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## **3<sup>RD</sup> QUARTERLY ACTIVITY REPORT 2016**

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Commissioner for Human Rights**

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Presented to the Committee of Ministers  
and the Parliamentary Assembly

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## 1. Overview

I devoted the most attention during the period in review to three big issue areas – the human rights implications of the measures adopted in Turkey in the aftermath of the attempted coup, migration-related challenges in several Council of Europe member states, and the continuing need to address ongoing or past serious human rights violations, such as torture and enforced disappearances.

I had visited Turkey in April and was soon to publish a report on human rights concerns in the country when the attempted coup took place in mid-July. The coup could have ended in catastrophe for democracy in the country, as well as a full-fledged civil war. Fortunately, the attempt was foiled, though the price was many killed and injured and deep trauma among both the political elite and the broader population. There seems to be a consensus not only in Turkey, but also more broadly in Europe that the Council of Europe has a key role to play in helping to address post-coup human rights challenges.

Regarding my own role, I issued two statements in July condemning the coup attempt and expressing certain human rights concerns about the first decree law under the state of emergency. I travelled to Turkey in late September to express my solidarity with Turkey's democratic forces and to receive an update on the human rights situation. The Turkish authorities showed exemplary co-operation and I had very constructive meetings with all my interlocutors. Soon after the visit, I published a memorandum to the Turkish government outlining the most serious and pressing human rights concerns surrounding the emergency measures. I intend to continue my dialogue with the Turkish authorities in the coming months and to play my part in the broader Council of Europe effort to assist Turkey in meeting post-coup challenges in a human rights compliant manner.

Migration continued to be a top human rights concern during the period in review and I addressed the issue in Spain, Hungary, Greece and Latvia. As a follow-up to my previous work in the country, I sent a letter to the Spanish authorities on the human rights of immigrants and asylum-seekers, urging the adoption of human rights compliant procedures for the border police in dealing with mixed migrant flows in Ceuta and Melilla. I published an opinion editorial in the *International New York Times* criticising anti-migrant propaganda and measures by the Hungarian government in the run-up to a referendum on the EU refugee relocation scheme.

During a follow-up trip to Greece, I visited a refugee reception centre and held meetings with the authorities, national human rights structures and civil society organisations on a variety of human rights issues, including Greece's efforts to cope with the migrant challenge while contending with an internationally imposed financial strait-jacket. In Latvia, I addressed the annual meeting of the European Society of International Law in a panel devoted to migration law in Europe. As part of a regular country visit to Latvia which focused on women's rights, children's rights and LGBTI rights, I also urged the Latvian authorities to provide housing support for relocated refugees.

During the period under review, I also sought to address the most serious human rights violations, such as enforced disappearances, wartime crimes, and torture. My Office organised one of our regular roundtables with human rights defenders in July. This time, we sought to raise awareness about our recently published issue paper on "Missing persons and victims of enforced disappearance in Europe" and convened activists

working on this issue from across the continent. I subsequently published a Human Rights Comment on the obstacles to the work of defenders in this issue area.

I sent a letter to the Serbian authorities urging the inclusion of all victims of wartime crimes in forthcoming reparation and compensation schemes. In a report on Ukraine and the memorandum to Turkey, I urged the authorities to address as a matter of urgency allegations of torture and ill-treatment. Among my core recommendations are for governments to co-operate with international monitors by providing unfettered access to places of detention, publish their international reports promptly and implement their recommendations, create and/or strengthen national prevention mechanisms, provide access for detainees to doctors and lawyers as from the outset of deprivation of liberty, and send a strong message of zero tolerance for ill-treatment backed by serious sanctions for any perpetrators. Finally, along with other leading human rights experts, I published a joint statement calling for speedy implementation of the Nelson Mandela Rules on treatment of prisoners.

## **2. Missions and Visits**

### ***Visit to Greece***

The Commissioner carried out a visit to Greece from 3 to 8 July. The visit focused on issues pertaining to racist and homophobic extremism, as well as to the impact of the austerity measures on the enjoyment of human rights, in particular by persons with disabilities and older persons. The Commissioner also tackled issues concerning the human rights of asylum seekers and immigrants.

In the course of his visit, the Commissioner held discussions with representatives of the national authorities, including the Minister of Finance, Mr Euclid Tsakalotos; the Minister of Health, Mr Andreas Xanthos; the Minister of Justice, Mr Nikolaos Paraskevopoulos; the Minister of Labour, Social Insurance and Social Solidarity, Mr Georgios Katrougalos; and Alternate Minister for Social Solidarity, Ms Theano Fotiou. The Commissioner also met with the Alternate Minister of Defence, Mr Dimitris Vitsas; the Alternate Foreign Minister for European Affairs, Nikos Xydakis; the Alternate Minister of Interior and administrative reconstruction, Mr Nikolaos Toskas, together with representatives of the Greek police; the Alternate Minister for Migration Policy, Mr Ioannis Mouzalas; and the Athens public prosecutor's office. In addition, the Commissioner met with the Greek delegation to the Parliamentary Assembly of the Council of Europe; the Mayor of Athens, Mr Georgios Kaminis; the Greek National Commission for Human Rights and the acting Ombudsman and members of his Office.

The Commissioner also met with representatives of international organisations, academics, and a number of non-governmental organisations. He carried out visits to the Psychiatric Hospital of Attica, in Dafni, the premises of a shelter for destitute people, including refugees, in central Athens and the refugee reception camp hosting more than 3 000 persons in Skaramangas. Furthermore, the Commissioner gave a lecture on human rights protection in Europe at the Hellenic Foundation for European and Foreign Policy.

At the end of his visit, the Commissioner welcomed the government's efforts to combat racism and homophobia. Whilst noting that the 2014 anti-racism law has consolidated the legislative framework and provided useful tools to prosecutors and police officers, the Commissioner stressed that more is needed in order to bring this law to life and to further enhance the efficiency and effectiveness of justice and law enforcement. The Commissioner welcomed the prosecution of members, including MPs, of the neo-Nazi party "Golden Dawn" for being members of a criminal organisation but also for their hate speech, which sends to society a clear signal of zero tolerance towards xenophobia and racism. Looking forward to a more developed and dissuasive case-law in this field, the Commissioner encouraged the Greek authorities to provide systematic anti-discrimination training to law enforcement officers, prosecutors and judges and to collect and analyse hate crime data in a more comprehensive manner. He further urged the authorities to rapidly adopt comprehensive equal treatment legislation.

As regards the impact of the economic crisis and austerity measures on human rights, the Commissioner noted that certain social groups have been particularly vulnerable, especially persons with disabilities whose health care and standard of living have worsened. The Commissioner expressed serious concern about the increasing demand in mental health care which is coupled by cuts in the staff and budget of the health care system. He stressed that this situation entails risks of extensive use of medical restraints and sedatives, as well as ill-treatment of patients and could also undo the effects of the reform of psychiatry initiated by the government and lead to the re-institutionalisation of persons with intellectual and psycho-social disabilities. Acknowledging the drastic economic constraints and limited margin of manoeuvre of the Greek authorities, the Commissioner urged them and their international lenders to spare health care, in particular psychiatry, from further budgetary cuts while negotiating and designing austerity measures.

As regards the human rights of asylum seekers and immigrants, the Commissioner recognised and commended the enormous efforts made by Greece and the Greek people in the context of the current refugee crisis. However, he noted the need to further improve the living conditions, including medical care, in refugee reception facilities and the processing of asylum claims and encouraged Greece to design and implement an ambitious migrant integration policy. The Commissioner also underlined the importance of effective protection from all forms of discrimination, as well as the role played by national human rights structures, such as the Ombudsman and the National Human Rights Commission. Finally, he stressed that other European countries must live up to their responsibilities, fulfil their solidarity commitments towards Greece and facilitate refugee relocation and family reunification.

Following the visit, the Commissioner raised his concerns in letters to the Alternate Minister of Interior and Administrative Reconstruction and the Minister of Justice of Greece (see below).

### ***Visit to Latvia***

The Commissioner visited Latvia from 5 to 9 September. The main topics of the visit were gender equality and women's rights, with a particular focus on the issue of violence against women; the human rights of children; and the human rights of LGBTI persons. In the course of the visit the Commissioner held discussions with the Latvian authorities, including the Prime Minister, Mr Māris Kučinskis; the Minister of the Interior, Mr Rihards

Kozlovskis; the Minister of Education and Science, Mr Kārlis Šadurskis; the Minister of Foreign Affairs, Mr Edgars Rinkēvičs; the Prosecutor General, Mr Ēriks Kalnmeiers; the Parliamentary Secretary of the Ministry of Welfare, Ms Karīna Ploka; the Deputy Head of the State Inspectorate for Protection of Children's Rights, Ms Anita Gotharde; officials at the Ministry of Justice; and Riga City Council officials. The Commissioner also had exchanges with representatives of different parliamentary factions, the Ombudsman, Mr Juris Jansons, and civil society representatives.

With regard to Latvia's efforts to combat violence against women, the Commissioner welcomed the signing of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) and called on the authorities for its prompt ratification. The Commissioner paid particular attention to the public debates around the Istanbul Convention and urged the authorities to invest in raising awareness about the aims and requirements of the Convention.

In relation to the human rights of children, the Commissioner noted that amendments to the Citizenship Law have simplified granting citizenship to stateless children born to non-citizen parents. However, the procedure still requires one of the child's parents to formally submit a request at the time of birth registration. The Commissioner urged the authorities to address this issue as a matter of priority and make the procedure entirely automatic. With regard to the situation of children in state care institutions, the Commissioner urged the authorities to boost their efforts to create community-based services and move forward the stalled deinstitutionalisation process.

The Commissioner also discussed the recent amendments to the Education Law regarding "morality in education" with his official interlocutors and urged them to ensure that educational policies and materials are human rights compliant, promote diversity and gender equality, and exclude any discriminatory and degrading content in this regard and in relation to LGBTI persons. The Commissioner commended the improved policies to protect freedom of assembly, notably as concerns measures to protect gay pride events, and called on the authorities to deploy more efforts to build trust among the population in law enforcement bodies and encourage them to report all instances of bias-motivated crime.

The Commissioner's report on this visit is forthcoming.

### ***Visit to Turkey***

The Commissioner visited Ankara between 27 and 29 September 2016. Having already visited Turkey in April 2016, he was preparing the report of that visit when a coup attempt occurred in Turkey on 15 July. The Commissioner immediately condemned this attempt and reacted to certain measures taken in its aftermath through two statements issued on 20 July and 26 July 2016. He decided to return to Turkey to express in person his solidarity with the democratic forces in Turkey in the aftermath of this attempted coup, as well as to receive updated information on relevant human rights developments, both on the human rights implications of the state of emergency declared in Turkey and on topics he had examined during his April visit.

During his September visit, the Commissioner met with the Minister of Foreign Affairs, Mr Mevlüt Çavuşoğlu; the Minister of Justice, Mr Bekir Bozdağ; the President of the Constitutional Court, Mr Zühtü Arslan; and the Undersecretary of the Ministry of the

Interior, Mr Muhterem İnce. He also met with Turkish ombudspersons, representatives of opposition political parties, and a number of NGOs. The Commissioner enjoyed the full co-operation of the Turkish authorities in the preparation and the execution of this visit.

The Commissioner immediately followed up on this visit with a memorandum on the human rights implications of the measures taken under the state of emergency in Turkey, published on 7 October. In the Memorandum, the Commissioner reiterated his firmest condemnation of the coup attempt of 15 July, paid tribute to the 241 persons who lost their lives and the many more who were injured resisting the coup plotters, and expressed his solidarity with the democratic forces in Turkey.

The Memorandum notes that since the coup attempt, the Turkish authorities had taken a series of measures on the basis of emergency decrees, which introduced significant deviations from ordinary procedural and human rights guarantees in the context of both administrative and criminal law. These measures affected a very large population and all sectors of society. The Memorandum notably examines the criminal law aspects of these emergency measures; administrative measures affecting public employees, civil society and the private sector, as well as family members of suspects; the question of legal remedies against these measures; and a number of other issues.

The Commissioner stressed the importance of conducting the fight against the coup plotters and terrorism while fully upholding human rights, as well as general principles of law such as, among others, presumption of innocence, individuality of criminal responsibility and punishment, no punishment without law, non-retroactivity of criminal law, legal certainty, right to defence and equality of arms.

The Commissioner's conclusions included the need to urgently revert to ordinary procedures and safeguards for human rights protection in Turkey, by ending the state of emergency as soon as possible. Until then, he called on the authorities to start rolling back the deviations from such procedures and safeguards as quickly as possible, through a nuanced, sector-by-sector and case-by-case approach.

This Memorandum is available on the Commissioner's website. The Commissioner intends to complement this memorandum by additional memoranda dealing with the human rights issues he examined during his April visit, namely human rights implications of counter-terrorism operations in South-Eastern Turkey and freedom of expression and freedom of the media, as updated through information received during his September visit.

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

#### ***Letter to Mr Dacian Cioloş, Prime Minister of Romania, concerning the human rights of Roma***

On 23 June the Commissioner sent a letter to the Prime Minister of Romania requesting updated information on certain major issues affecting the human rights of Romania's Roma population. The letter followed up on a number of key recommendations made in the Commissioner's visit report from 2014. Concerning anti-Roma public rhetoric, the Commissioner asked whether any self-regulatory measures had yet been adopted to

sanction racist hate speech used by politicians. As regards forced evictions the Commissioner reiterated his concern about Roma living under the continual threat of having to leave their homes. The question of the segregation of Roma children in schools was also raised and in particular the importance of having official data. The Commissioner urged the authorities to set up the relevant Commission within the Ministry of Education in charge of putting into operation the government's strategy for improving Roma education. A number of pending cases before the European Court of Human Rights on the issue of police violence against Roma still attests to the fact that this remains an issue of concern. The establishment of a fully independent police complaints mechanism was highlighted as a priority.

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

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

On 11 July 2016 the Commissioner published a report on his visit to Ukraine which took place from 21 to 25 March 2016. This was the Commissioner's fourth report on Ukraine since the beginning of his mandate. It focused on serious human rights violations related to the conflict in the east of the country, as well as taking stock of issues raised in the Commissioner's previous report, concerning his visit in July 2015.

The Commissioner expressed great concern over the continued hardship and suffering of ordinary people from areas affected by the conflict. Since the outbreak of armed hostilities in eastern Ukraine in April 2014, more than 9000 people have lost their lives. Numerous human rights abuses have been reported, including cases of summary and extra-judicial executions; alleged war crimes committed against the civilian population and military personnel in captivity; indiscriminate shelling of populated areas resulting in deaths and serious injuries to civilians; and the shooting down of a civilian airplane in July 2014. The Commissioner emphasised that the death penalty, which had been incorporated in the "legislation" in the non-government controlled areas, must be renounced as a matter of principle.

The Commissioner received credible allegations about cases of torture and ill-treatment from persons who had been detained or held captive in 2014 and 2015 on both sides of the contact line. Having regard to the absolute prohibition against torture and ill-treatment under international law, the Commissioner highlighted the need for urgent and sustained measures on both sides to put an end to such crimes and bring those responsible to account. Victims of conflict-related crimes should have access to justice and be provided with effective remedies and reparation. Long-term programmes for rehabilitation should be available to all victims of ill-treatment and their families.

The Commissioner expressed concern about practices whereby certain individuals have been held *incommunicado* and/or in unacknowledged places of detention. He regretted that it was not possible for him and representatives of other international organisations to have access to places of deprivation of liberty in the non-government controlled territories. He emphasised that unimpeded access on both sides of the contact line was indispensable to safeguarding the physical integrity and rights of the persons deprived of their liberty, and for ensuring their humane treatment and adequate conditions of detention.



The Commissioner observed that to re-establish lasting peace and reconciliation in society it was crucial to hold to account those responsible for serious human rights violations. While recognising a multitude of challenges related to the investigation and prosecution of all those implicated in such abuses, including in cases where mercenaries and/or foreign fighters may have been involved, the Commissioner highlighted the importance of ensuring an effective investigation in every case where there are indications that a serious human rights violation may have occurred. To this end, he recommended addressing, as a matter of priority, a number of significant shortcomings as regards the investigations into such abuses and to ensure full co-operation with the relevant international mechanisms which may provide assistance and expertise.

The Commissioner also highlighted the need for greater efforts to investigate cases of enforced disappearances, as well as to establish the fate and whereabouts of the disappeared persons and to identify and prosecute those responsible. To this end, there should be an independent and impartial mechanism for the search for missing persons, and the national legislation regulating the punishment for enforced disappearances and the rights of victims and their families should be made fully compatible with international standards. Reparation, in the form of compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition must also be ensured. The Commissioner further emphasised the need to recognise and support the initiatives of various NGOs and volunteer groups who search for the locations of gravesites and assist with the return of mortal remains to victims' families.

As regards freedom of movement, the Commissioner once again underscored the need to review the Temporary Order regulating the movement of civilians and vehicles across the contact line, with a view to introducing less restrictive rules and regulations for crossing. Any security-related restrictions should be proportional to the goal pursued, reviewed on a regular basis and lifted whenever possible. He further recalled that all barriers impeding the access of humanitarian aid, as well as those affecting the ability of international organisations and missions to reach out to the most vulnerable groups of the population, should be removed.

The Commissioner also recommended amending the regulatory framework related to Internally Displaced Persons (IDPs) so as to de-link the payment of pensions and other entitlements from a person's IDP status. There should be a separate procedure enabling those who permanently reside on the territories outside governmental control to have access to their pensions and other social entitlements. He also urged the authorities to fully restore targeted assistance to persons who have been registered as IDPs and to carry out any verification on a case-by-case basis, to be assessed on the specific merits. Furthermore, both the verification procedure and the procedure for suspension of IDP payments should be clearly defined in the law, and subject to due process and legal safeguards.

Lastly, the Commissioner observed that there was an acute need to promote a message of reconciliation and tolerance, and urged all media reporting on the conflict to do so responsibly, ethically and professionally.

The report is available on the Commissioner's website.

***Letter to Mr Fernández Díaz, Spanish Minister of the Interior***

On 12 July 2016, the Commissioner addressed a letter to the Minister of Interior of Spain, Mr Fernández Díaz, in which he expressed concerns about the persisting practice of summarily returning to Morocco persons attempting to reach the cities of Ceuta and Melilla, without any identification of the persons concerned or assessment of their individual situation. He reiterated his call on the Spanish authorities to adopt a procedural framework for border police in Ceuta and Melilla, with instructions on how to handle mixed migration flows in full compliance with Spain's international human rights obligations. The latter include safeguarding the right for each person to be identified, to have their international protection needs duly assessed, to have access to a lawyer, an interpreter and medical assistance, as appropriate, as well as to an effective remedy to challenge any violation of the ECHR of which the persons concerned could allege to be the victims.

The letter is available on the Commissioner's website along with the Minister's reply.

***Letter to Mr Nikolaos Toskas, Alternate Minister of Interior and Administrative Reconstruction of Greece and Mr Nikos Paraskevopoulos, Minister of Justice of Greece***

On 19 August the Commissioner published a letter that he had addressed to Mr. Nikolaos Toskas, Alternate Minister of Interior and Administrative Reconstruction of Greece and Mr Nikos Paraskevopoulos, Minister of Justice of Greece, concerning the Bill on a complaint mechanism covering law enforcement and detention facility agents. In his letter, the Commissioner welcomed the fact that the Ombudsman, an independent and efficient national human rights structure, will be empowered to investigate following receipt of complaints and to carry out *ex officio* investigations. However, he noted that this first step requires the immediate allocation of adequate financial and human resources to the Ombudsman's Office. In addition, the Commissioner invited the Greek authorities to envisage enlarging the scope of the mechanism's competencies, which should not be limited to issuing non-binding recommendations to the disciplinary bodies of the relevant authorities.

Moreover, noting with serious concern an increase of recorded hate crime (especially homophobic) in Greece, the Commissioner stressed the need to enhance implementation of the existing anti-hate crime law, to collect and analyse hate crime data in a more systematic manner and to raise public awareness. He further underlined the importance of providing systematic, continuous anti-discrimination training to law enforcement officials, prosecutors and judges.

The letter is available on the Commissioner's website along with the Ministers' replies.

***Letter to Mr Andreas Xanthos, Minister of Health of Greece, and to Ms Theano Fotiou, Alternate Minister of Social Solidarity of Greece, concerning the human rights of persons with intellectual and psychosocial disabilities and their de-institutionalisation***

On 12 September, the Commissioner published a letter he had addressed to Mr Andreas Xanthos, Minister of Health of Greece, and to Ms Theano Fotiou, Alternate Minister of Social Solidarity of Greece, concerning the human rights of persons with intellectual and

psychosocial disabilities and their de-institutionalisation. Whilst noting with interest the efforts made by Greece since the mid-1980s in order to end institutionalisation of persons with intellectual and psychosocial disabilities and to develop community care services, the Commissioner expressed his grave concern about the instances of deaths and of physical restraint of patients in certain institutions. He stressed that the persisting, grave deficiencies in the state mental health care system require more proactivity and coordination by the state, more rigorous planning and a stronger and more effective monitoring system.

In addition, the Commissioner noted with serious concern the increasing demand in mental health care which has been coupled by drastic cuts in the staff and budget of the health care system, due to the on-going economic crisis and austerity measures. He stressed that this leads inadvertently to an increased burnout of healthcare professionals and entails real risks of extensive use of medical restraints and sedatives, and of patient ill-treatment. He therefore urged Greece and the country's international lenders to spare health care, in particular psychiatry, from further budgetary cuts while negotiating and designing austerity measures. The Commissioner also encouraged the Greek government to eliminate involuntary placements, forced treatment and the use of physical restraints in psychiatry, and to redouble efforts to achieve the de-institutionalisation objectives set in the successive psychiatric care reforms.

The letter is available on the Commissioner's website.

***Letter to Mr Aleksandar Vulin, Serbian Minister for Labour, Employment, Veterans and Social Affairs, concerning victims of wartime crimes***

On 12 September the Commissioner published a letter addressed to Mr Aleksandar Vulin, Serbian Minister for Labour, Employment, Veterans and Social Affairs reiterating his concern that many victims of crimes committed during the wars in the 1990s remain without access to effective and adequate reparation by Serbia. Commissioner Muižnieks noted that a pending draft bill on the rights of veterans, disabled veterans, civilian disabled war victims and their family members significantly improved the legal status of veterans and military victims of war, while excluding certain other categories of war victims (estimated at 15 000), such as families of missing persons, victims of wartime sexual violence, and victims of action by Serbian armed forces. According to reports received by the Commissioner, valuable expertise of civil society organisations that have been active in this field for many years has not been fully taken into account in this legislative process. Given that it had not been tabled in the parliament, the Commissioner welcomed any further information on the bill's progress and the possibility of expanding its scope so that all victims of wartime crimes are provided with adequate and effective reparation, in line with internationally established standards.

The letter is available on the Commissioner's website along with the Serbian authorities' reply.

## **4. Themes**

### ***Human Rights of Roma and Travellers***

On 2 August, on the occasion of the commemoration of the liquidation of the Auschwitz “Tzigeuner Lager” on 2 August 1944, the Commissioner published a statement. He recalled that the extermination of the Roma came after centuries of exclusion, expulsions, and sometimes killings of Roma in Europe on the mere ground that they were Roma. He reminded politicians and media that stigmatising anti-Roma speech has a profound impact on public opinion and can lead to the trivialisation of past atrocities and the legitimization of discrimination and racially-motivated crime. Instead of scapegoating the Roma, elected officials and policy-makers should step up the fight against age-old anti-Gypsyism.

### ***Children’s rights***

On 20 September, the Commissioner published a Human Rights Comment on violence against children (“*No violence against children is acceptable, all violence is preventable*”), in which he highlighted that this phenomenon remained socially acceptable in Europe and thus, widespread. He stressed in particular violence faced by migrant children, conflict-related violence affecting children in Eastern Ukraine and physical and psychological violence to which children living in institutions are often confronted, even though this is not a well-known issue. He also recalled that racism and prejudice generate a high level of violence, for example against Roma and LGBTI children and that austerity measures had led to higher risks of domestic violence towards children and jeopardised the capacity of child protection services to detect and prevent violence. He urged member states where widespread patterns of past violence against children had been uncovered to provide adequate reparation and justice. As regards sexual violence against children, he called on states which have not yet done so to accede to and implement the Lanzarote Convention against sexual abuse and sexual exploitation of children. He supported a ban on all forms of corporal punishment at national level and raised concerns about growing risks for children of being exposed to violence through the Internet.

The Commissioner stressed that violence against children has also a high cost for society as a whole and welcomed, in this context, the development of new initiatives to combat violence, notably at UN level. Lastly, he provided a set of recommendations to combat this phenomenon, including the adoption and implementation of comprehensive national strategies on violence against children and improved collection of data.

### ***Women’s rights and gender equality***

In a Human Rights Comment entitled “*Protect women’s sexual and reproductive health and rights*” published on 21 July, the Commissioner expressed concern at recent regressive trends and attempts to exert control over women’s bodies and sexuality. He recalled that sexual and reproductive health and rights were linked to the enjoyment of many other human rights, including the right to the highest attainable standard of physical and mental health, the right to decide about the number and spacing of one’s children, the prohibition of torture and inhuman or degrading treatment, the right to private life and the right to be free from discrimination. The Commissioner called on

member states of the Council of Europe to ensure that women have full access to sexual and reproductive health information, goods and services in practice. He recommended teaching mandatory sexuality education that is age-appropriate, evidence-based, scientifically accurate and non-judgmental in all schools and removing barriers in access to contraception.

Noting reports of human rights violations in the context of maternity health care, the Commissioner called on member states to ensure that women have access to appropriate child birth procedures that are in line with adequate standards of care, respect women's autonomy and the requirement of free, prior and informed consent. The Commissioner also noted that while most countries in Europe ensured access to abortion without restrictions as to the reasons, some had kept restrictive abortion laws in contradiction with the case-law and guidelines of international human rights treaty bodies. Even when access to abortion was provided for by law, there could be barriers to access in practice. Referring to his recent country work, the Commissioner stressed that states should make lawful, at a minimum, abortions performed to preserve the physical and mental health of women, or in cases of fatal foetal abnormality, rape or incest. He also encouraged them to move towards decriminalization of abortion within reasonable gestational limits.

### ***Challenges to the ECHR system***

On 28 August the Commissioner published a Human Rights Comment on challenges to the Convention system and in particular on prolonged non-implementation of a number of judgments of the European Court of Human Rights and direct attacks on the Court's authority. The Commissioner expressed concern at the increase in cases pending for more than five years before the Committee of Ministers, as well as the rising number of 'leading' cases that have not been implemented for more than ten years. Prolonged non-implementation of the judgments of the Court is a challenge to the Court's authority and thus to the Convention system as a whole.

Direct challenges to the authority of the Court within a handful of member states have also become more explicit and vocal in recent years. These are of particular concern because the integrity and legitimacy of the Convention system is at stake. Worrying examples can be noted from a few member states.

The Human Rights Comment ends with lines of action for the future reinforcing subsidiarity through improved domestic implementation; improving the efficiency of the procedures before the Court and improving the Committee of Ministers supervision of the judgments' execution process.

### ***Treatment and rehabilitation of prisoners***

On 18 July the Commissioner joined a group of human rights experts in a public statement to hail the adoption of the Nelson Mandela Rules, the revised Standard Minimum Rules for the Treatment of Prisoners, which were adopted on 17 December 2015. The Commissioner stressed that these revised Rules are a welcome step forward because they are an additional tool available to governments to transform prisons from mere places of punishment into places of rehabilitation.

## **5. Other meetings**

### ***12th Conference of the European Society of International Law, Riga***

On 9 September, the Commissioner addressed the 12th Conference of the European Society of International Law hosted by the Riga Graduate School of Law in cooperation with the Latvian Constitutional Court. In his speech on the topic of the refugee crisis in Europe, the Commissioner underlined that while the international and European legal framework was largely adequate, the failure of states to abide by their legal obligations under the UN Refugee Convention and the European Convention on Human Rights, resulted in a significant “implementation gap”. Referring to the refugee protection framework enshrined in the European Convention and the Strasbourg Court’s case-law, the Commissioner raised three major human rights issues: the inability or unwillingness of a number of European states to effectively protect asylum seekers from refoulement; the excessive use by states of detention of asylum seekers; and the lack of effective domestic remedies for reviewing and redressing human rights violations of migrants and asylum seekers, notably in relation to migrant detention.

### ***2016 OSCE Human Dimension Implementation Meeting (HDIM)***

On 19 September, the Commissioner participated in the opening plenary of the 2016 OSCE HDIM in Warsaw. He was, with the Executive Director of Human Rights Watch, Mr Kenneth Roth, and the OSCE Representative on Freedom of the Media, Ms Dunja Mijatović, one of the three keynote speakers in the Debate on Democracy and Human Rights in the OSCE area 25 years after the Charter of Paris.

Opening the debate, the Commissioner referred to several remaining human rights challenges linked to the commitments taken by the signatories of the Charter. Referring to the legacy of the past and transitional justice issues, he highlighted that impunity for mass violations of human rights and humanitarian law remained serious problems and that thousands of victims had not yet received redress and thousands of people were still missing. He recalled that in many countries democratic achievements had been fragile and that backsliding had taken place in recent years in some states. States had also been quick to restrict human rights in their efforts to address the threat of terrorism including, for some of them, by imposing states of emergency and derogating from the European Convention on Human Rights. He also stressed that the current single biggest challenge to human rights was the migration issues and that it was high time for European countries to recommit to the values of human rights and solidarity in migration policy. During the debate, discussions also revolved on democracy and human rights, the importance of free and independent media for democracy, and the need to fill the gap between human rights standards and their implementation.

On 21 September, the Commissioner participated in a Side-event organised by the Council of Europe and the Office of the UN High Commissioner for Human Rights (OHCHR) in the framework of the HDIM entitled “Addressing the deteriorating situation of civil society actors and human rights defenders in Europe” (see the section on human rights defenders for more information).

The Commissioner took the opportunity of his presence in Warsaw to meet with some of his interlocutors in Poland. On 19 September, he met with Mr Marcin Warchoł,

Undersecretary of State in the Ministry of Justice of Poland, in order to follow-up on the conclusions and recommendations he had made regarding administration of justice in his report on Poland published in June 2016. On 20 September, the Commissioner participated in an expert seminar organised in cooperation with the Office of the Polish Ombudsman, Mr Adam Bodnar, further discussing the issues related to administration of justice addressed in that report. On the same day, the Commissioner participated together with the Polish Ombudsman in the opening of the 2016 Polish Congress of Persons with Disabilities where he introduced his work in the field of promoting and protecting human rights of persons with disabilities in the member states of the Council of Europe.

## 6. Human Rights Defenders

### ***Round-table on missing persons and victims of enforced disappearance in Europe***

On 30 June and 1 July the Commissioner held a round-table in Strasbourg with human rights defenders on missing persons and victims of enforced disappearance in Europe. About 20 defenders from European countries participated in the event. The UN Special Rapporteur on the situation of human rights defenders, Michel Forst, and a member of the UN Working Group on Enforced or Involuntary Disappearances, Henrikas Mickevičius, as well as Council of Europe representatives also attended. The objective of the round-table was to further discuss and promote the recommendations contained in the Commissioner's [Issue Paper](#), published in March, on Missing persons and victims of enforced disappearance in Europe. It also provided an opportunity to exchange additional information on the situation in European countries affected by these issues and of human rights defenders working on transitional justice. The discussions aimed to identify ways to enhance the fulfillment of state obligations in relation to missing persons and victims of enforced disappearance, as well as to improve the working environment for human rights defenders active in this field. The information obtained during the round-table will benefit the Commissioner's country and thematic work on transitional justice and better enable him to support the work of human rights defenders.

The participants discussed the importance of establishing the truth, including the existence of efficient and effective domestic legal and institutional frameworks, as well as the search and exhumation of missing persons and victims of enforced disappearance. The round-table exposed the lack of adequate legal provisions in this area in many European countries. Where legal provisions exist, they appear to lack effectiveness. Several participants reported that the crime of enforced disappearance is not properly codified in national legislation, which impedes effective investigation and punishment of those responsible. Furthermore, the work and effectiveness of national, bilateral and regional bodies working on missing persons and enforced disappearances was sometimes negatively affected by political considerations, lack of resources and insufficient cooperation with civil society actors.

Discussions also concentrated on ending impunity for those responsible for enforced disappearances through prosecution and the imposition of appropriate punishment, as well as on the provision of support and reparation for victims. While participants agreed that there is some slow progress in the search, exhumation and identification of mortal remains of victims of enforced disappearance, the situation is much less satisfactory

when it comes to punishing those responsible. The identification of mass graves and the exhumation of bodies do not always result in the opening of investigations. Even if an investigation is initiated, it is often marred by severe flaws. For example, several cases were closed due to statutes of limitations. In addition, victims of enforced disappearance and their families do not get proper support and protection. In several European countries there are no adequate legal provisions on reparation for the victims.

The round-table was also devoted considerable attention to the situation of human rights defenders working on issues related to missing persons, enforced disappearances and transitional justice. The work of human rights organisations and defenders is crucial to protect and promote the rights of victims of enforced disappearance and their families, and to ensure that they obtain redress. The participants discussed the obstacles that they face in carrying out their activities, and possible ways to surmount them.

The Commissioner will publish a report on the round-table.

***Human Rights Comment “Human rights defenders’ work is vital for redress to victims of enforced disappearance”***

On 29 August, the Commissioner published a Human Rights Comment entitled “Human rights defenders’ work is vital for redress to victims of enforced disappearance”. The Commissioner recalled that thousands of cases of missing persons and enforced disappearance remain unresolved in Europe, perpetuating the suffering of their loved ones, which is passed from one generation to another. Addressing these questions is often dependent on the political agenda of governments, which explains the slow progress made thus far. Cases of missing persons and enforced disappearance where the victims remain unaccounted for are not an issue of the past, irrespective of when they occurred. Indeed, families face various problems years after their loved ones have gone missing. For example, in order to exercise rights related to inheritance and social welfare, relatives are compelled to declare the death of missing or disappeared persons whose fate has not yet been clarified.

The Commissioner stressed that impunity for crimes of enforced disappearance usually goes hand in hand with impunity for other serious human rights violations and results in the recurrence of violations. Investigations into cases of enforced disappearance are often not effective, for a variety of reasons. There may notably be a reluctance to punish members of the state executive. As a result some of the perpetrators even continue to serve in law enforcement, security or military structures. Another concern relates to the lack of - or very slow - implementation by respondent states of the judgments of the European Court of Human Rights in cases of missing persons and enforced disappearance, in contravention of states’ obligations under the European Convention.

The Commissioner underlined that civil society actors and other human rights defenders are crucial to human rights, democracy and the rule of law. Associations of relatives of missing persons or victims of enforced disappearance as well as human rights NGOs play a vital role in establishing the facts and in pursuing justice. They however face a series of obstacles, which range from legal and administrative restrictions impeding registration and access to funding, to judicial harassment, smear campaigns, threats and intimidation, unlawful arrest or detention, ill-treatment, disappearance and death. The absence of effective investigation into violations committed by state and non-state actors against human rights defenders themselves remains a major problem in a number of



European states. Human rights defenders and organisations working on transitional justice issues face intimidation, pressure, threats and attacks as they challenge the mainstream national narrative in their community or country.

The Commissioner highlighted that clarifying the fate of missing persons and victims of enforced disappearance should be a matter of priority for the governments concerned, and that the involvement of international and European actors as well as National Human Rights Institutions is crucial on transitional justice issues. The Commissioner urged states to define enforced disappearance as a continuous crime in national law and to ratify the [UN Convention for the Protection of All Persons from Enforced Disappearance](#). In addition, law enforcement officials, judges and lawyers should be trained on standards, legal obligations and good practices related to cases of enforced disappearance. A system of reporting cases of missing persons and enforced disappearance and of verification of such reports could usefully be established at national level. Instead of having to declare the death of their relatives, the families of missing and forcibly disappeared persons should be issued a certificate of absence. Finally the Commissioner underlined the importance of building the capacity and expertise of human rights NGOs active in this field.

***Side-event “Addressing the deteriorating situation of civil society actors and human rights defenders in Europe”***

On 21 September, the Commissioner participated in a Side-event organised by the Council of Europe and the Office of the UN High Commissioner for Human Rights (OHCHR) in the framework of the OSCE Human Dimension Implementation Meeting, and entitled “Addressing the deteriorating situation of civil society actors and human rights defenders in Europe”. Besides the Council of Europe, representatives of the UN and the OSCE/ODIHR took part in the event. The Commissioner recalled that the support to and protection of human rights NGOs and defenders are at the core of his mandate. He highlighted the main tools at his disposal to fulfill this task, such as regular consultations with human rights defenders and civil society actors, intervention in cases of those facing difficulties and assessment of policies, laws and practices which affect the working environment of human rights actors from civil society. While stressing the crucial role they play in the functioning of the human rights system, the Commissioner expressed concern about the numerous obstacles having a negative impact on the situation and work of human rights civil society actors and the shrinking space for critical voices. The participants notably discussed the importance of raising public awareness of positive narratives about the work of human rights defenders.

## **7. Communication and Information work**

More than 130 news items were published by the media covering the Commissioner’s work. The main media coverage concerned the visits to Greece and Latvia, the report on Ukraine and the situation in Turkey.

The visit to Greece was covered by *Aftodioikisi News, Altsantiri, ANSAmed, Athina 9.84, AVGI, CNN Greece, Dailymail, Ekathimerini, ERT, Kathimerini, Left, NewPost, New York Times, Proto Thema, and Skai*, while that on Latvia received wide coverage by national media (*163gorod, Baltic Daily News, Baltnews, Batic Daily News, BelRynock, Bnn, Delfi,*

*DPA, E-gorlovka, EurAsia Daily, Jurista Vards, KrasNews, LETA, LSM, Ltv, Mixnews, Neatkarīgā Rīta vīze, NRA, Pnp, Regnum, Reitingi, Tsargrad.tv, Tv.net, Union news, Ves).*

The report on Ukraine was covered by 112, *Baltic Daily News, CensorNet, InfoResist, NahNews, News Era, TopRe, Ukrinform, Ura-inform, Vzglyad Penza From-ua, KievSML, PressOrg, The Ukrainian Week, The Stopru, Tyzhden, Vybor*) while the Commissioner's work on Poland continued to attract media attention from *BFM TV, De Standard, Die Welt, Ethnos, EU-Info, Euro2day, Last news, Le Figaro, and the New York Times.*

The comments on the situation in Turkey was covered by *Agence Belga, Anadolu Agency, AnsaMed, APA, Boston herald, CNN Turk, DPA, Europe Online, Dunya, Haber Turk, Hürriyet Daily News, Konhaber, Interfax, SDA/ATS, SiR, Sputnik, and Tiroler Tageszeitung.*

The Human Rights Comment on the implementation of EHCR judgments were covered by *AFP, Agerpress, ATS, Bulletin Quotidien, La Libre Belgique, Le Figaro, SDA, Sputnik, Stiripesurse.ro, UNIMEDIA, ZiareLive.ro*

*ANSA Med, EFE, El Confidencial, La Informacion, El Diario, Latvijas, Europa press* covered the Commissioner's work on migration. An op-ed on Hungary's migration policy was published by the *International New York Times.*

Another op-ed was published on a bill aimed at abolishing full and partial guardianships for persons with disabilities in Bulgaria (*24 Chasa*).

Additional coverage concerned counter-terrorism (*The Huffington Post, Le Temps, Le Courier*), women's rights (*Kavkazkiy Uzel*), human rights defenders (*Ukrinform.ru*), media freedom (*Novi list, Ansa, Libertas*), the situation in Armenia (*ArmenPress, ArmInfo, Mediamax*), human rights in Azerbaijan (*Azer-Press, Turan*), children's rights (*Dialogos, Cyprus News, SigmaLive*), and persons with disabilities in France (*Le Figaro*).

25 tweets were published, with an increase of 580 followers. Over 48,000 unique Internet users visited the Commissioner's website, twice as much as compared to the third quarter of 2015 and 20% more compared to the previous quarter. The Commissioner continued to engage on Facebook and his page received over 150 likes.

## 8. Next three months

### October

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| 10-11/10 | PACE Session   |
| 11/10    | Launching conference of the Fourth Thematic Commentary on the Scope of Application “The Framework Convention: a key tool to managing diversity through minority rights” (Strasbourg) |
| 14/10    | 108th Plenary Session of the Venice Commission   |

### November

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| 04/11    | Conference on “Children's Rights in the Migration Crisis and in the Digital Environment” of the Estonian Chairmanship of the Committee of Ministers (Tallinn) |
| 14/11    | World Jewish Congress (Strasbourg)  |
| 17/11    | Exchange of views with Gender Equality Commission (Strasbourg)  |
| 17/11    | European Governmental LGBTI Focal Point Network Roundtable (Strasbourg)   |
| 21-25/11 | Visit to Ireland  |
| 28-29/11 | Criminal Justice Centre Workshop on ‘Surveillance, Oversight and Human Rights in Counter-terrorism’; and bilateral meetings (Paris)                           |
| 30/11    | Inter-mechanisms meeting on the protection of human rights defenders (Brussels)   |

### December

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| 02/12            | European Implementation Network event on better implementation of ECtHR judgments (Strasbourg) |
| Week of 05-10/12 | Visit to Lithuania   |

## 9. Observations and reflections

In recent years, both religious and secular critics of so-called “gender ideology” and “gender theory” have mounted a growing challenge against generally accepted human rights terminology and principles. During my country visits, I have even encountered objections to the very use of the word “gender”, particularly in the context of promoting the ratification of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention). What should we in the human rights world make of this criticism?

Before turning to the criticism, it is useful to recall that over the years the word “gender” has acquired different meanings depending on the context. The definition contained in the Gender Equality Glossary, recently published by the Council of Europe Gender Equality Commission, represents the mainstream understanding: while the term “sex” refers to the biological characteristics that define humans as female or male, “gender shall mean the socially constructed roles, behaviours, activities and attributes that a given society considers appropriate for women and men”. This definition is also used by the Committee on the Elimination of Discrimination against Women and other UN mechanisms. It is this meaning that enters into play in the use of the expression “gender stereotypes”.

The expression “gender equality” is increasingly replacing “equality between women and men”, be it at the UN, the Council of Europe or the European Union. Gender equality not only requires the elimination of all forms of discrimination on the basis of sex but also the achievement of substantive or *de facto* equality between women and men. The same meaning of gender prevails in terms such as “gender mainstreaming” or “gender gap”.

As we can see, the word “gender” in its different meanings has for many years permeated international human rights texts and policy discourse. What manner of ills do critics associate with the term “gender”, “gender theory” or “gender ideology”? What could be so dangerous to work for the full achievement of gender equality? What could be so objectionable to examining the broader social context in which men and women interact?

It seems that one core objection has to do with fears for the fate of a traditional society based on a cultural affirmation that gender is strictly and always binary and that men and women play (and should play) very different roles in public life and within the family. The first problem here is that some adherents of this vision of society justify limiting women to the stereotypical role of mothers, giving birth and staying at home to rear children. This vision cannot be reconciled with a human rights based approach that sees women (and men) as autonomous members of society who should be able to choose on an equal basis their own role in society and within the family. One of the five objectives of the Council of Europe Gender Equality Strategy 2014-2017 is to combat gender stereotyping that presents “a serious obstacle to the achievement of real gender equality and feed into gender discrimination”.

Another problem with the traditionalist approach to society is that it is often used to justify sexism, which is the supposition, belief or assertion that one sex is superior to the other. Often, those critics defend, even if implicitly, the idea of the superiority of men over women. Sexist attitudes result in discrimination against members of the supposedly

inferior sex, just as racist attitudes do with members of the supposedly inferior “race”. Therefore, all states have international human rights obligations to take appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women. The European Court of Human Rights (“the Court”) has also stressed that “gender stereotypes, such as the perception of women as primary child-carers and men as primary breadwinners cannot, by themselves, be considered to amount to sufficient justification for a difference in treatment, any more than similar stereotypes based on race, origin, colour or sexual orientation.”

It seems that another fundamental objection has to do with diverging understandings of what constitutes a family. The jurisprudence of the Court as to what constitutes “private and family life” and deserves protection under Article 8 has evolved considerably in recent years. For many, this is the crux of the matter. The Court has progressively recognised that same-sex partners living in a stable relationship merit legal protection in the form of civil unions or registered partnerships, not necessarily “gay marriage”. Most recently, in *Oliari and Others v. Italy*, the Court concluded that granting such protection is a trend, as 24 of 47 Council of Europe member states have legislated on legal recognition of same-sex couples. Here, it seems that the human rights world and defenders of traditional family models will have to agree to disagree.

Another criticism has to do with recognition of gender diversity. Critics invoking “traditional values” mistakenly reduce the world into men and women alone, ignoring, for example, the existence of “intersex persons” – those who do not fit neatly into male or female categories because of their anatomy (earlier, such persons were sometimes called “hermaphrodites”). As I noted in a recently published Issue Paper, outside Europe recognition of indeterminate or third gender persons is in many places unremarkable.

A particular object of criticism appears to be a growing recognition of the rights of transgender persons – those whose gender self-identification does not match the gender assigned at birth and who occasionally may choose to undergo gender reassignment surgery or hormonal treatment. A human rights based approach insists that such persons should not be pathologised and that states should not make official recognition of the new gender subject to requirements such as divorce and/or sterilisation. As far back as 2002, the Court found that there was a trend towards increased social acceptance of transsexuals and the legal recognition of their post-operative sexual identity.

A particular target of some defenders of traditional values has become the Istanbul Convention, which seems to crystallise in their view all the above-mentioned evils. Some ultraconservative critics try to justify or condone domestic violence (against women and children) by relabeling it private family “quarrels” or just punishment for disobedient children. In this conception, any attempt to prevent domestic violence constitutes external interference violating the sanctity of marriage and the family. To such unacceptable views, there can be only one answer: it is not measures taken to prevent and combat domestic violence that destroy marriages and families, but domestic violence itself.

Other critics try to claim that violence in the family affects men as much as women and that a focus on women victims is in some way misleading or “discriminatory”. This flies in

the face of data in every European country suggesting that women are the victims of family violence in the vast majority of cases. Some critics may even acknowledge that violence against women is a problem, but do not want governments challenging traditional gender roles and stereotypes through education and awareness raising, which the Istanbul Convention envisages. However, it is only logical that the above-mentioned general human rights obligation to combat gender stereotypes has become part of the measures required by the Istanbul Convention to prevent gender-based violence against women and domestic violence. The Convention rests on the presumption that violence against women is a manifestation of a broader pattern of inequality in power relations that must be addressed if the issue of violence is to be effectively tackled. This view is based on much scholarly research that critics would like to ignore.

Other critics latch on to the list of non-discrimination grounds of the Convention, which includes sexual orientation and gender identity. Ratifying the Convention, in the eyes of these critics, would represent recognition of unacceptable identities. This ignores the fact that the Istanbul Convention is about combating violence against women and domestic violence and these provisions are listed among other non-discrimination grounds such as race, disability and age, in order to extend additional safeguards to LGBTI victims of gender-based violence, who may face particular difficulties to access justice and receive support.

I am concerned that all this criticism of the word “gender” is having an increasingly harmful effect on the protection of human rights, in particular on women’s and LGBTI persons’ rights in Europe. The human rights world must engage more actively with critics and use evidence and scholarly research to debunk myths, distortions and fears. Secular and religious critics of so-called “gender ideology” or “gender theory” have the right to hold and express their own views, but they should not be allowed to impair individual rights in the name of their beliefs. Nor should they be allowed to stop progress in recognising and addressing gender inequality and ignore the reality of gender diversity or the evolution of European human rights law. In the end, it is not human rights that are transforming people’s understanding of their identities – human rights law is slowly adapting to the reality on the ground and the practical needs of diverse individuals and rainbow families. This does not mean that men, women and traditional families are being displaced; they are only being complemented by a rich tapestry of individual identities and partnerships that have gone unrecognised for a very long time.