vatican, AFP, ASCA, ORF, Limes, and Die Presse*. The Commissioner also participated in a live morning show of Swedish *TV4* on this subject. His visit to Romania, which focused on the situation of the Roma, attracted in-depth coverage (*ARD, ZDF, The Guardian, Le Temps, El Correo, Realitatea, FOCUS News Agency, Radio Romania, Rompres, Diplomat*). Furthermore, an interview given to the *Evangelischer Pressedienst* was mentioned by *Deutschlandradio Kultur* and several other German media (*Südwest Presse - Reutlinger Nachrichten - Metzinger Uracher Volksblatt*).

The media also covered the publication of the two reports on Georgia (*Rustavi 2, BLACK SEA PRESS, BNO NEWS, The Voice of Russia, Civil Georgia, Trend, ITAR-TASS, Interfax*). Further coverage of the Commissioner’s activities in Georgia was given mainly by *Interfax news, Apsnypress, Civil Georgia, The Voice of Russia, The Messenger, Nouvelle d’Arménie*.

Many media reported on the Commissioner’s visit to Bosnia and Herzegovina and his first observations (*Reuters News, N24, FENA, Sarajevo X, Ijiljan, 24 Sata, Oslobodenje, Radio Sarajevo, MIA, Virgilio Notizie, ANSAmed, SDA/ATS*).

The Commissioner’s concerns over discrimination and Islamophobia made the news in several media, in particular those from Spanish and German speaking countries (*IPS, El Mundo, El Pais, La Vanguardia, ABC, EFE, Stern, ORF, Islamische Zeitung, Evangelischer Pressedienst, APA, Die Presse, Today’s Zaman, Il Giornale, La Croix, AFP, DNA, World Bulletin, News24, ANSA, Sarajevo-X*). *New Europe* published the Commissioner’s opinion piece on the right of Muslims to practice their religion.

The publication of the letter to the Federal Minister of Interior of Germany was covered by *Wiener Zeitung, ARD, SIR, Beta, Albinfo, Junge Freiheit, Deutsche Welle, RTL, and STA*, while *Kristeligt Dagblad, Jydske Vestkysten, Toulouse 7, and ANSA* published news on the Human Rights Comment on the desecration of cemeteries.

The Human Rights Comment on freedom of assembly in Russia received significant attention, in particular among Russian media (*RIA Novosti*, *The Voice of Russia*, *ITAR-TASS*, *Svobodanews*, *SIR*, *Radio Free Europe*). The *BBC* broadcast a documentary on the CIA detention centres, with quotes from an interview with the Commissioner.

Het Nieuwsblad quoted the Commissioner's observations on prison conditions made in the 2008 report on Belgium; *AnsaMed*, *Dan*, *AFP* and *Libération* mentioned the Commissioner's position on the rights of LGBT persons.

The letter to the Prime Minister of Bulgaria and minority rights was covered by *Nova Makedonija*, *Utrinski vesnik*, *Dnevnik*, *Zaman*, *Deutsche Welle*, *Ethnos*, while *AFP*, *Le Figaro* and *Les Echos* reported on the letter to the French Minister of Interior concerning the desecration of cemeteries. *Information*, *Swedish Radio*, *Financial Times*, *Junge Welt*, *Trouw*, *l'Unità*, *EuroparlTV*, *Politiken*, *Dutch news* and *Jyllands Posten* focused on the Commissioner's declarations on the Dublin Regulation, asylum seekers and family reunification.

ARD and *Literaturnaya gazeta* reported on the Commissioner's declarations on the general human rights situation in Europe.

The speech given at the Conference of Ministers of Justice in Istanbul was mentioned by *ABC*, *EFE* and *Hurriyet*. The opening of the Sakharov exhibition in Sarajevo was covered by *Oslobođenje*.

Other topics covered by the media were the Human Rights Comment on carrier liability and sanctions (*Junge Welt*, *APA*, *ANSA*, *EFE*, *Dom Radio*, *AFP*), the situation in Belarus (*Charter 97*), trafficking in Cyprus (*AFP*), forced returns to Kosovo (*Le Courrier des Balkans*, *Süddeutsche Zeitung*), the rights of persons with disabilities (*Superando*, *Sir*, *SuperAble*, *Bulgarian News Agency*), investigations in Chechnya (*Ria Novosti*), children's rights in Russia (*The Voice of Russia*), minority rights (*ITAR-TASS*) and the Human Rights Comment on missing persons in the Balkans (*Focus*).

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

Airlines are not immigration authorities – 12 October

Inhuman treatment of persons with disabilities in institutions – 21 October

Freedom to demonstrate is a human right – even when the message is critical – 26 October

European Muslims are stigmatised by populist rhetoric – 28 October

Europe should accept more refugees in need of safe resettlement – 23 November

Desecrations of cemeteries are hate crimes that exacerbate intolerance – 30 November

Countries of the former Yugoslavia need to step up their efforts to resolve cases of missing persons – 14 December

Austerity budgets will cause further child poverty – 21 December

9. Next three months

January

17-23 January	Visit to Armenia
24-27 January	PACE 1st part
28 January	Seminar on Data Protection (Budapest)

February

17-18 February	Seminar “Human rights dimensions of migration in Europe” (Istanbul)
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March

2-5 March	Visit to Georgia
22-24 March	Visit to Malta

10. Observations and reflections

As in previous reports, let me conclude by mentioning some broader concerns which have become apparent in the cause of our activities.

Roma rights. It is crucial that the interest demonstrated during the autumn for the situation of the Roma populations is channelled into actions which would effectively diminish the discrimination of Roma and travellers. My many talks with Roma in several countries have not left me optimistic - more energetic efforts are needed. The High Level Meeting of 20 October must be thoroughly followed through (without the Council of Europe taking on tasks for which it is not suited). It must be recognised that a major aspect of the social misery of Roma is widespread anti-Gypsism.

Xenophobia. It is obvious that Europe is now close to a deeper failure in defending basic values of mutual human respect. Islamophobic statements have become “normal” even in the mainstream political discourse in several countries. Also, refugees and other migrants are made targets of hate speech. At the same time, the problem of millions of vulnerable migrants *sans papiers* remains largely unaddressed. The situation is made worse by the fact that the competence of UNHCR is not sufficiently respected and recognised by a number of European countries.

Inequalities. Austerity budgets have been presented by several European governments in response to the economic crisis which has developed since autumn 2008. Care has been taken in some cases to protect the poor from the worst consequences of the budget cuts, but it is obvious that a major part of the burden will in reality be put on categories which are already in difficult circumstances such as single-parent families, persons with disabilities and many elderly people - not to mention minorities such as the Roma. Inequalities have grown in Europe for three decades now and it appears that the gaps will increase further. This tendency – which might well have dangerous political consequences - requires higher priority, including in Council of Europe discussions. Social rights are human rights.

Limitations to media freedom. The international community has reacted strongly to the new media legislation in Hungary. However, threats against media freedom are a reality in a number of European countries. The politicised penalisation of the journalist Eynullah Fatullayev in Azerbaijan is one illustration. In the Russian Federation several journalists have been assaulted, some of them killed, by forces which obviously have wanted to silence them. Some governments take action to prevent even modest and peaceful criticism in the media. Decisions on the allocation of frequencies for radio and television are sometimes politicised. Furthermore, I find it essential that the ongoing discussion on the Wikileaks revelations be balanced and not lead to repressive actions against media outlets.

Impunity. Impunity in criminal cases is always a problem. I have been struck by the fact that some of the worst crimes – with the worst repercussions for human rights in general – have gone unpunished. This has been the case in regard to a number of notorious assassinations of journalists and human rights defenders. In some of these cases the contract killer has been identified but not the forces behind them. This is extremely

serious. Also, I have not been convinced that the investigations into these cases have always been sufficiently professional and well supported.

I will of course continue to raise these and similar problems during the forthcoming year, but I would hope that governments in member states will give them higher priority.

