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## **4<sup>TH</sup> QUARTERLY ACTIVITY REPORT 2015**

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Commissioner for Human Rights**

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and the Parliamentary Assembly

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## 1. Overview

The most common human rights issues I addressed over the period in review might be summarised as those pertaining to mobility, diversity and security. By mobility I mean not only the human rights of immigrants, asylum-seekers and refugees, but also of internally displaced persons (IDPs) and victims of human trafficking. With regard to diversity, I mean efforts to combat intolerance and to promote non-discrimination on grounds of ethnicity and religious affiliation, as well as gender, sexual orientation, gender identity and disability. In the context of counter-terrorism efforts, I have stressed the need to balance human rights and security in line with Council of Europe standards.

I published a report on Germany in which the central topic was this country's admirable efforts in receiving very large numbers of immigrants and asylum-seekers. I also carried out visits to Cyprus and Hungary in which migration and refugee policy was, respectively, one or the only focus. The visit to Cyprus will be followed by a report, while that to Hungary has fed into a Third Party intervention on a migration-related case regarding returns from Austria to Hungary before the European Court of Human Rights. This follows on from another Third Party intervention I made during the period under review on a case of alleged pushbacks by Spain to Morocco.

I also sought to engage in awareness-raising about the human rights aspects of the migration crisis through media work, as well as through a public event called the *Dialogues de Strasbourg* and presentations at the Center for Strategic and International Studies in Washington, D.C., and at New York University. I addressed the situation of IDPs in a report I published on Ukraine, as well as during a visit to Georgia. Moreover, I published a human rights comment on victims of human trafficking and forced labour and held a very constructive exchange of views with the Council of Europe's anti-trafficking body GRETA.

I addressed efforts to combat racism and intolerance in the report on Germany, in which I analysed the recent upsurge in racist attacks and reforms implemented since the so-called NSU affair, in which a series of racially-motivated murders across several years went undetected due to systemic shortcomings in law enforcement. In a report on Slovakia, I focused on Roma as the primary target of racism, stressing the need for more vigorous efforts to combat hate speech and hate crimes, as well as to improve policing and social integration. In a letter to the prime minister of the Czech Republic, I expressed concern about the decision not to adopt a law compensating Roma women who were victims of forced sterilisations. In my visit to Georgia I examined efforts to address disputes between religious groups, restrictions on religious freedoms, and acts of violence targeting religious minorities.

Another frequent target of intolerance were lesbian, gay, bisexual, trans and intersex persons (hereafter, LGBTI persons). In my visit to Georgia, I urged the authorities to effectively investigate and adequately punish hate crimes against LGBTI persons. In the report on Slovakia, I urged more vigorous efforts in addressing persistent homophobic discourse and hate crimes against LGBTI persons, as well as considering reforms towards the legal recognition of same sex couples. I made a similar call for legal recognition in my report on San Marino, which I also urged to ratify the Istanbul Convention and review strict criminal law provisions on abortion,

In reports on San Marino and Slovakia, I also addressed the human rights situation of persons with disabilities in the context of anti-discrimination policy. In both countries I called on the authorities to fully align their legislation on legal capacity with the UN Convention on the Rights of Persons with Disabilities and exert greater efforts to support the rights of persons with disabilities to live in the community.

The period under review witnessed several terrorist threats and attacks and various, often problematic, legislative and policy initiatives aimed at countering terrorism. I sent a letter to the Swiss authorities expressing concern about proposed legislative changes providing for more intrusive surveillance and suspicionless mass data retention. In an op-ed for the *New York Times*, I analysed the broader trend of granting more intrusive powers to intelligence services throughout Europe and the risks this poses to human rights. I also issued a statement on Turkey expressing concern about the deleterious effect on human rights of the curfews imposed on several cities in the southeast of the country, civilian casualties and damage to property, as well as the need for effective investigations of alleged security service violations in the campaign against terrorism.

## **2. Missions and Visits**

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

During the visit to Georgia from 9 to 13 November, the Commissioner followed up on the report he published in May 2014 which focused on the administration of justice and the protection of human rights in the justice system as well as tolerance, non-discrimination and the situation of ethnic and religious minorities.

In Tbilisi, the Commissioner met with the Minister of Foreign Affairs, Mr Giorgi Kvirikashvili; the Minister of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees, Mr Sozar Subari; the Minister of Education and Science, Ms Tamar Sanikidze; the Minister of Justice, Ms Tea Tsulukiani; the Minister for Reconciliation and Civic Equality, Mr Paata Zakareishvili; the Deputy Head of the State Security Service, Mr Levan Izoria; the Deputy Chief Prosecutor, Mr Giorgi Gogadze; the President of the Constitutional Court, Mr George Papuashvili; and the Chairperson of the Supreme Court, Ms Nino Gvenetadze. In addition, the Commissioner held discussions with the Public Defender (Ombudsman), Mr Ucha Nanuashvili, members of the Georgian Bar Association, representatives of civil society, and international partners.

The Commissioner visited Batumi in the Autonomous Republic of Adjara where he met with the Chairman of the Government of Adjara, Mr Archil Khabadze; the Chairperson of the Human Rights Committee in the Supreme Council of Adjara, Ms Medea Vasadze; the Regional Representative of the Public Defender, Mr Giorgi Charkviani; and civil society actors.

The Commissioner also travelled to the administrative boundary line with South Ossetia, close to the village of Odzisi, and discussed the human rights situation in the conflict-affected areas with several interlocutors in Tbilisi.

The Commissioner welcomed the positive trends and achievements of justice sector reforms in Georgia, including those in the area of juvenile justice. However, a number of

concerns regarding the independence and functioning of the justice system were reported to the Commissioner. He notably called upon the Georgian authorities to ensure that the selection, appointment and transfer of judges are transparent, merit-based and done in accordance with clear criteria, in order to fully guarantee judicial independence and ensure public trust in the judiciary. The introduction of a procedure for the random allocation of cases among judges on the basis of an automatic distribution system would improve the functioning of the judiciary and contribute to better shielding judges from internal and external interference, notably when it comes to high profile cases. The Commissioner recalled that the existence of a three-year probationary period for judges before their appointment for life continued to raise concern with regard to the ability of judges to adjudicate cases independently, as this rendered them more vulnerable to pressure. The Commissioner also urged the Georgian authorities to remedy problems in the functioning of disciplinary proceedings against judges with a view to addressing possible abuses and avoiding any perception of impunity.

While recent changes in the Law on the Prosecutor's Office have brought some improvement to the selection, appointment and dismissal procedures of the Chief Prosecutor, concerns remain regarding the work of this key institution in the criminal justice system. The Commissioner underlined that further efforts should be undertaken to increase the impartiality and accountability of prosecutors and that the competence and capacity of prosecutors to carry out effective investigations into allegations of human rights violations should be strengthened. He also urged the Georgian authorities to investigate reported instances of abuse by the police effectively. The Commissioner raised the case of Giorgi Mdinradze, a defence lawyer, who was reportedly beaten by police officials in Tbilisi when he was defending a juvenile, and reports of repeated abuse at the Kobuleti police station.

The Commissioner urged the Georgian authorities to establish the necessary conditions for an effective implementation of the anti-discrimination law, including by adopting the proposed amendments to the law which are now pending before Parliament. The latter would reinforce the position of the Ombudsman in addressing discrimination, notably with regard to the private sector and would extend the deadline for submitting complaints to the courts. Although it was reported to the Commissioner that instances of hate crime and hate speech had increased in the last few years, legal provisions penalising racism, intolerance and discrimination remain underused. In this respect, the Commissioner was heartened by the plans to introduce internal guidelines in the Prosecutor's Office regarding the application of article 53.3 of the Georgian Criminal Code establishing discrimination as an aggravating circumstance. The Commissioner stressed that violence against LGBTI persons and those defending their human rights should be effectively investigated and adequately punished, specifically referring to incidents that took place on 17 May 2013 in Tbilisi on the occasion of the International Day against Homophobia and Transphobia.

The Commissioner noted with concern that, since the publication of his report in May 2014, further cases of disputes between majority and minority religious groups, mostly about issues pertaining to religious properties and places of worship, have resulted in reported instances of intolerance and discrimination against members of religious minorities. Specific incidents targeting members of the Muslim community and Jehovah's Witnesses were brought to his attention. The Commissioner reiterated that unlawful restrictions of religious freedoms, and in particular acts of violence, should be effectively investigated and adequately punished, in accordance with the legal provisions

in force. The investigation into earlier reported incidents of unlawful restrictions on religious freedoms, including those which took place in Nigvziani and Samtatskaro, should be completed.

While in Batumi, the Commissioner visited a semi-formal settlement on the outskirts of the city called “dream town”, which is inhabited by hundreds of families who relocated from other parts of the country – mainly high mountainous regions of Adjara – because of poverty, difficult living conditions and natural disasters. Many of the families settled in “dream town” live in substandard conditions with no running water or sewage and lack adequate healthcare and social assistance. The Commissioner urged the authorities to assess the socio-economic situation of the population living in “dream town”, provide assistance to those who are in need and offer durable solutions to address housing and other needs of the families and individuals concerned.

The Commissioner’s Observations on the human rights situation in Georgia were published on 12 January 2016 and are available on the Commissioner’s website, along with the authorities’ comments.

### ***Visit to Hungary***

The Commissioner visited Hungary from 24 to 27 November in order to discuss the human rights situation of immigrants, asylum seekers and refugees, following sweeping changes introduced in Hungarian law and practice in this field over the summer of 2015. The focus was on developments since the Commissioner’s last report on Hungary, published on 16 December 2014, which also covered, among other issues, the human rights situation of immigrants, asylum seekers and refugees. The Commissioner held meetings with the Minister of the Interior, Mr Sándor Pintér; the Minister of Justice, Mr László Trócsányi; the State Secretary for Security Policy and International Cooperation, Mr István Mikola; the State Secretary for Social Affairs and Inclusion, Mr Károly Czigere; the Parliamentary State Secretary of the Ministry of Defence, Mr Tamás Vargha; and the Director General of the Office of Immigration and Nationality, Ms Zsuzsanna Végh. He also had meetings with the Chief Prosecutor, Mr Péter Polt and the Chairperson of the Hungarian delegation to the Parliamentary Assembly of the Council of Europe, Mr Zsolt Németh. The Commissioner also met the Commissioner for Fundamental Rights, Mr László Székely. He held discussions with representatives of UNHCR and of civil society organisations. The Commissioner furthermore visited the Röszke transit zone at the Serbian border and the Debrecen asylum detention centre, where he met the staff and detainees.

As further detailed in a press release issued at the end of the visit and available on his website, the Commissioner concluded that with close to 400,000 people arriving at its borders in search of international protection in 2015, Hungary had been confronted with an unprecedented task in this field. However, a series of swift measures taken in recent months had rendered access to international protection extremely difficult and unjustifiably criminalised immigrants and asylum seekers. These measures include the introduction of an accelerated asylum procedure lacking essential safeguards, the construction of razor-wire fences at the Serbian and Croatian borders, the creation of makeshift transit zones where an extremely accelerated asylum procedure (referred to as border procedure) applies, and the proclamation by the government of a mass migration crisis during which the border procedure applies. The Commissioner urged the authorities to replace the new measures with a fully human rights compliant asylum

procedure. He also called on them to repeal newly established offences related to illegal crossing of the border fence and the specific fast-track criminal procedure applicable to these offences, which are particularly problematic in terms of fair trial standards.

Another issue of serious concern to the Commissioner is the high risk of *refoulement* of asylum seekers and persons transferred to Hungary from other EU member states under the Dublin regulation (“Dublin returnees”) on the grounds of inadmissibility of their claims, in contradiction with international and European legal standards. This is the consequence of Serbia being considered as a safe third country by the government, in contradiction to UNHCR’s position that Serbia should not be considered as such. The increasing recourse to detention of asylum seekers and Dublin returnees is also worrying, especially in light of concerns about its arbitrariness and the quality of judicial review of detention decisions. Noting the absence of a reliable system for identifying vulnerable persons and unaccompanied minors in asylum detention, the Commissioner urged the authorities to improve asylum detention conditions and to put in place a rigorous system of identification of all special needs to ensure that vulnerable people and children are not placed in detention.

Finally, the Commissioner stressed that the government and political leaders should refrain from using xenophobic rhetoric linking migrants to social problems or security risks, and put in place a genuine, fully-fledged programme of integration that would ensure migrants’ access to housing, employment and other social rights.

### ***Visit to Cyprus***

The Commissioner carried out a visit to Cyprus from 7 to 11 December, focusing on: certain issues pertaining to the protection of the human rights of immigrants and asylum seekers; and the impact of the economic crisis on the enjoyment of human rights, in particular by women, children and older persons.

During his visit the Commissioner held discussions with the Cypriot authorities, including the President of the Republic, Mr Nicos Anastasiades; the Minister of Foreign Affairs, Mr Ioannis Kasoulides; the Minister of Interior, Mr Socratis Hasikos; the Minister of Justice and Public Order, Mr Ionas Nicolaou; the Minister of Finance, Mr Harris Georgiades; and the Permanent Secretary of the Ministry of Foreign Affairs, Mr Alexandros Zenon. In addition, the Commissioner met with the Commissioner for Administration and Human Rights, Ms Eliza Savvidou, the Commissioner for Children’s Rights, Ms Leda Koursoumba, and members of the Technical Committee on Gender Equality.

The Commissioner also met with representatives of international organisations, academics, and a number of non-governmental organisations. He carried out visits to the premises of a charity in Nicosia, where he met with victims of the economic crisis; to the reception centre for asylum seekers in Kofinou; and to the migrant detention centre in Mennogeia. Furthermore, the Commissioner gave a lecture on the impact of the economic crisis on the enjoyment of human rights at the University of Cyprus and visited the anthropological laboratory of the Committee on Missing Persons (CMP), where he met with the members of the CMP as well as with its technical staff.

At the end of his visit, the Commissioner welcomed the readiness of Cyprus to receive asylum seekers in the context of the EU relocation scheme, but expressed serious

concern about the grave shortcomings of the national asylum system. He invited the authorities to step up their efforts to improve reception conditions and fully align domestic asylum procedures with European human rights standards. He stressed the need for long-term reception policies matched with adequate funding for their implementation. The Commissioner also expressed concern about the lack of legal assistance for asylum seekers, the often excessive length of the asylum procedure, and the fact that most asylum seekers are granted subsidiary protection, which excludes them from enjoying their right to family reunification. He noted that refugees and beneficiaries of subsidiary protection form part of Cypriot society and underlined that, in view of the expected reunification of the island, it is all the more important for the authorities to draw upon the Council of Europe's expertise and strengthen their efforts to enhance all migrants' integration and social cohesion, promote tolerance and eradicate hate speech and other forms of hate crime.

The Commissioner welcomed the end of the practice of detaining Syrian asylum seekers as well as the reduction by half of the detention capacity of the Mennogea detention centre for migrants, in line with CPT recommendations. Stressing that detention of failed asylum seekers and of other migrants in view of their deportation is widespread, he expressed worries about the insufficient social and psychological support offered to detainees, as well as the prolonged and sometimes repeated detention of migrants without reasonable prospect of removal, and called on the authorities to apply alternatives to detention in order to avoid depriving migrants of liberty for excessively long periods.

As regards the impact of the economic crisis and austerity measures, the Commissioner noted that certain social groups have been particularly vulnerable, especially migrant children and single parent families. He welcomed the establishment of a Guaranteed Minimum Income scheme (GMI), but expressed his concern about its implementation and urged the authorities to redress this situation by making it possible for social services to process the GMI applications promptly and adequately. He also called on the authorities to conduct human rights - including gender equality - impact assessments of all austerity measures, as well as to consult with national human rights structures and civil society organisations and experts before embarking upon their implementation.

The Commissioner's report following this visit is forthcoming.

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

#### ***Report on Germany***

On 1 October, the Commissioner published a report following his visit to Germany on 24 April and from 4 to 8 May 2015. The report focused on the legal and institutional framework for the protection and promotion of human rights; the human rights of asylum seekers, refugees and immigrants; and the fight against racism and intolerance.

With regard to the first issue, while welcoming the recent strengthening of the German Institute for Human Rights through the adoption of a law giving it a solid legal basis, the Commissioner calls for the powers of the Institute to be increased. Other institutions for the protection and promotion of human rights in Germany currently have inadequate



means and powers and are not sufficiently independent. The Federal Anti-Discrimination Agency should be empowered to investigate complaints brought to its attention and to go to court, and its budget for awareness and research activities and staff should be increased. The National Agency for the Prevention of Torture should also be adequately resourced and the number of its members and support staff should be increased. A fully independent and well-functioning complaints mechanism covering the conduct of all law enforcement officials should be established.

While welcoming the existence of a general framework for the democratic oversight of the intelligence and security services in Germany, the Commissioner considers that the legal framework and remedies should be improved to ensure that human rights are fully protected against any abuse by these services. The parliamentary oversight operated by the Parliamentary Control Panel must be bolstered by strengthening its support staff and technical expertise. The resources and technical expertise available to the G-10 Commission should also be reviewed. All oversight bodies should have access to all information which they deem to be relevant to the fulfilment of their mandates. The question of surveillance operated by the German intelligence services over non-German citizens outside of Germany should be clarified. Adherence to Article 8 of the ECHR, which guarantees the right to private life, should be ensured with respect to all activities of the state parties, including all of their national security and intelligence activities.

As concerns the human rights of asylum seekers, refugees and immigrants, the Commissioner acknowledges the very considerable efforts made by Germany to receive the high numbers of persons arriving. However, with the number of applications steadily increasing, more staff responsible for making asylum decisions are crucial to ensuring that the asylum procedure is both expedient and fair. In spite of the challenges arising from the numbers, reception conditions must remain in line with human rights standards. To this end, nationwide obligatory minimum standards for the operation of reception facilities should be introduced and the Federal Government should better support the Länder and municipalities in shouldering the costs of reception. Further steps should be taken to improve asylum seekers' access to health care, language courses and family reunification. Allegations of ill-treatment of asylum seekers at reception facilities should be effectively investigated.

The Commissioner finds that the figures available on the operation of the Dublin system in Germany, and notably the minimal differential between transfers of asylum seekers from and to the country, provide a powerful illustration of the fact that Europe is maintaining a system which is unfair to asylum seekers without even obtaining the results for which it is purportedly kept alive. Dublin cases are also further aggravating the backlog of cases pending before German courts. The Commissioner believes that there is a pressing need to overhaul the Dublin Regulation and calls on Germany to take the lead in replacing it with a more human rights oriented system.

The Commissioner welcomes the measures the German authorities have taken since 2013 to help Syrian refugees to face the humanitarian crisis. The German authorities should continue to play a leading role in this regard, increase the resettlement quota, and fully align the status of resettled refugees to that of persons granted status after an asylum procedure in the country.

With regard to the fight against racism and intolerance, the Commissioner is concerned that these phenomena are on the rise in Germany, as reflected in an upsurge of attacks

against facilities for asylum seekers. The German authorities should broaden their approach to combating racism, from one which focuses almost exclusively on the activities of extremist organised groups to one which recognises that racism, including racially motivated offences, often comes from individuals not at all associated with these groups.

While the NSU affair clearly illustrates the seriousness of hate crimes committed by extreme right-wing movements, the Commissioner believes that the reform efforts it is prompting should have a broader reach. Thus, the welcome amendments introducing the racist motivation as an aggravating circumstance of ordinary offences should be accompanied by both formal guidance for the police and prosecutors and by training of all the actors of the criminal justice system, including judges, on racist offences. The German authorities are also invited to improve their system for recording and following up on hate crime. The Commissioner also urges the German authorities and political leaders to condemn all instances of hate speech and hate crime, and to abstain from using rhetoric that stigmatises particular groups of the population.

Following the NSU affair, the German authorities could look more deeply into the extent to which structural forms of racism may be preventing law enforcement authorities from providing a professional service to Germany's minority groups. Concerned, in particular, at reports of racial profiling practices, the Commissioner invites the German authorities to consider introducing a reasonable suspicion standard, whereby powers relating to control, surveillance or investigation activities can only be exercised on the basis of a suspicion founded on objective criteria, and to strengthen the training of law enforcement officers on the subject of identity checks. Allegations of racist or racially discriminatory conduct by law enforcement officials should also be effectively investigated and the possible racist motivation of such acts should always be closely examined.

Lastly, the Commissioner calls on the German authorities to keep their legislation against racial discrimination and racist hate speech under review. In particular, he stresses the need to ensure effective legal protection for victims of discrimination by public authorities and the importance of comprehensive data broken down by grounds such as ethnic origin for effective action against racism and discrimination.

To mark the publication of this report, the Commissioner presented it at a press conference organised at the Bundespressekonferenz on 1 October and at a public event organised together with the German Institute for Human Rights on 2 October. The day before publication, the Commissioner also met with the Minister of Justice, Mr Haiko Maas, and the State Secretary at the Federal Minister of Justice, Dr. Stephanie Hubig to present the report to them.

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

### ***Report on Slovakia***

On 13 October, the Commissioner published a report following his visit to Slovakia from 15 to 19 June 2015. The report focused on issues concerning systematic work for the implementation of human rights, and Slovakia's action against discrimination.

The Commissioner noted that although Slovakia's anti-discrimination framework is comprehensive, it provides a differing degree of protection for various vulnerable social groups. It must be reformed to close all protection gaps. In this regard, the recent adoption of the first national human rights strategy is an important step towards framing a coherent and transversal approach. The Commissioner welcomed the efforts made to systematise the implementation and monitoring of human rights through the human rights strategy and stressed that its success is also linked to that of relevant sectorial action plans and their effective implementation notably at local level. In addition, he urged Slovakia to provide the Ombudsperson and the National Centre for Human Rights with adequate support and resources to effectively carry out their mandates.

The Commissioner remained seriously concerned by persistent manifestations of anti-Gypsyism and hate speech, and instances of excessive use of force by the police during raids on Roma settlements. It appears that the authorities underestimated the incidence and implications of racist hate crime, including racially motivated police violence, affecting Roma. More and resolute efforts are needed to condemn, effectively investigate and sanction such crimes. The placement of Roma children in special schools, the spatial segregation of Roma, and their substandard housing situation must also be addressed as a matter of priority. The recent legislative developments regularising informal dwellings should be reinforced by preventing evictions without the provision of adequate alternative accommodation. Slovakia was urged to strengthen its efforts aimed at protecting the human rights and social integration of Roma, in line with the Council of Europe standards.

As concerns persons with disabilities, the Commissioner welcomed the on-going reform aimed at prohibiting the full legal incapacitation of persons with psychosocial and intellectual disabilities as of July 2016. The authorities were called on to finalise this process and develop a flexible system of supported decision-making, based on individual consent and necessary judicial safeguards, to ensure that persons placed under guardianship can challenge this measure. At the same time, the Commissioner remained concerned about the slow deinstitutionalisation process and the practice of transforming traditional residential institutions into smaller housing units. The authorities were urged to refrain from placing additional persons with disabilities in residential institutions. Opening new - even if smaller - institutions should be avoided. Instead, resources must move to the development of individualised support services. The report also highlighted the need to improve the access of children with physical or sensory disabilities to mainstream schools.

The strengthened policy and institutional framework notwithstanding, persistent anti-gay public discourse and hate speech have been very worrying. The Commissioner noted that they must be countered by effective measures, including the extension of the provisions of domestic hate speech legislation to cover sexual orientation, gender identity, and sex characteristics. The provisions of the Criminal Code establishing hatred based on ethnicity, race, skin colour and sexual orientation as an aggravating circumstance should also be extended to cover transphobic hate crime. Law enforcement officials should be adequately equipped to identify and effectively investigate such incidents. The Commissioner underlined that hate crime, including hate speech, requires effective investigations and sanctioning by the authorities. This would send a strong signal that hate crime has no place in a democratic society. Furthermore, in light of the recent case-law of the European Court of Human Rights, the Commissioner encouraged Slovakia to provide legal recognition to same sex couples

allowing them to address the practical problems related to the social reality in which they live.

Lastly, the Commissioner called on the authorities to promote and fully respect the human rights of trans and intersex persons, including intersex children. Special attention should be paid to countering practices imposing medical interventions and non-marriage requirements for the official recognition of gender reassignment. In particular, Slovakia was called on to set up strong and explicit guarantees protecting intersex children from unnecessary surgical procedures aimed at assigning them a sex without their free and informed consent.

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

### ***Report on San Marino***

On 15 October, the Commissioner published a report following his visit to San Marino from 9 to 10 June 2015. The report focused on freedom of expression and media freedom and on the fight against discrimination, including women's rights and gender equality, the human rights of persons with disabilities and the human rights of LGBTI persons.

The Commissioner's main concern regarding media freedom related to the adoption of a new law on publishing and the profession of media operators: this law foresees an enforcement mechanism for a future code of ethics, which in the opinion of the Commissioner goes beyond self-regulation and carries a risk of undue interference with media content. He therefore urged the Sammarinese authorities to replace this mechanism with one that is more respectful of media the freedom and the principle of self-regulation. The Commissioner also encouraged San Marino to decriminalise defamation and to review the sanction for disclosing pre-trial information.

As regards the fight against discrimination, the Commissioner encouraged the authorities to address a number of gaps in San Marino's anti-discrimination legislation and to ratify the revised European Social Charter. He considered that an existing body (Commission for Equal Opportunities) did not meet the independence and effectiveness requirements for an equality body and encouraged San Marino to set up a human rights structure in compliance with the Paris Principles which could also fulfil this role.

Concerning women's rights and gender equality, the Commissioner warmly welcomed the progress made on combating violence against women, while urging the speedy ratification of the Istanbul Convention and encouraging the reinforcement of the competent national body. He highlighted specific problems relating to foreign-national women, in particular private carers, as well as the need to address the gender gap in employment and political participation. With respect to reproductive rights, the Commissioner encouraged San Marino to review the very strict criminal law provisions on abortion in the light of the relevant international standards.

While welcoming important progress concerning the human rights of persons with disabilities, the Commissioner encouraged San Marino to back up its recent legislation with a clear action plan and adequate resources. The Commissioner also urged a thorough review of the Sammarinese legal capacity legislation to align it with the

standards of the United Nations Convention on the Rights of Persons with Disabilities. Notwithstanding the excellent quality of care in residential settings, the Commissioner also encouraged San Marino to support efforts to move towards fully community-based living arrangements.

As for the human rights of LGBTI persons, the Commissioner recommended the introduction of a framework based on self-determination in order to ensure the legal recognition of a person's gender. The Commissioner also recommended the introduction of legal protection for same-sex couples in the form of a civil union or registered partnership, while in the meantime extending the current protection enjoyed by non-married, cohabiting opposite-sex couples to same-sex couples. He furthermore called on the authorities to raise awareness on the human rights of LGBTI persons and to promote respect and equality.

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

***Letter to the Swiss Federal Councillor, Head of the Federal Department of Defence, Civil Protection and Sport***

On 16 October, the Commissioner published a letter he had sent on 23 September to Mr Ueli Maurer, Federal Councillor, Head of the Federal Department of Defence, Civil Protection and Sport, concerning Switzerland's draft law on intelligence. While welcoming that the draft law contained a number of safeguards against possible abuses of power by the intelligence services, the Commissioner was concerned that some measures, such as the use of surveillance tools to record non-public communications and the powers of the intelligence services to explore the network cable raised issues of compatibility with the right to respect for private life. Referring to plans to extend the period in which telecommunications service providers are obliged to retain secondary personal data, the Commissioner reiterated his position that suspicionless mass retention of communications data is contrary to the rule of law, incompatible with core data-protection principles and ineffective. Finally, the Commissioner stressed the importance of independent mechanisms ensuring democratic and effective oversight of the activities of intelligence services, which review the compatibility of these activities with human rights standards and in particular the right to respect for private life.

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

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

On 22 October, the Commissioner published a letter addressed to the Prime Minister of the Czech Republic, Mr Bohuslav Sobotka, concerning reparations for involuntary sterilisations of Roma women. In his letter the Commissioner expressed his concern about the Czech government's decision not to proceed with the adoption of the law allowing the granting of compensation to the Roma women who were victims of forced sterilisations. The Commissioner noted that involuntary sterilisation of Roma women without their full and informed consent has been a persistent problem in the Czech Republic. In his 2011 report, the predecessor of the Commissioner, while welcoming the expression of regret by the Czech authorities for this unlawful practice, deplored the lack of an effective domestic mechanism to enable victims to seek and obtain compensation

for the harm they had suffered. In his letter the Commissioner underlined that according to the case-law of the European Court of Human Rights, such practices violate the human freedom and dignity of the victims, thus constituting serious human rights violations and therefore governments are obliged to establish accessible and effective mechanisms to obtain reparations.

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

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

On 3 November, the Commissioner published a report following his visit to Ukraine from 29 June to 3 July 2015. The report focused on the humanitarian situation in the areas affected by the conflict in the east of the country, as well as the situation of internally displaced persons (IDPs), human rights of children, and freedom of movement and access of humanitarian organisations. The Commissioner also followed up on the topics which he had discussed with the Ukrainian authorities during his previous visits to the country, such as investigations into serious human rights violations; police and judicial reforms; and systematic work to implement human rights.

The Commissioner expressed his profound concern and sadness over the loss of thousands of lives and severe hardship experienced by ordinary people living in the communities affected by the conflict. He urged all sides to do their utmost to ensure the de-escalation of the situation and to refrain from using violence in order to focus on resolving the differences through negotiations as outlined by the Minsk agreements of September 2014 and February 2015. As a result of the protracted conflict, five million individuals are estimated to be in urgent need of assistance to meet their basic needs. Access to clean water has become a pressing issue for up to 1.3 million people. The Commissioner was alarmed by the level of destruction the military activities have caused to infrastructure, including medical facilities, schools and kindergartens. He urged the authorities to take a flexible, proactive and pragmatic approach with regard to the payment of social benefits to persons residing in non-government controlled territories, with a view to minimising the severe hardship experienced by the population which has already been greatly affected by the armed hostilities, food insecurity, higher prices for basic goods and non-functioning banking sector.

While the adoption in 2014 of the legislative framework for IDPs was an important undertaking, the Commissioner urged the authorities to develop a detailed action plan for IDPs, which would, inter alia, include measures aimed at providing them with durable housing solutions and livelihood opportunities. It should also address issues such as protection against discrimination on the basis of displacement; access to justice; protection of property rights; safeguarding the right to vote; and integration in the host communities.

With regard to the human rights of children, the Commissioner called upon the authorities to adopt regulations for a simplified procedure allowing children and parents living in non-government controlled areas to acquire identity documents and legally valid educational certificates, and to develop and put in place an effective statelessness determination procedure. The Commissioner also expressed concern about the conditions of social care institutions in conflict-affected areas and called for an

information campaign to raise awareness of the risks of land mines and unexploded ordnance among children and parents.

As concerns freedom of movement, the Commissioner urged the government to review the existing security measures with a view to ensuring that the current barriers affecting movement across the demarcation line are brought to the necessary minimum.

The Commissioner expressed concern that the access of humanitarian organisations to the affected population had been hampered on both sides of the contact line. In his discussions with the Ukrainian authorities, he advocated the establishment of humanitarian corridors and the simplification of administrative procedures for humanitarian aid. Furthermore, the Commissioner encouraged the decision-makers in Donetsk and Luhansk to ensure unhindered access of humanitarian organisations to the affected groups living on non-government controlled territories and to reconsider any decisions affecting their ability to do so.

With regard to investigations into serious human rights violations, the Commissioner urged his interlocutors to address structural and operational deficiencies in the independence and effectiveness of investigations, as identified by the International Advisory Panel. There is also a need to raise awareness among prosecutorial and judicial authorities of the applicable international standards for effective investigations, their practical application and the respective roles of the authorities to combat impunity.

While welcoming the ongoing police and judicial reforms, the Commissioner reiterated his long-standing recommendation to establish an independent complaints mechanism for police activities. Furthermore, he encouraged the authorities to include all necessary safeguards concerning the use of firearms in the current legislative regulation on police.

Finally, the Commissioner welcomed the adoption of the National Human Rights Strategy and provided his specific guidelines for the preparation of the National Human Rights Action Plan. He also urged the authorities to review and reconsider on a regular basis their decision to derogate from the European Convention on Human Rights and other international human rights instruments.

The report is available on the Commissioner's website.

## **4. Themes**

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

On 13 October, the Commissioner delivered a public lecture in Strasbourg (*Dialogues de Strasbourg*) on migration and asylum. The Commissioner underscored that Europe can and must do more to help people fleeing war and persecution, both by improving reception conditions and increasing the legal avenues to seek asylum in a safe way.

On 20 October, the Commissioner gave a lecture on "Human Rights Challenges in Europe" at the Center for Strategic and International Studies (CSIS) in Washington DC. The Commissioner gave a general introduction to the Council of Europe and its institutions. He explained his mandate, his working methods and his priorities as

Commissioner for Human Rights. He underlined that the two main challenges which he has faced in the last two years were the crisis in Ukraine and the situation of refugees in Europe.

On Ukraine, the Commissioner described in detail the five visits he carried out to this country between December 2013 and July 2015. He gave an overview of the main questions raised in terms of human rights and the challenges to be met in this field.

On the issue of migration and the movements of refugees in Europe, the Commissioner underlined that this is not a new challenge but a situation which had already become chronic in previous years. He described his observations during past visits to the 'front-line countries' and he also touched on the situation in the Mediterranean Sea and the Western Balkans. The Commissioner emphasised that EU countries have to team up not only to save lives but also to ensure common minimum standards of reception across Europe.

The Commissioner also recalled that the Council of Europe has human rights standards in this field, notably through the case-law of the European Court of Human Rights and the European Committee of Social Rights, which must be respected by all member states. The Commissioner recalled that he had recently made Third Party Interventions before the Court on issues of migration. He also initiated increased co-operation with national human rights structures and human rights defenders on the subject of the rights of refugees. Finally, the Commissioner underlined that he will continue to deal with the human rights of immigrants, refugees and asylum-seekers as a high priority in his work, through his country visits, his thematic work and his awareness-raising activities by informing the public and communicating on these issues.

On 22 October, the Commissioner gave a lecture at New York University (NYU) during a conference organised by the Center for International Research in the Humanities and Social Sciences (CIRHUS) on the theme "Towards Dystopian Democracies in Europe and the USA? From prejudice in immigration policies to mass surveillance in counterterrorism operations." In the first part of his intervention which focused on migration, the Commissioner introduced the European system for the protection of human rights and his own mandate, as well as his working methods and the tools available to him. He gave an overview of his migration-related work in a dozen member states of the Council of Europe and provided a clear picture of the main problems which arise in terms of protecting the human rights of migrants and refugees. While underlining that immigration is a test of Europe's values and commitment to human rights, the Commissioner stressed that one of the most urgent measures is the reform of policy and legislation governing asylum. He added that EU countries should agree on a new system that could fairly re-locate asylum-seekers, based on the principles of inter-state solidarity and effective human rights protection. The Commissioner also strongly emphasised that laws which ensure a humane approach to the needs of migrants should replace provisions that criminalise migrants who enter and remain by irregular means. Such legislative changes must go hand in hand with improved migration policies.

### ***Counter terrorism and human rights protection***

In the second part of his lecture at NYU, which was devoted to democratic oversight of national security services, the Commissioner spoke about the two main episodes that suggest democratic oversight is too weak: European complicity in CIA renditions ten



years ago; and revelations of mass surveillance in the last few years. The Commissioner underlined that to date, too many governments had been unwilling to establish the truth and ensure accountability for their complicity in the unlawful programme of “extraordinary renditions” – involving the abduction, detention and ill-treatment of suspected terrorists – carried out by the CIA in Europe between 2002 and 2006. He recalled that in July 2014, the European Court of Human Rights delivered two judgments which reaffirmed that absolute human rights norms, such as the prohibition of torture, must be upheld in all circumstances. Concerning mass surveillance, the Commissioner stressed that privacy is a fundamental human right which is essential for living in dignity and security. In this context, he gave several concrete examples of governments amending their laws to increase the powers of surveillance for security services. The Commissioner said that in the current debate on surveillance, it is crucial to inject a greater amount of human rights perspective. He outlined certain safeguards to be provided as a minimum: laws should be precise and clear as to offences, activities and people subjected to surveillance, and must set out strict limits to its duration, as well as rules on the disclosure and destruction of data; there should be effective remedy for those whose rights have been violated; there should be independent scrutiny and robust judicial oversight of security services.

In an opinion editorial published in the New York Times on 27 October, the Commissioner warned about the intrusive surveillance measures being adopted by many European countries. He cautioned member states against such measures, highlighting the need to limit surveillance and the use of data in a way that strictly respects the right to privacy. He also underscored the need to ensure that rigorous procedures for the examination, use and storage of all data obtained are in place, and to provide those subjected to surveillance with a possibility to exercise their legal right to appeal. Finally he stressed that security agencies must operate under independent scrutiny and judicial review.

On 18 November, the Commissioner made a statement following anti-terror operations conducted by the Turkish forces in Silvan, Diyarbakır, which was subjected to a round-the-clock curfew from 2 to 14 November. Commenting on the situation in Silvan and more generally on the use of such curfews by the Turkish authorities, the Commissioner recalled that the fight against terrorism, while an obligation of the member states, must be conducted within the bounds of international human rights standards. Given the massive interference with human rights such open-ended, round-the-clock curfews represented, their widespread use in South-Eastern Turkey since August did not appear to satisfy the criteria of proportionality and necessity in a democratic society. The Commissioner also pointed to numerous allegations of human rights violations caused by security forces, expressing his preoccupation about the lack of ongoing investigations. He also pointed to the losses of life, injuries and destruction of property that occurred during these curfews, stressing the duty of the Turkish authorities to ensure that victims receive compensation for the damages suffered, even if these damages are caused by the failure of the state to prevent terrorist acts. The Commissioner stated that he would continue to monitor the situation in Turkey very closely.

On 19 November, the Commissioner took part in a Lab of the World Forum for Democracy in Strasbourg concerning national security and the need to bring surveillance under control. The Commissioner was invited to discuss two civil society initiatives: the US NGO *Revolution Truth's* “Legal Campaigns”, whose goal is to take legal action against various governmental and corporate actors who are reported to erode

democracy through restrictions of civil liberties, human rights, and transfers of sovereign power to corporate entities; and the UK-based NGO *Privacy International's* initiative named "Holding intelligence agencies accountable through international law", which is aimed at better holding intelligence agencies to account by promoting law and practice which ensures that all persons, regardless of their nationality, enjoy the same level of protection when it comes to operations carried out by intelligence services.

Noting that the current systems of oversight of national security services in Europe remain largely ineffective, the Commissioner welcomed both initiatives. He regretted the lack of progress in this field, in spite of the revelations over the last years about security operations which have violated human rights. The Commissioner stressed that European countries must ensure more democratic and effective oversight of their security services' activities and avoid future operations leading to new human rights violations. He drew the audience's attention to his recommendations contained in the Issue Paper on democratic and effective oversight of national security services published in June 2015. The Commissioner also highlighted the need for member states to pause and to consider the damage done in the context of the so-called "war on terrorism" before giving further powers to national security services and adopting new intrusive measures.

### ***Human Rights of persons with disabilities***

On 9 November, the Commissioner submitted his comments on a working document opened for consultation by the Committee on Bioethics (DH-BIO). This document contained a draft Additional Protocol to the Convention on Human Rights and Biomedicine concerning the protection of the human rights and dignity of persons with mental disorders with regard to involuntary placement and involuntary treatment.

While fully understanding the concerns that prompted this work, the Commissioner did not share the view of DH-BIO that human rights violations in the context of involuntary measures occur mainly due to legal gaps and insufficient safeguards. He argued, based upon his extensive monitoring work, that safeguards that rely on medical reports and which function within legal systems that are inherently discriminatory *vis-à-vis* persons with psychosocial disabilities are often insufficient to prevent such violations. The Commissioner further expressed his concern that the draft Additional Protocol would be in contradiction with the United Nations Convention on the Rights of Persons with Disabilities, the benchmark treaty on the rights of persons with disabilities. The scope, definitions and provisions of the draft Additional Protocol were also too broad to offer more legal certainty compared to the existing limitations defined in the case-law of the European Court of Human Rights and the safeguards already in force in the vast majority of member states. The Commissioner felt, therefore, that the draft did not present sufficient added value to offset a number of significant risks, including to the effectiveness of the Commissioner's future work on disability.

For these reasons, the Commissioner expressed his view that DH-BIO should not adopt the draft Additional Protocol. The Commissioner stressed, however, that member states clearly needed guidance on ways and means of reducing the need for coercion in psychiatry, stating that DH-BIO was in a good position to offer such guidance.

The Commissioner's comments on the draft Additional Protocol are available on his website.

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

In a Human Rights Comment published on 12 November (“Improving protection for victims of forced labour and human trafficking”), the Commissioner recalled that while forced labour and human trafficking are clearly prohibited by international and European legal standards, there are still persons in Europe who fall victim to forced sexual exploitation, forced labour exploitation and other emerging forms of exploitation such as forced begging or forced committing of petty offences. Women, children and certain minority groups such as Roma are particularly vulnerable to trafficking. The Commissioner stressed the importance of ratifying and implementing the 2005 Council of Europe Convention on Action against Trafficking in Human Beings and the 2014 Protocol to the ILO Forced Labour Convention. It is also important, particularly in the context of current refugee movements across Europe, not to confuse the smuggling of migrants and trafficking for the purpose of exploitation, and to ensure that measures taken against smuggling do not impact negatively on action against human trafficking. When it comes to preventing trafficking in a migratory context, the real solution is not to close borders but to open channels for legal migration. Child victims of trafficking should receive adequate assistance tailored to their specific needs, be protected from further exploitation and from disappearance from reception centres. National and transnational companies should be made accountable in cases of human trafficking, including through effective and appropriate penal sanctions.

On 18 November, the Commissioner had an exchange of views with the Group of Experts on Action against Trafficking in Human Beings (GRETA). He updated GRETA on his thematic and country work related to human trafficking, including promoting the ratification and implementation of the Council of Europe Convention on Action against Trafficking in Human Beings. The discussions, which also explored possibilities for closer co-operation, focused on different subject areas, among which featured: action against human trafficking in the context of the refugee crisis in Europe; the particular vulnerability of children - and among them, unaccompanied migrant minors - to human trafficking; the need for protection and assistance for all victims of trafficking; and the work of national human rights institutions related to action against human trafficking.

### ***Human rights of children***

On the occasion of the first European Day on the Protection of Children against Sexual Exploitation and Sexual Abuse (18 November) the Commissioner issued a statement in which he stressed the importance of raising awareness about sexual abuse and sexual exploitation of children in society at large in order to fight more effectively against these phenomena. A European Day devoted specifically to this issue can usefully contribute to this endeavour and also give more visibility to existing tools to prevent and combat these phenomena. The Commissioner recalled that children in a situation of vulnerability, such as migrant children, children belonging to marginalised groups of society or those living in poverty, are at higher risk of becoming exposed to violence, including sexual violence. However, he also stressed that all children can be exposed to such risks, in different contexts, and notably through their increasing use of Internet. He invited all member states which have not yet done so to ratify the Lanzarote Convention on the protection of children against sexual abuse and sexual exploitation.

### ***Freedom of expression and media freedoms***

On 13 October, the Commissioner participated in a Council of Europe Conference entitled “Freedom of expression: still a precondition for democracy?”, at which over 400 participants assessed the major challenges in this field today. Intervening as member of a panel in the introductory session of the Conference, the Commissioner focused not only on the main challenges and solutions as they emerge from his extensive country and thematic work in this field, but also responded to questions about the tools at his disposal to ensure that these challenges are met.

On 21 October, the Commissioner spoke at Columbia University (Harriman Institute) in New York on threats to media freedom and NGOs in Europe. In his speech, the Commissioner introduced the Council of Europe and the work of its different institutions. He underlined that the right to freedom of expression and media freedom are essential for the exercise of all other rights protected by the European Convention on Human Rights. NGOs have a key role in the functioning of any human rights system by bringing complaints before domestic and international mechanisms. Commissioner Muižnieks described the increased pressure on NGOs and media in several Council of Europe member states and gave concrete examples based on his country visits and thematic work. This pressure takes different forms, from physical attacks in various contexts to harassment and defamation campaigns, stigmatising rhetoric, judicial harassment, abusive raids by prosecutorial or tax authorities, administrative pressure, attacks by police during demonstrations and also by the mafia and organised crime groups. The Commissioner highlighted the main challenges posed for human rights work by the pressure put on NGOs and the media and shared his reflections on how to reverse this trend.

On 3 November, the Commissioner participated in a conference on “Freedom of expression and media freedom in the Western Balkans and Turkey” *Speak Up! 3* organised by the EU Commissioner for European Neighbourhood Policy and Enlargement negotiations, Johannes Hahn. Following up on two previous editions of this conference, *Speak UP! 3* gathered journalists, media analysts, decision-makers from the enlargement countries, authorities and experts from international, regional and national organisations committed to promoting freedom of expression and media freedom. In his opening speech, the Commissioner gave an account of his work on media freedom and freedom of expression in Turkey and in Western Balkan countries, warning against a clear risk of erosion of advances achieved in these fields in recent years and pointing to the need for swift progress to be made in a number of areas. These areas include protecting journalists against violence and judicial harassment and against specific threats resulting from mass surveillance; protecting journalists acting as whistle-blowers; preventing censorship on the Internet; and promoting media pluralism and ethical journalism.

### ***Human rights and development***

On 14 October, the Commissioner published a Human Rights Comment entitled “The new development agenda should fulfil human rights”. It focused on the 2030 Agenda for Sustainable Development, aimed at ending poverty in all its forms everywhere, which was launched by a UN summit in New York on 25-27 September 2015. The Commissioner pointed out that the 2030 Agenda was based on the universal respect for human rights and that Europe should make it its own to the benefit of the most

vulnerable groups in our societies. He highlighted the relevance of the agenda to children, young people, people with disabilities, Roma and migrants and its emphasis on gender equality. A people-centred approach of the agenda aims to ensure that all human beings can fulfil their potential in dignity and equality, echoing the Universal Declaration of Human Rights.

The Commissioner urged European governments to acknowledge the human rights potential of the 2030 Agenda and associate national human rights structures in its monitoring. The realisation of this potential will also depend on the choice of concrete indicators for monitoring the agenda's implementation. Many of the indicators currently developed are useful for gauging the fulfilment of human rights in Europe. European and international human rights mechanisms can help develop suitable indicators and provide data on progress achieved. The Commissioner stressed that the 2030 Agenda offers a unique opportunity to promote development approaches which also improve the respect, protection and fulfilment of human rights and called for its full implementation in Europe.

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

On 10 and 11 December, the Office participated in a conference "Council of Europe, National Human Rights Institutions, Equality Bodies and Ombudsman Offices Promoting Equality and Social Inclusion", organised by the Council of Europe and the Finnish Parliamentary Ombudsman and Human Rights Centre in Helsinki. The representative of the Office made a presentation about recent progress in the implementation of national human rights action plans in Europe and outlined the Commissioner's activities in this area.

## **5. Human Rights Defenders**

### ***Meetings with Russian human rights defenders and experts***

The Commissioner held two meetings with human rights defenders and information technology experts from the Russian Federation on 5 and 6 November respectively. During the first meeting, the Commissioner discussed issues related to the work of human rights defenders in Russia. The effects of the implementation of Foreign Agents' legislation on civil society activities with reference to the Commissioner's Opinion of 9 July 2015 on the subject was one of the major topics covered. Human rights defenders also shared information with the Commissioner on several pending legislative initiatives which can affect their future work. In addition, the meeting discussed the execution of judgments of the European Court of Human Rights in Russia.

In the second meeting, the Commissioner met lawyers, activists and experts in information technology to discuss a wide range of human rights issues related to the Internet in Russia. Particular attention was given to freedom of expression and media freedoms in the digital space, Russian legislation governing access to and blocking of the content of web-sites, and the practical implementation of this legislation. The effects of the implementation of Russian anti-extremist legislation on users' rights in social networks were also explored. Human rights aspects of digital surveillance carried out by security agencies were a further topic of the discussions.

## **6. Other meetings**

### ***Meetings at US State Department***

On Monday 19 October, the Commissioner held a series of meetings at the US State Department in Washington DC.

The meeting with Anne Richards, Assistant Secretary (Bureau for Populations, Refugees and Migration), centred on the challenges faced in the Council of Europe area in terms of the protection of the human rights of immigrants, refugees and asylum-seekers. The Commissioner and the Assistant Secretary discussed the issue of resettlements, notably the importance of possibly increasing the quota of Syrian refugees that the USA could receive on its territory, as well as the problems which currently surround such a possibility. The Commissioner also provided information based on his work in the field on the situation of migrants and of IDPs. Commissioner Muižnieks and Ms Richards had an in-depth discussion on the subject of the integration of refugees during which the interest of exchanging good practices in this area was underlined.

The meeting with Rob Berschinski, Deputy Assistant Secretary (Bureau of Democracy, Human Rights and Labor), focused on the Council of Europe and the role of the Commissioner, as well as on certain specific themes. The Commissioner and the Deputy Assistant Secretary discussed issues related to the refugee movements in Europe. They also tackled the subject of the Internet, and the Commissioner presented the issues raised in his Issue Paper on the rule of law on the Internet and in the wider digital world. They also had an exchange on the democratic oversight of security services.

At his meeting with Randy Berry, Special Envoy for the Rights of LGBT Persons, the Commissioner explained his country and thematic work related to the human rights of LGBTI persons. He spoke about the growing case-law of the European Court of Human Rights on hate speech, including homophobia. The Commissioner and the Special Envoy exchanged information on their respective current and future work in the member states.

The meeting with Shawn Casey, Special Representative for Religion and Global Affairs and Shaarik Zafar, Senior Advisor to the Secretary for Muslim Engagement, covered issues related to migration and integration, European Islam and the Orthodox Church in Europe. The Commissioner explained his work and his priorities. The discussion also covered the role of churches and church-based charity organisations in relation to the movements of refugees in Europe, and the urgency of a European human rights compliant plan for the long term. The possibility of the USA increasing its quota of resettlements and the problems raised in this context were also discussed. The Commissioner also had an in-depth exchange with his interlocutors on issues of integration and on European Islam.

The meeting with Ambassador David Saperstein, Ambassador-at-large for International Religious Freedom, was devoted to the presentation of the Council of Europe as well as of the mandate and the work of the Commissioner. The discussion also covered the situation of Jewish communities and problems of antisemitism in Europe. The Commissioner informed Ambassador Saperstein on his work concerning the fight against antisemitism. The situation of Muslim communities and prejudices against them

in Europe were also discussed and the Commissioner raised the issue of the vulnerability of Muslim women who not only face daily discrimination but are also the target of sometimes violent attacks.

***Meeting with the Director of International Jewish Affairs from the American Jewish Committee and Personal Representative of the OSCE Chairperson-in-Office on Combating Anti-Semitism, Andrew Baker***

On 20 October, the Commissioner held a meeting in Washington DC with Andrew Baker. The discussion covered the fight against antisemitism in Europe, notably issues relating to the safety of Jewish communities and the problem of the use of social media to propagate antisemitism. Commissioner Muižnieks and Mr Baker exchanged detailed information on the situation of Jewish communities in several European countries. They also discussed their respective future work and co-operation possibilities in this area.

***Meeting with the UN High Commissioner for Human Rights, Prince Zeid Ra'ad Al Hussein***

On 22 October, Commissioner Muižnieks held a meeting in New York with High Commissioner Zeid. As it was their first meeting, they each presented their priorities in order to determine avenues for possible future joint action or strengthened co-operation.

The discussions mainly focused on the themes of the movements of refugees in Europe; the risks of weakening the protection system of the European Convention on Human Rights mechanism; and the different human rights crisis situations in Europe.

Commissioner Muižnieks and High Commissioner Zeid also held an in-depth exchange on their respective work in the member states. High Commissioner Zeid referred to his recent visit to the United Kingdom, where Commissioner Muižnieks will carry out a visit in January 2016. They discussed their respective analyses on the situation of immigrants, refugees and asylum-seekers in Hungary and in the Czech Republic. The Commissioner and High Commissioner Zeid discussed the consequences of the crisis in Syria, not only on the neighbouring countries but also concerning the movements of refugees in Europe in general and in the EU in particular. Commissioner Muižnieks stressed in this respect the importance of preparing the integration of refugees arriving in Europe right away. The discussion also covered the situation in Ukraine and the Commissioner praised the work of *UN Human Rights Monitoring Mission in Ukraine* and thanked the UN for its co-operation with his Office. Lastly, High Commissioner Zeid and Commissioner Muižnieks had a general exchange of views on the human rights situation in Azerbaijan, Georgia, Russia and Turkey.

***Meeting with UN Special Representative of the Secretary General on Violence against Children, Marta Santos Pais***

On 23 October, the Commissioner held a meeting in New York with SRSG Santos Pais. He presented his work in the field of children's rights, notably on child statelessness; children in migration; and inclusive education. SRSG Santos Pais explained her mandate which is based on the UN standards and covers all forms of violence against children. She stressed that human rights are clearly bridged with development, that violence against children has been integrated into the Agenda for Sustainable Development and she will begin working on the indicators to be identified for

measurement. She also informed the Commissioner of a study she will carry out on children deprived of liberty. Commissioner Muižnieks and SRSG Santos Pais agreed on the usefulness of co-operating in this context, possibly by inviting the relevant departments of the Council of Europe under the “best interests of the child” umbrella together with SRSG Santos Pais and with the Commissioner to discuss how they could contribute to the study. Lastly, Commissioner Muižnieks and SRSG Santos Pais exchanged views on the situation of migrant children in reception centres in Europe and the possibility of working on this subject with national human rights structures and human rights defenders.

### ***Meeting with Ms Věra Jourová, EU Commissioner for Justice, Consumers and Gender Equality***

On 3 November, the Commissioner met with Věra Jourová, EU Commissioner for Justice, Consumers and Gender Equality. The discussions focused in particular on EU action against discrimination, combating hate speech on the Internet and data protection.

### ***Meeting with Ms Astrid Thors, OSCE High Commissioner on National Minorities***

On 18 November, the Commissioner held an exchange of views with Ms Thors on a number of issues of common concern. They shared information on their country work, with particular emphasis on their respective recent visits to Ukraine. They reiterated their commitment to continue to regularly exchange information and co-operate on issues of mutual interest.

### ***Meetings with Frontex***

On 2 December, the Commissioner visited the headquarters of Frontex in Warsaw upon the invitation of Mr Fabrice Leggeri, Executive Director of Frontex. The Commissioner held bilateral meetings with Mr Leggeri and Ms Inmaculada Arnaez Fernandez, the Fundamental Rights Officer (FRO) on a number of issues of common interest. The Commissioner also took part in a plenary meeting which was attended by the FRO, the Deputy Executive Director of Frontex, and the heads of departments for external relations, return operations, operational analysis and legal affairs.

The Commissioner used this opportunity to inform Frontex about his work in the field of the human rights of immigrants and refugees, highlighting that these issues have been addressed in a number of his country visits and that they remain priority issues for him. He mentioned that his planned future work in this area will focus notably on migrant integration in Europe. The representatives of Frontex presented its operational activities in response to the main migration challenges at EU borders and in the Western Balkans, in particular in the context of ‘search and rescue’ and ‘return’ operations, and the functioning of ‘hotspots’. Lastly, Commissioner Muižnieks was informed about the follow-up taken by Frontex aimed at implementing the European Ombudsman’s recommendations relating to the establishment of a human rights complaints mechanism and changes to certain regulations governing ‘joint return operations’.



## **7. Co-operation with national human rights structures**

On 30 November and 1 December the Commissioner participated in the general assembly meeting of the European Network of National Human Rights Institutions (ENNHRI) in Utrecht. He made a keynote address on the refugee and migration situation in Europe and referred to the useful work carried out by NHRIs in this area. He highlighted the need to focus on the integration and family re-unification of refugees and migrants, and pointed out that there was a great variation in current approaches in different European countries. The Commissioner expressed his support for NHRIs in raising awareness of human rights compliant responses for resolving the current situation. During the ENNHRI general assembly, he also held several bilateral meetings with representatives of NHRIs.

## **8. European Court of Human Rights**

### ***Third party interventions before the European Court of Human Rights***

On 12 November 2015, the Commissioner published comments he submitted to the European Court of Human Rights on two cases against Spain (N.D. and N.T., Applications No 8675/15 and No. 8697/15) relating to alleged pushbacks of migrants from the Spanish city of Melilla to Morocco . The submission was made on 10 November in accordance with Article 36, paragraph 3 of the European Convention on Human Rights.

Based inter alia on his visit to Melilla and Madrid from 13 to 16 January 2015, the Commissioner points to the existence of a practice whereby migrants who attempt to enter Melilla in groups by climbing the fence surrounding the city are summarily returned by Spain's border guards to Morocco. The Commissioner underlines that these returns take place outside of any formal procedure and without identification of the persons concerned or assessment of their individual situation, a circumstance which prevents them from effectively exercising their right to seek international protection in Spain. Additionally, he stresses that migrants summarily returned from Melilla have no access to an effective remedy which would enable them to challenge their removal or seek redress for any ill-treatment they may have been subjected to during such operations.

While supporting the efforts recently carried out by the Spanish authorities to improve the asylum system, particularly in Ceuta and Melilla, the Commissioner recalls that he had urged them to engage in the necessary legislative and administrative changes, in full compliance with international and European human rights standards, in order to safeguard the right of all migrants to seek and receive asylum in Spain and to be protected from collective expulsions.

The Commissioner's comments are available on his website.

## 9. Communication and Information work

The media coverage concerned mainly migration, and the situations in Ukraine and in Turkey, with more than 180 news items published by national and international media outlets.

The Commissioner's interviews and declarations on migration were largely covered by a variety of media, focusing mainly on the recommendations to improve reception and increase legal avenues to seek asylum (*PTB, 20Minutos, AFP, Agence Belga, Aktualne, Aljazeera, ANSA, Atlatzo, Avgi, B92, Blesk, Ceske Noviny, CTK Daily News, Cyprus News Agency, Dagens Nyheter, DELFI, Deutsche Welle, Deutschlandfunk, Die Welt, DNA, DPA, Dradio Wissen, EFE, Efsyn, El Diario, El Faro Digital, Eunews, Euronews, Euro Zpravy, Famagusta Gazette, Guardian, Federalna, Focus, Herald Voice, iDNES, Il manifesto, Independent, Index, Kathimerini, La Rioja, La Vanguardia, La Voz Libre, Left, Malta Today, Melilla Hoy, New Post, Newzy.net, NOS, Parlamentni Listy, Prague Post, Pravda, Radio Paha, Reporter, RIA Novosti, RTBF, Sin Embargo, Swissinfo, Sputnik, The Telegraph, The Washington Post, Times of Malta, Today's zaman, Townhall, TRT Deutsch, TVN24, TV Net, Tyden, Vatican Radio, Voice Chronicle, Wiener Zeitung*). An opinion editorial on this issue was published in *Europe's World*.

Many German and international media covered the publication of the report on Germany (*Anadolu Agency, APA, Beyaz Gazete, Bursada Bugün, Cihan Haber, CypLive, Deutsche Welle, Deutschlandfunk, Die Welt, Golem, Haqqin, HuffingtonPost, Human Rights Watch, La Gaceta, Merkur, N-TV, Ria Novosti, Risale Haber, Sputnik, Tagesspiegel, TAZ, The Muslim News, TRT Haber, Turkish Weekly, W Radio, Wirtschafts Woche*).

The report on the visit to Eastern Ukraine was the main topic covered by the press. Articles and interviews were published by *ArezzoWeb, Balcani e Caucaso, BigmirNet, Boursorama, Dialogue, EurAsia Daily, Glavred, Gordon, Hromadske TV, Inopressa, inoSMI, Interfax, Kommersant, L'Avenir, Morningstar, New Europe, News 24, N-TV, Panorama, Polit Navigator, Polit Russia, Politnavigator, Pravda, PressOrg24, Radio Free Europe, Reitingi, Reporter, RIA, RIA fan, RIA Novosti, RTBF, Russian Planet, Saarbrücker Zeitung, Sagodnya, Sassari Notizie, Spiegel Online, Sputnik, Tass, Telegraph, The Wall Street Journal, Vybor, VZ, WDR, ZaDonbass, Zeit Online, and ZN*.

The comments on the situation in Turkey were widely covered, mainly by *Die Welt, Haber Kesif, Haberler, Hurriyet, Midyat Habur, Reuters, The Russophile, US News, and Zaman*. The Commissioner's concerns about media freedom in Turkey and more broadly in Europe were reported by *Asbarez Armenian News, BGN News, Bianet, Blic, Bugün, Cihan, Deutsche Welle, DPA, EU News, Haberler, Huffington Post, Hürriyet, Hurriyet Daily News, NTV, Radikal, Radio Free Europe, Reuters, The Wall Street Journal, theNational, Today's Zaman, and Voice of America*.

An op-ed on surveillance was published in the *International New York Times*, triggering additional media coverage and interviews (*Ara, ATS, AWP, SDA, Basler Zeitung, Berner Zeitung, Bluewin, Center for Democracy and Technology, Democracy Now, Huffington Post Live, InoPressa, Le Temps, Neue Zürcher Zeitung, SRF, The Huffington Post*). An interview on surveillance was also published by the *Süddeutsche Zeitung*.

The report on the Slovak Republic was covered by articles and interviews with *Buongiorno Slovacchia*, *Dennik*, *EU Observer*, *Euronews*, *Europa Press*, *MENA FN*, *Pluska*, *Pravda SK*, *Reuters*, *SME*, *Spravy Pravda*, *Teraz*, *The Slovak Spectator*, and *Washington Blade*.

The report on San Marino was covered by *ANSA*, *Il Resto del Carlino - Il Giorno - La Nazione*, *La Tribuna*, *Libertas*, *Romagna Noi*, *RTV*, *San Marino Notizie*, and *SMTV*.

An op-ed on Azerbaijan was published by *Politico* and mentioned by *APA*, *Azertac*, *HayastanNews*, *Politico*, *Reuters*, *Trend*, and *Trend News Agency*.

The tweet expressing concerns about the decision of the Parliament of Poland to amend the Constitution and the composition of the Constitutional Court was covered by *Associated Press*, *Frankfurter Rundschau*, *ORF*, *Radio Poland*, *wPolityce*, and *Wprost*.

The visit to Cyprus was covered by *Associated press*, *Cyprus Mail*, *Cyprus News*, *Cyprus News Agency*, *Famagusta Gazette*, *Politis news*, and *Sputnik*, while *AFP*, and *Turan Information Agency* wrote about the Commissioner's comment on the release on parole of Leyla Yunus.

Additional coverage concerned LGBTI (*3Sat*, *Gazeta Wyborcza*, *TRT Français*, *Delfi*, *Diena*, *Kauno diena*, *Lietuvos diena*, *Parliamentary newspaper*, *The Baltic Course*), PACE work (*LB*, *BS News*, *Sobytiya Info*, *Ukrinform*), Roma (*Dennik N*, *Romea*, *SME*, *Teraz*), persons with disabilities (*SuperAbile*), the report on France (*Slate*), women's rights (*Pravda*), the visit to Georgia (*Apsny*, *Civil*, *Georgia Today*, *Newsday*), the visit to Hungary (*Associated*, *Chron*, *Daily Mail*, *Fox News*, *National Post*, *TOL*, *Periscope*), and Azerbaijan (*1News*, *Day*, *SRF Play*).

149 tweets were published, with an increase of 1003 followers (+17% in comparison to the monthly average increase in 2015).

Over 28,000 unique Internet users visited the Commissioner's website, an increase of around 15% compared to the previous quarters of 2015. A steep increase was also noticed in the number of page views (190,000 - an increase of about 70,000 compared to the previous quarter).

## 10. Next three months

### January

17-23/01 Visit to United Kingdom

25-29/01 PACE session

### February

08-12/02 Visit to Poland

23/02 Exchange of views with FCNM

25-26/02 Inter-Mechanisms Meeting on human rights defenders (Strasbourg)

### March

29/02-10/03 Visit to Turkey

21/03-25/03 Visit to Ukraine

## 11. Observations and reflections

The migration crisis continues to unfold in a manner that poses grave risks for human rights. Migrant deaths and chaotic arrivals continued unabated over the period in review, as did various efforts to limit the influx. The continued building of fences and the progressive re-imposition of border controls between European countries threaten the right to access international protection, not to speak of freedom of movement. Many in the European Union appear to be willing to provide strong financial and other incentives for Turkey to stop the flow at any cost, even if that means countenancing widespread detention of migrants or “pull backs” of vessels embarking at sea.

Several countries appear to be engaging in a “race to the bottom” in a vain attempt to reduce alleged “pull factors”. Many states are considering or enacting misguided, mean-spirited policies, such as reducing asylum seeker benefits, seizing asylum seeker assets, making asylum seekers pay for staying at reception centres or for time in detention, making family reunification nearly impossible, and granting only temporary, unstable forms of status. Many of these measures not only run counter to international human rights standards, they are also harmful to social cohesion and likely to be ineffective in affecting migratory movements.

The primary driver of the recent influx is not “pull factors,” but the “push factor” of war and violence in countries such as Syria, Afghanistan and Iraq. A misguided focus on alleged “pull factors” will have a counterproductive impact on the stated goal of most

governments, which is to promote the successful integration of refugees and other beneficiaries of international protection. Stigmatising asylum seekers as “welfare scroungers”, pushing them towards destitution, limiting their right to family reunification and depriving them of a long-term stake in their host societies hinders the prospects for integration. It also feeds public prejudice and the electoral fortunes of far right parties. Into this broader toxic cocktail, New Year’s Eve introduced a new ingredient - news of sexual assaults committed by persons of migrant background.

Of course, among the more than million new arrivals to Europe over the last year there will be cases when some asylum-seekers come into conflict with the law. If asylum-seekers have committed a crime, they should be treated like other criminals. The actions of a small minority should not serve as a pretext to tar all migrants as criminals or sex offenders. As research published by the EU Fundamental Rights Agency in 2014 already demonstrated, there is a need to combat sexual harassment and sexual violence more forcefully throughout Europe. If Governments are serious about this, they should intensify their efforts in this area and target all its manifestations. Governments should resist the populist delusion to reduce the problem to migrants alone, to use the New Year’s Eve events as an excuse to discriminate against migrants, to withdraw from participating in relocation programmes, to close their borders or even to send asylum-seekers back to countries where they could face torture.

There are no quick fixes, there is no magic wand that will reduce migratory pressure in the short-run – at least not in a human rights compliant manner. The medium to long-term solutions should involve the following: 1) finding a political solution to the conflicts in countries such as Syria, Afghanistan and Iraq; 2) ramping up resettlement of asylum-seekers from in and around conflict areas; 3) significantly expanding other legal venues for people to arrive in a safe and orderly way, such as family reunification and humanitarian visas; and 4) increasing support for UNHCR’s efforts to provide for the basic needs of asylum-seekers and refugees in and near conflict areas. These all require political leadership and considerable resources. But the continued chaotic arrivals, beggar-thy-neighbour responses, and willingness to backslide on human rights have huge political and economic costs as well. I fear we are already beginning to pay that bill, and its size is rapidly growing.