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1. Overview

Despite the slowdown in the pace of work during the summer break, my Office sought to keep human rights on the European agenda during the period in review. The biggest areas of focus were children's rights, the situation of human rights defenders, media freedom and migration. As I will explore in greater detail in the conclusion to this report, the summer of 2017 was in some ways different from previous "crisis" summers in the area of migration. While this year saw a significant decline in arrivals in Europe, many problems persist and I fear that an emergency mentality has become the new norm in some countries.

Migration was one of the subjects of a report on Slovenia and the focus of a visit to Luxembourg. In both countries, I stressed the need to reduce delays in processing asylum applications and to pay special attention to the needs and vulnerability of children on the move. Moreover, I underscored the importance of thinking long-term about the fate of new arrivals by promoting their integration into society. In Slovenia, I emphasised the desirability of starting integration measures as early as possible for individuals from countries with high recognition rates, the importance of promoting family reunification, and the need to address hostility among parts of the majority population. In Luxembourg, the integration challenge revolves around finding adequate housing solutions in a tight housing market and facilitating labour market access in a trilingual milieu. I also addressed the rights of migrant children in a keynote speech at an event organised by the Czech chairmanship of the Committee of Ministers of the Council of Europe on ending migrant child detention.

I tried to draw attention to the frequent disregard for children's rights to equal treatment and to education in a position paper on inclusive education. The paper synthesises much of my country work on the frequent lack of access to mainstream education by Roma children, children with disabilities, migrant and other disadvantaged children. I addressed inclusive education deficits during missions to the Czech Republic and Latvia, as well as in the report on Slovenia. In Latvia, I also stressed the need to ensure the right to a nationality for children and to guarantee that their best interests are a primary consideration in this realm. In a statement on Croatia, I raised concerns about proposals that could weaken child's rights protection in the country by undermining the independence and effectiveness of the children's ombudsman.

While I met with human rights defenders from many countries during the period in review, I publicly sought to address the situation of defenders in Russia and Turkey. Regarding Russia, my action followed up on much previous work on problematic legislation – the so-called "Foreign Agents Law" - and its implementation. I intervened as a third party before the European Court of Human Rights in a group of cases regarding Russia challenging the compatibility of this legislation with the European Convention. Regarding Turkey, I made two statements on judicial actions targeting the legitimate work of human rights defenders by arresting them and holding them in remand custody on charges that defy credibility.

Media freedom remained a regular focus of my work. I participated in a training seminar for journalists from Armenia, Azerbaijan, Belarus, Georgia, the Republic of Moldova and Ukraine during my mission to Latvia. I also made a statement expressing concern about the situation of a journalist in Russia faced with deportation to a country where his rights

would be at serious risk. Finally, I published a Human Rights Comment on the increasingly common phenomenon of arbitrary internet blocking.

In addition to the foregoing, I also addressed several other human rights topics. First among them was counter-terrorism and human rights. For example, in a letter to the French Senate, I stressed the need to bring an anti-terrorism bill fully into line with Council of Europe human rights standards. At a conference organised by the Council of Europe and the Independent Police Complaint Authorities Network (IPCAN), I underlined the important role of such authorities in upholding human rights while their governments countered terrorism and stressed the risks to social cohesion of ethnic and religious profiling, especially against Muslims. I addressed profiling and other forms of racism targeting persons of African descent in a Human Rights Comment. In another Human Rights Comment, I summarised my country work on the rights of persons with intellectual and psycho-social disabilities. Finally, I focused on freedom of assembly in a memorandum addressed to the authorities of the Russian Federation.

2. Missions and Visits

Mission to Latvia

The Commissioner carried out a mission to Latvia from 29 June to 1 July. In the course of the mission, he met with the President, Raimonds Vējonis; the Minister of Welfare, Jānis Reirs; and the Minister of Foreign Affairs, Edgars Rinkēvičs. The meetings focused on follow-up actions undertaken by the authorities in some of the areas covered in the Commissioner's December 2016 report on Latvia, including the situation of non-citizen children, efforts regarding the de-institutionalisation of children, combating domestic violence, and progress on ratifying the Istanbul Convention. During the mission, the Commissioner also participated in a seminar on Media Freedom organised for journalists from the Eastern Partnership by the Center for Media Studies of the Stockholm School of Economics in Riga. Finally, the Commissioner took part in the 2017 Lampa Conversation Festival in Cēsis, which gathered activists, policy-makers and some 10 000 citizens for debates on democracy, human rights and current affairs.

Visit to Luxembourg

The Commissioner visited Luxembourg from 18 to 22 September, focusing on human rights issues pertaining to migration, asylum and integration. During his visit, he held meetings with Grand Duke Henri of Luxembourg; the Minister for Foreign and European Affairs, Immigration and Asylum, Jean Asselborn; the Minister of Justice, Félix Braz; the Minister for Family and Integration, Corinne Cahen; the Minister of Labour, Nicholas Schmit; the President of the Chamber of Deputies, Mars Di Bartolomeo; the Chairperson of Luxembourg's delegation to the Parliamentary Assembly of the Council of Europe, Anne Brasseur; members of the Chamber of Deputies; officials from the Ministry for Education, Children and Youth; the Directorate of Migration and the Luxembourg Reception and Integration Agency; the Director-General of the Grand Ducal Police Service, Philippe Schrantz; the President of the Superior Court of Justice and the Constitutional Court, Jean-Claude Wiwinius; the State Prosecutor, Martine Solovieff; and the President of the Administrative Court, Francis Delaporte. He also met with the Ombudsman, Claudia Monti, as well as representatives of the Consultative Commission for Human Rights and the

Centre for Equal Treatment, and held a number of meetings with civil society organisations. In addition, the Commissioner visited the detention centre at Findel and the semi-open emergency accommodation structure (“SHUK”) in Kirchberg, which are operated by the Luxembourg Reception and Integration Agency and used, respectively, for the placement of unsuccessful asylum-seekers and for persons about to be sent back to their home countries or to the European Union country where they first applied for asylum (“Dublin” transfers). He also visited the “Lily Unden” home, a reception centre for asylum-seekers operated by the Luxembourg Red Cross.

The Commissioner recognised Luxembourg’s efforts in receiving asylum-seekers and in relocating and resettling refugees, including from outside of Europe, and welcomed the overall absence of political instrumentalisation of the issue of migration. However, he noted some delays in the examination of asylum claims, and called on the authorities to accelerate the examination of claims while systematically providing applicants with information on the progress made. He also stressed the need for additional efforts in the identification of vulnerable persons, and recommended that the presumption of minority be applied in all cases of doubt and that trained ad hoc administrators and legal guardians be appointed for all unaccompanied minors. The Commissioner also encouraged the authorities to make more use of alternatives to detention in order to avoid the repeated deprivation of liberty of unsuccessful asylum-seekers.

The Commissioner noted the steps taken by the government in providing asylum-seekers with access to suitable accommodation and employment. He invited them to make further efforts to identify housing in locations likely to enable integration while avoiding geographical isolation and to find solutions allowing asylum-seekers to integrate into the labour force as soon as possible. The Commissioner commended Luxembourg’s policy of including all foreign children in the education system without regard to their immigration status, but encouraged their soonest possible integration in regular education and meaningful interaction with locals. On the ratification of international human rights instruments, the Commissioner welcomed the news of the forthcoming ratification of the Council of Europe Istanbul Convention and recommended that Luxembourg ratify the Revised European Social Charter as well as the International Labour Organisation’s 2011 Domestic Workers Convention.

Mission to the Czech Republic

On 25 and 26 September, the Czech chairmanship of the Committee of Ministers organised the conference “Immigration detention of children: coming to a close?” in Prague in which the Commissioner participated, delivering the keynote speech. In the speech he urged all those involved to move forward with the abolition of the immigration detention of children. He noted two countervailing trends: on the one hand, an international law framework which increasingly prohibits the detention of children on account of their immigration status, but at the same time, the seeming expansion of child detention in practice. The Commissioner pointed to the need to expand alternatives to detention and that simply building ‘child-friendly’ detention centres was not the answer. He called on member states to urgently address cases of ill-treatment, and to set out roadmaps to the full abolition of the immigration detention of children. He also noted the need for more active collaboration with other actors, including civil society, and to improve the collection of data on detention and alternatives to detention. Finally, he reminded participants that successfully combating immigration detention can only take place if broader migration

policies provide for sufficient safe and legal routes to Europe, to prevent migrant children from becoming irregular in the first place, and thus at risk of detention.

In the course of this mission, the Commissioner held meetings with Jindřic Fryč, State Secretary at the Ministry of Education, Youth and Sports; Martina Štěpánková, Deputy Minister for Human Rights; the Public Defender of Rights, Anna Šabatová; and civil society organisations. These meetings focused on issues concerning inclusive education and the human rights of Roma. The Commissioner welcomed the reform of the Education Act and was provided with information on the progress of its implementation. He also noted with satisfaction the involvement of the Ombudsman's Office in facilitating the transition to an inclusive education system and stressed the importance of collaboration between all parties involved in order to obtain concrete positive results. There was also an exchange about the social exclusion of a significant part of the Roma community that lives in inadequate housing conditions. The Commissioner stressed the need to curb the territorial segregation of the Roma community and encouraged the Czech authorities to promptly adopt a law on social housing.

3. Reports and continuous dialogue

Report on Slovenia

On 11 July, the Commissioner published a report following his visit to Slovenia from 20 to 23 March. The report focused on the human rights of migrants, asylum seekers and refugees; the human rights of Roma; the situation of the “erased” persons; and the impact of poverty on the enjoyment of human rights.

The Commissioner observed that the number of asylum seekers and refugees currently present in Slovenia is manageable and welcomed Slovenia's willingness to participate in the EU relocation scheme and in the resettlement of asylum seekers from countries neighbouring Syria. Noting that Slovenia is becoming a destination country, the Commissioner recommended that the authorities make some systemic adjustments to be able to handle increasing numbers of asylum applications, including by shortening the length of asylum procedures. The Commissioner further recommended improving the handling of unaccompanied migrant minors seeking asylum, notably by prohibiting the detention of irregular migrant children and strengthening the legal guardianship system. He also urged the authorities to take steps to enhance the successful integration of refugees into Slovenian society, including: considering pre-integration measures for asylum seekers from countries with high acceptance rates; refraining from restrictions to the family reunification framework; and increased efforts by the authorities to combat hostility and prejudices against asylum seekers and refugees. Finally, the Commissioner recommended that the authorities refrain from activating amendments adopted in January 2017 to the Aliens Act, which fail to provide appropriate guarantees against refoulement or safeguards for the rights of everyone to seek and enjoy asylum.

While welcoming Slovenia's solid legislative and policy framework in relation to the human rights of Roma, the Commissioner regretted that some long-standing problems have not been resolved in some parts of the country, notably in the area of housing. He recommended that the central authorities urgently work with local authorities to solve the status of illegal settlements, where some Roma families live in sub-standard conditions,

and ensure access to clean water. The Commissioner expressed his concern about a growing phenomenon of child marriages and pregnancies in the Roma community and encouraged the authorities to counter it, including through prevention campaigns in the communities and setting the minimum age for marriage at 18. Finally, the Commissioner encouraged the Slovenian authorities to continue their efforts to ensure that Roma children have access to quality education, e.g. by training and hiring more Roma assistants to work with children of all ages and their families, and by upholding the authorities' commitment to include Roma pupils in mainstream education.

The Commissioner also examined the situation of the "erased" persons, i.e., over 25000 people who were removed from the official residence registry in the period following the country's independence in 1991, with dramatic consequences for the enjoyment of their political, civil, economic and social rights. While welcoming the steps taken by Slovenia to implement the judgments of the European Court of Human Rights on the matter, the Commissioner took note of the remaining concerns expressed by representatives of the "erased" regarding the 2010 Act on the regularisation of the status of "erased" persons and as regards compensation. The Commissioner recommended that the Slovenian authorities enable the regularisation of the remaining "erased" persons who wish to reintegrate into Slovenian society, in particular the small number who still live in Slovenia without legal status. He further called on the authorities to introduce information about the "erasure" in school curricula and to conduct awareness-raising among the public, as a way to tell the truth about past violations.

While Slovenia's poverty rate is within the EU average and the country has a strong tradition as a welfare state, the Commissioner noted with concern that the number of poor people has been increasing since 2008. Those most affected are children in vulnerable families, older persons – particularly older women, the long-term unemployed, and the working poor. The Commissioner stressed that poverty is both the consequence and the source of violations of human rights protected under international and national law, such as the rights to work, food, health, housing and an adequate standard of living. The Commissioner recommended that Slovenia consider adopting a human rights based approach to its policies against poverty, increase consultations with persons affected, and introduce quality assessment of the outcomes of such policies. The Commissioner further recommended that the authorities lift any remaining austerity measures as soon as economic growth targets are reached, refrain from pension reforms that would result in increased poverty among older persons, and create opportunities for sustainable and decent work.

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

Letter to the French Senate on anti-terrorism bill

On 17 July, the Commissioner published a letter in which he called on French senators to improve the bill strengthening internal security and anti-terrorism measures in order to bring it fully into line with Council of Europe standards, particularly the case-law of the European Court of Human Rights. The Commissioner stressed the need to ensure that the bill does not result in the indefinite extension of the state of emergency. He also drew the senators' attention to certain provisions which he considered to be problematic, particularly those giving prefects powers to set up protective perimeters within which searches and frisking can be organised, which have previously always been subject to a judicial order.

He was also concerned about the lack of detailed criteria and adequate legal safeguards governing these powers and the possibility of closing down places of worship in which statements are made which constitute incitement to commit acts of terrorism or violence. In addition he was worried about the possibility of placing persons suspected of posing a particularly serious threat to public safety and order under house arrest or electronic surveillance without any detailed criteria in this respect having been prescribed by the law. In his letter the Commissioner underlined that although terrorism poses a serious threat to human rights and democracy, any restriction on individual freedoms must be strictly necessary to protect the public, and be proportionate to the legitimate aim pursued.

The letter is available on the Commissioner's website.

Follow-up Memorandum on freedom of assembly in the Russian Federation

On 29 September, the Commissioner published a follow-up Memorandum on freedom of assembly in the Russian Federation. The document contains the Commissioner's assessment of the country's legal framework pertaining to the right to freedom of assembly, as well as certain aspects of its implementation in practice.

In his Memorandum, the Commissioner highlighted that following legislative amendments introduced in 2012 and 2014, the autonomy of organisers in deciding on the place and the manner of holding public events had been considerably restricted, thereby transforming the notification procedure into a *de facto* obligation to seek authorisation. The Commissioner further noted that the amendments had introduced new offences and sanctions, including criminal liability for repeated violation of rules governing public events, which failed to meet the criteria of necessity and proportionality.

The Commissioner also referred to a growing intolerance towards "unauthorised" public events, resulting in their dispersal and the arrests of many protesters, even those who behave peacefully, as well as their subsequent punishment. With regard to the judicial proceedings and sanctions, the Commissioner referred to the recent case-law of the European Court of Human Rights concerning the Russian Federation, which sheds light on some of the key issues that require attention: problems as regards the fairness and impartiality of administrative proceedings; the absence of free legal aid for people facing deprivation of liberty as a sanction; unreserved endorsement by courts of evidence provided by the police; and disproportionate sanctions.

The Commissioner recommended that the legal framework on public assemblies in the Russian Federation be thoroughly revised in close consultation with the national human rights structures, in order to bring it in line with international and European human rights standards.

The memorandum is available on the Commissioner's website.

4. Themes

Freedom of expression and media freedom

On 2 August, the Commissioner issued a statement on the decision to deport a human rights activist and journalist of the newspaper *Novaya Gazeta* – Khudoberdy Nurmatov, known by the pen name of Ali Feruz - for his journalistic investigations on the difficult conditions for Central Asian migrants in Russia. Mr Nurmatov had been apprehended, tried and placed in a detention facility awaiting deportation to Uzbekistan for violation of migration regulations. The Commissioner stressed the risks that Mr Nurmatov could face if deported to Uzbekistan, a country where he had allegedly been subjected to ill-treatment in the past. He called upon the Russian authorities to provide Mr Nurmatov with all the necessary procedural safeguards in the context of his administrative proceedings and urged his prompt release from detention. The Commissioner also recalled that states have a duty to ensure a safe and enabling environment for the work of human rights defenders and journalists, which includes protecting them from reprisals. Lastly, he underlined that international law prohibits sending a person to a country where he or she may be subjected to ill-treatment.

On 26 September, the Commissioner published a Human Rights Comment on arbitrary Internet blocking and its impact on freedom of expression. Referring to a number of countries where blocking measures give rise to serious concerns, the Commissioner underlined that online censorship is an increasing phenomenon. However, the systems in place for blocking suffer from a number of deficiencies, compounded by the fact that once states have introduced blocking against the most serious issues and legitimate targets such as child pornography and hate speech, they tend to extend it to all sorts of other material that they disapprove of. The Commissioner also noted an upsurge of legislation on blocking in the context of counter-terrorism, as well as an increasing tendency to leave blocking and the removal of content to the private sector or to resort to Internet throttling (slowing down) and shutdowns. He concluded by calling on member states to stop relying on or encouraging private companies to regulate the online communication space without ensuring themselves that human rights are protected and that due process guarantees are upheld in line with the European Convention on Human Rights.

Human Rights of LGBTI people

On 31 August, the Commissioner published a human rights comment in which he urged all Council of Europe member states to strengthen efforts to combat homophobia and transphobia. The Commissioner observed that there had been a backlash following recent gains in the recognition of the human rights and equality of lesbian, gay, bisexual, transgender and intersex (LGBTI) persons, with some particularly disturbing reports from some parts of the continent. The Commissioner further warned that no society is immune to rising intolerance against sexual minorities, notably when prompted by unscrupulous populist politicians. Stressing that LGBTI persons are entitled to the same human rights as anyone else, the Commissioner outlined a comprehensive approach for tackling homophobia and transphobia, including the adoption of anti-discrimination and hate crime laws and their effective enforcement; training of judicial and police officials; and education campaigns aimed at promoting understanding of LGBTI persons and more tolerant societies.

Children's rights

On 11 July, the Commissioner published a statement in relation to the debate that was taking place in the Croatian parliament concerning a draft Law on the Ombudsman for Children. Noting that there was a legal gap which needed to be filled since the Constitutional Court's decision abolished the previous law, the Commissioner was concerned that the draft law risked undermining the institution's independence. He was particularly concerned by a provision under which the Ombudsman can be dismissed if the parliament rejects the Ombudsman's annual report. Moreover, it was unclear why the draft law provided for the election of a new Ombudsman when the mandate of the current Ombudsman, Ivana Milas Klarić, expires in 2022. Recalling the 2014 recommendations addressed by the UN Committee on the Rights of the Child to the Croatian authorities concerning the strengthening of independence of the Ombudsman for Children to ensure its full compliance with the Paris Principles, the Commissioner urged the Croatian government to reconsider the draft law taking into consideration the draft amendments put forward by the Croatian Ombudsman and the Ombudsman for Children.

On 12 September, the Commissioner published a Position Paper on combating school segregation through inclusive education, based on his work on this issue in a large number of country visits and ensuing reports. The Commissioner recalls that school segregation is a serious form of discrimination, which states have the positive obligation, firmly entrenched in international human rights law, to tackle.

While it tackles school segregation as a whole, the Position Paper makes a specific focus on the three groups of children most affected by this phenomenon in Europe: Roma children; children with disabilities; and children with a migrant background. It first provides an overview of the situation in Council of Europe member states, including the main factors causing segregation. The Position Paper then reviews the negative consequences that school segregation of entire groups of children entail, both for the children themselves and for the performance of educational systems and social cohesion as a whole.

Finally, the Position Paper lists a series of major principles that should underpin any policy to eradicate segregation and promote inclusive education and concludes by providing twelve recommendations. These recommendations range from improving anti-discrimination legislation and designing comprehensive desegregation strategies, to ensuring the quality of education in all schools, regulating and monitoring school admissions and defining socially balanced school districts.

The Position Paper is available on the Commissioner's website.

Human rights of persons with disabilities

On 24 August, the Commissioner published a Human Rights Comment entitled "Respecting the human rights of persons with psychosocial and intellectual disabilities: an obligation not yet fully understood". The Commissioner highlights that Council of Europe member states have not fully internalised the paradigm shift they endorsed by ratifying the UN Convention on the Rights of Persons with Disabilities (CRPD), particularly with respect to the right to live in the community; the right to legal capacity; and the right to an inclusive education for persons with psychosocial and intellectual disabilities. Thus, large, segregated facilities continue to exist throughout Europe and deinstitutionalisation efforts are often halted by austerity measures. Similarly, many European legal systems continue

to provide for substituted decision making, including full guardianship regimes, and procedures interfering with a person's legal capacity are often not accompanied by appropriate procedural safeguards. The Commissioner also notes with regret that instead of focusing on progressively eliminating coercive practices in psychiatry, member states have rather been intent on designing judicial safeguards and controls, which often do not work in practice. The Commissioner finally highlights that in Europe a high number of children with disabilities are still segregated in specialised schools, which in turn reinforces and validates their marginalisation in the later stages of their lives. The Commissioner calls on member states to start rethinking the systems that are fundamentally non-compliant with the CRPD, instead of trying to adjust them, and to ensure the active involvement of persons with disabilities in the development of policies that profoundly affect their lives.

Racism and xenophobia

On 25 July, the Commissioner published a Human Rights Comment entitled "Afrophobia: Europe should confront this legacy of colonialism and the slave trade". The Commissioner highlighted that in a number of European countries manifestations of both old and emerging forms of racism and discrimination against Black persons are still frequent. In particular, incitement to hatred against Black persons proliferates in politics and sports. Portrayal of African migrants as a menace for Europe cannot but reinforce the negative stereotypes associated with Black minorities. Such attitudes might deprive people who are in need of the protection they should be granted in Europe. Racial profiling in policing of Black persons and other visible minorities is another issue of particular concern. The Commissioner recommended that states adopt a proactive approach in their efforts to fight Afrophobia. Specifically, he called on states to: promote Black people's positive contributions to Europe; act resolutely against all forms of incitement to hatred against Black people; collect disaggregated national data on ethnic and racial groups based upon voluntary self-identification; prohibit all forms of school segregation; prohibit all forms of racial profiling in policing and establish an effective and transparent mechanism for complaints; strengthen the legislation prohibiting discrimination in access to health care, housing and employment and use "discrimination testing" as a tool to demonstrate and eliminate discriminatory conduct; create opportunities to increase the participation of Black people and other ethnic minorities in national and local political life, administration and decision-making processes.

Transitional justice

On 11 July, the Commissioner published a statement on the occasion of the commemoration of the Srebrenica genocide, in which he underlined that while paying tribute to the victims, we should remember the suffering of the relatives of the victims and the survivors of that genocide, who deserve our respect and support. He expressed his concern that these victims' dignity has been vilified by public discourse and demonstrations, in particular in Republika Srpska, "where some demean or blatantly deny the Srebrenica genocide or, worse, glorify the perpetrators of war crimes and crimes against humanity". The Commissioner noted that instead of cynically toying with human suffering, political leaders and opinion makers should embrace the victims' need for justice, support, and above all, recognition.

On 2 August, on the occasion of the commemoration of the "Pharrajimos", the Roma genocide, the Commissioner issued a statement calling on member states to make more vigorous efforts towards acknowledging the genocide and other past atrocities committed

against the Roma. While steps have been taken in some countries, trivialisation and sometimes denial of these events are still common in Europe. Member states should therefore establish the truth about past mass human rights violations against the Roma, acknowledge their responsibility, compensate victims and descendants and adequately honour the memory of the victims. In this context, the Commissioner underlined the value of truth and reconciliation commissions and of memorials. He added that these steps were needed to strengthen mutual trust and respect between Roma and non-Roma, an essential component for the success of policies aimed at improving the situation of Roma.

Administration of justice and human rights

On 17 July, the Commissioner published an opinion editorial “Poland has a duty to preserve judicial independence” in *Open Democracy*, which was reprinted in Polish on the following day by *Gazeta Wyborcza*. In his article, the Commissioner criticised a series of government measures undermining the legitimacy and independence of the Polish judiciary, including the adoption by the Parliament of a bill giving it the decisive role in the appointment of judges; the creeping politicisation of the Constitutional Tribunal whose valid rulings remained unpublished, lawfully-elected judges were not sworn in, and whose rules of procedure were repeatedly and hastily amended; the merging of the functions of Minister of Justice and Prosecutor General; and the envisaged sweeping reform of the Supreme Court. The Commissioner reiterated that in a democracy, governments and parliaments do not hold a monopoly on legitimacy, and stressed the role of an independent judiciary as the ultimate guarantor of citizens’ constitutional rights. While reaffirming governments’ right to reform the justice system, he cautioned against the risk of delegitimisation of the judiciary and the overall erosion of public trust in state institutions. He also recalled the main principles of the Recommendation CM/Rec (2010)12 of the Committee of Ministers to member states on judges: independence, efficiency and responsibilities, in particular the need to avoid any actions and public discourse which may discredit the judiciary or undermine its independence, and the need to ensure the independence of councils for the judiciary.

On 11 September, the Commissioner published a statement on his social media accounts (Facebook and Twitter) expressing concerns about the conviction of Akhtem Chiygoz, vice-chair of the Crimean Tatar Mejlis, on the basis of a law which was not applicable when the facts in question occurred. The Commissioner expressed serious doubts as to the compatibility of the criminal sentence with the European Convention on Human Rights, which clearly establishes that 'no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed.' In his statement, the Commissioner also noted that the criminal conviction of Mr Chiygoz further impacted the already difficult situation of Tatars in Crimea.

Counter-terrorism and human rights protection

On 15 September, the Commissioner participated and made the concluding observations in the Third Conference of the Independent Police Complaint Authorities’ Network which was entitled “Respecting fundamental rights and freedoms in the context of strengthening the fight against terrorism”, and was held in Strasbourg. The Commissioner expressed his concern that one of the major reactions by states to terrorist attacks has been to adopt laws on surveillance that raise serious issues of compatibility with human rights standards. Of particular concern are practices of surveillance that are not based on prior judicial

authorisation, are imprecise about people and actions subjected to surveillance and are not accompanied by remedies for the subjects of surveillance or by sufficient democratic oversight. The Commissioner was also worried by the tendency in certain states to normalise emergency measures by embedding them in ordinary legislation. He underlined that although policing is a demanding service, especially in the current context, all instances of misconduct by police forces are corrosive of the public trust, especially among members of minority and migrant communities. Independent police complaint mechanisms, like the members of IPCAN, can play a vital role in upholding the rule of law and human rights standards. They can function well if they are well-designed and police forces co-operate with them. The Commissioner underlined that in this age of terrorism such safeguards are necessary to prevent a deterioration in the quality of democracies while fighting terrorism.

5. Human Rights Defenders

During the period under review, the Commissioner expressed concern about judicial actions targeting human rights defenders in Turkey on two occasions. On 6 July, the Commissioner stated that he was extremely concerned at the arrest of eight well-known Turkish human rights defenders -- including two who had made valuable contributions to his office -- along with two trainers from Germany and Sweden at a digital security and information management workshop in Istanbul on accusations of terrorism-related offenses. Regarding the incident as an illustration of the increasingly frequent phenomenon of judicial actions targeting human rights defenders for conduct that should be protected under the European Convention on Human Rights, the Commissioner urged the Turkish authorities to immediately release the said persons and to end all arbitrary interference with the work of civil society. However, on 18 July, the Commissioner further expressed dismay at the decision to remand four of the aforementioned human rights defenders and the two trainers in custody on unsubstantiated charges of aiding a terrorist organisation. The Commissioner once again called on the Turkish authorities to immediately release those persons and to refrain from further prosecution of all those who had been charged in that case.

6. European Court of Human Rights

Third party intervention before the European Court of Human Rights

On 5 July, the Commissioner submitted his written observations to the European Court of Human Rights in the proceedings relating to “Ecodefence and others v. Russia” (application No. 9988/13) and 48 other applications concerning the legislation and practice on non-commercial organisations in the Russian Federation, and more specifically the “Law on Foreign Agents”. In his intervention, the Commissioner assessed the legal framework in relation to the functioning of NGOs in Russia, observing that the provisions of the Law on Foreign Agents introduced unjustified discriminatory treatment for a particular set of organisations, and that subsequent amendments to the legislation had rendered the environment for NGOs receiving foreign funding even more restrictive. Apart from the pejorative label “foreign agent”, the main concerns related to the broad and vague character of the term “political activity” which included the most commonly-practiced, basic and natural methods of work of NGOs. The Commissioner underlined that the application

of the Law on Foreign Agents against civil society groups advocating for changes in law and practice or scrutinising the human rights compliance of actions by public authorities greatly undermined their role as a public watchdog in a democratic society.

The Commissioner's third party intervention also contains his assessment of the impact upon NGOs of the application of the Law on Foreign Agents, which entailed considerable interference with their ability to freely exercise the rights to freedom of association and freedom of expression. In particular, many NGOs and human rights defenders had experienced severe consequences, including disproportionate sanctions and, in one case, even criminal prosecution for "malicious" non-compliance. The Commissioner noted that the imposition of significant fines had left a number of NGOs with no choice but to initiate liquidation proceedings; moreover, the imposition of the pejorative label "foreign agent" had considerably affected the reputation of civil society groups. The Commissioner further noted that the implementation of the Law on Foreign Agents had affected the ability of NGOs to secure funds, and to co-operate with state institutions and other partners. Many civil society groups had been subjected to ostracism, harassment, and even physical attacks as a result of the application of the Law on Foreign Agents.

In order to address the problems identified, the Commissioner recommended that the authorities in the Russian Federation, both federal and regional, adopt a series of measures at institutional, legal and political levels, to ensure the protection of human rights defenders at risk and promote an enabling environment for their work. This should entail, first and foremost, a thorough revision of the legislation regulating the activities of NGOs. The Commissioner underscored that NGOs should be free to solicit and receive funding, not only from public bodies in their own state, but also from institutional and individual donors, another state or multilateral agencies, subject only to the laws on customs, foreign exchange and money-laundering, as well as those on elections and the funding of political parties.

The Commissioner's written observations are available on his website.

7. Communication and Information work

The main media coverage concerned freedom of expression, freedom of assembly and human rights defenders in Russia, human rights defenders in Turkey, the independence of the judicial system in Poland, and inclusive education. More than 195 news items were published by national and international media outlets.

The Memorandum on the law on freedom of assembly in Russia was covered by *Adevarul*, *ANSA*, *ASI*, *Daily Sabah*, *Deutschlandfunk*, *EFE*, *El Diario*, *Interfax*, *ITAR/TASS*, *Kommersant*, *Pravo*, *Rapsinews*, *RIA*, *TV Rain*, *Torontovka* and *Voice of America*.

The Commissioner's statement on human rights defenders in Russia was covered by *ABC News*, *ASI*, *Deutsche Welle*, *ITAR/TASS*, *SM News*, *Sputnik*, and *RIA*.

The Third Party Intervention on the Foreign Agents Law in Russia was covered by *Kommersant*, *Rambler*, *MTI*, *Hirado*, *Askanews*, *RAPSI*, and *Agence Europe*.

The Commissioner's statements on the arrest and detention of human rights defenders in Turkey was covered by *ABC News, AFP, Agencia Lusa, Agenzia Nova, ANSA, The Associated Press, Armenews, Blasting News, BBC, Corriere della Sera, The Economist, Die Welt, DW, El Pais, EPD, Le Figaro, Frankfurter Rundschau, Global Voices, Hürriyet Daily News, Index, Interris, Népszava, The New York Times, L'Orient-Le Jour, Prensa Latina, Reuters, Turkish Minute, Wiener Zeitung* and *Yahoo News*.

The Commissioner's statement on the new law on the National Judiciary Council in Poland was mentioned by *ABC News, Adnkronos, Agence Europe, ANSA, The Associated Press, BBC, Bloomberg, The Canadian Press, Dagens Nyheter, DPA, DW, Emetro.pl, EU Observer, Evenimentul Zilei, Gazeta Wyborcza, Handelsblatt Online, Index, Karpat Info, Kurier, MTI, Polish News Bulletin, The Times, SDA/ATS, Spiegel, and The Washington Post*.

The Position Paper on inclusive education was covered by *7sur7, AGI, ANSA, Askanews, DN, Ert, Expatica, Hajdú Online, il Diario des lavoro, Mainfatti, Liberal, MTI, OrizzonteScuola, La vanguard, Le Vif, SIR* and *SwissInfo*.

The Commissioner's letter to the French Senate on the anti-terrorism bill was covered by *20 minutes, AFP, Acteurs publics, Agencia Lusa, Diario de Noticias, Diario Vasco, El Confidencial, Europe 1, EFE, France Info, Just Security, Mediapart, Numerama, Maire-Info, Le Parisien, Le Point, La Vanguardia, RFI* and *SME*.

The Commissioner's report on Slovenia was covered by *Delo, Dnevnik, Hlavné Spravy, Mladina, Mediafax, Newsfront, Reuters, SME, Sofia News Agency, STA, TASR, and Times.si*.

Il Primato Nazionale and *ANSA* reported on the Commissioner's statement on the commemoration of the Roma genocide.

The letter calling on the Croatian government to reconsider the draft law on the Ombudsman for Children was mentioned by *Večer, Telegram, HRT, Vijesti, Hina, Tportal, and Index*.

The visit to Luxembourg was covered by *Agefi, L'Essentiel, Letzenbuerger Journal, Le Quotidien, RTL, Tageblatt, Tageblatt.lu* and *Luxemburger Wort*.

The statement on the commemoration of the Srebrenica genocide was covered by *B92, Balkan Insight, BHRT, Blic online, FENA, Informative, Il Piccolo, N1, NoviMagazin* and *Vesti*.

The Commissioner's letter to the Italian parliament on the Bill introducing the crime of torture in the penal code (published on 26 June) was covered by *Adnkronos, ANSA, Corriere della Sera, DPA, Frankfurter Allgemeine Zeitung, Il manifesto, LEFT, Lindro, Mitteldeutsche Zeitung, Nordbayerische Nachrichten, Panorama, La Repubblica* and *La Repubblica Genova*.

Further coverage concerned Azerbaijan (*EFE, El Confidencial, News.az*), Crimea (*Gazeta, Interfax, PressOrg24, RFE/RL, Svoboda*), discrimination against Muslims in Luxembourg (*Le Jeudi*), human rights defenders in Armenia (*Armenpress, Asbarez, PanArmenian.net, Panorama*), internet blocking (*EU Observer, Interfax, Napi, SwissInfo*), rights of LGBTI

persons (*Diena, Baltic Daily, Golos ameriki*), migration (*The Australian, Le Courier, ČTK, Der Bund, El Faro de Ceuta, Kathimerini, ParlamentníListy.cz, Radio Praha, Tages Anzeiger, TAZ, Týden.cz*), racism (*ANSA/ATS, Agence Europe, Agencia Lusa, Diario de Noticias, Sapoz24, 5TV, Sputnik, Izvestia*) and women's rights (*Unita*).

45 tweets were published, with a reach of 750 000 users and an increase of 462 followers. 24 Facebook posts were published, with a reach of over 20 000 users and an increase of 249 page likes (followers).

A total of 46 509 unique Internet users visited the Commissioner's website, a slight increase from the third quarter 2016.

8. Next three months

October

- | | |
|----------|-------------------------------------------------------------------------------|
| 02-06/10 | Visit to Sweden |
| 09-13/10 | Visit to Republic of Moldova |
| 17-19/10 | Joint event with ENNHRI on family reunification and other meetings (Brussels) |
| 23-25/10 | UNGA 3rd Committee and other meetings (New York) |

November

- | | |
|----------|---------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 07-10/11 | Visit to Malta |
| 16/11 | Exchange of views with OSCE Permanent Council (Vienna) |
| 21/11 | Event hosted by UNHCR Switzerland and the <i>Centre Suisse pour la Défence des Droits de Migrants</i> on strategic litigation in family reunification (Berne) |
| 22-24/11 | Visit to Liechtenstein |

December

- | | |
|----------|-----------------------------------------------------------------------------------------------------------------------------|
| 06-08/12 | 1 st National Congress of Human Rights organised by the Office of the Ombudsman and additional meetings (Warsaw) |
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9. Observations and reflections

The summer of 2015 marked the peak point in the recent migration policy crisis in Europe, with the continent seeing unprecedented numbers of new arrivals. The number of new arrivals by sea had already fallen by 74% in 2016 compared to 2015 and has continued to fall significantly in 2017. In other words, this past summer we should have seen a dissipation of the panic that had earlier swept many European capitals, an end to the frenzied building of fences, a suspension of the border checks within the Schengen zone, calmer political debate, and preparations to do away with restrictive “temporary” or “emergency” legislative measures. This has not happened. At least not yet.

In some cases, such as in Germany, Austria and the Czech Republic, elections intervened. There, the migration issue and often, its conflation with fears of or prejudices against Muslims, served as a mobilising cause, especially for parties on the far right. Even in countries without imminent elections, a “tough” stand on the migration issue and government efforts to mobilise popular support against a party challenger even further to the right meant that no easing of policy or rhetoric was likely in the near future. Thus, while the numbers were way down, the temperature of political discourse surrounding migration remained quite high in many quarters. In Sweden, “emergency measures” are due to expire only in 2019, with a policy review foreseen in 2018. The risk everywhere is that the temporary becomes permanent and that “emergency mode” becomes normalised.

One of my big fears is that, in the attempt to placate short-term public pressures and hostility to migration, policy-makers may be planting a time-bomb for the future. This is because many of the temporary measures – especially granting persons in need of protection only short-term, unstable forms of status and restricting their possibilities for family reunification -- will only hinder the integration of the new arrivals. Without long-term prospects in a country and distressed by separation from their loved ones, the likelihood of successful integration of the new arrivals diminishes significantly. Shortcomings in integration, in turn, will only feed into the far-right populist narrative that the new arrivals are “too culturally different” or that they do not want to integrate. Moderate, mainstream politicians may be digging their own graves and creating a larger electorate for their populist far-right competitors.

Another worrying phenomenon is the newly negative attitude towards humanitarian work with migrants. One of the key reasons that 2015 and 2016 were not a complete disaster was the incredible mobilisation of civil society in many countries to provide food, clothing shelter, medical assistance, language training and other support to new arrivals. However, now stigmatising or even criminalising the work of NGOs in the domain of migration is becoming increasingly common. Over the last one to two years, we have seen an escalation of rhetoric accusing humanitarian NGOs, especially those saving people in the Mediterranean, of assisting people smugglers. We have also seen a rash of cases brought to national courts against activists for facilitating the transit of irregular migrants. I have been alerted to such cases in Denmark, France, Greece, Italy, and Switzerland. A year ago in Serbia, the government sent an open letter to NGOs telling them that humanitarian assistance to migrants outside of reception centres was no longer permitted. By hindering or penalising the work of civil society, governments will only make their own task of coping effectively with migratory flows and migrant integration more difficult.

Approximately one-and-a-half years ago, the European Union and Turkey agreed on a “statement” aimed at limiting the irregular flow of people across the Aegean. At the time, I criticised this agreement on several grounds, including that it risked running afoul of international refugee protection standards, it discriminated against non-Syrians in need of international protection and would likely lead to increased detention of migrants. The number of people crossing the Aegean fell, and now, despite its many faults, many across Europe see the “statement” as a new model for the EU’s relations with third countries. Earlier, questions about the observance of human rights in countries such as Libya evoked evasive answers. Now, after receiving horrific accounts from the United Nations, we can no longer ignore the grave violations of human rights there. All Council of Europe member states are under the legal obligation to prevent violations of Article 3 of the European Convention on Human Rights by not returning persons to countries where they risk torture and inhuman or degrading treatment or punishment. The EU-Turkey statement cannot and should not be replicated.

While the numbers are way down this year, many of the endemic problems remain, especially in front-line Greece. In September the Committee on the Prevention of Torture (CPT) published a report on its 2016 visits to Greece describing squalid conditions in the Aegean islands’ hotspots, routine and lengthy detention of unaccompanied migrant children and police violence towards migrants. Recent reports suggest that new arrivals are increasing and that the situation is deteriorating. What is more, winter is fast approaching. Thus, in Greece, there is a need for “emergency mode” and rapid measures to help the more than 13,000 migrants remaining on the islands. Elsewhere, “emergency mode” should end and we should get back to pre-crisis levels of protection.