

COMMISSIONER FOR HUMAN RIGHTS OF THE COUNCIL OF EUROPE

DUNJA MIJATOVIĆ

3RD QUARTERLY ACTIVITY REPORT 2021

1 July to 30 September

Presented to the Committee of Ministers
and the Parliamentary Assembly

This report contains a summary of the activities carried out by the Commissioner for Human Rights, Dunja Mijatović, between 1 July and 30 September 2021.

1. Reports and continuous dialogue

Letter to the House of Commons and the House of Lords of the United Kingdom on the Police, Crime, Sentencing and Courts Bill

In a [letter](#) addressed to the Speaker of the House of Commons, the Rt Hon Sir Lindsay Hoyle MP, and the Lord Speaker of the House of Lords, the Rt Hon the Lord McFall of Alcluith, published on 5 July, the Commissioner called on parliamentarians to reject restrictions on peaceful demonstrations and the proposed criminal offence of trespass in case of unauthorised encampment. She noted that new possibilities to impose conditions on demonstrations in England and Wales were often broadly formulated and risked arbitrary application, affecting the rights to freedom of expression and freedom of peaceful assembly. She also highlighted that the proposed new criminal offence of trespass could have a potential negative impact on Gypsy, Roma and Traveller communities leading a nomadic lifestyle, whose marginalisation has been exacerbated by the reduction of socially rented sites.

Letter to the Senate of the Czech Republic on a draft law on compensation for victims of forced sterilisation

In a [letter](#) addressed to the President of the Czech Senate, Miloš Vystrčil, and the chairpersons of four Senate committees, published on 16 July, the Commissioner expressed her support for the adoption of a draft law that would provide a one-off financial compensation for victims of unlawful sterilisation. This followed her earlier letter to the Czech Chamber of Deputies, which had already approved the draft law. In her letter, the Commissioner noted that the adoption of the draft law by the Senate would provide an opportunity to allow the victims a measure of justice and to move forward.

On 22 July, following the approval of the draft law by the Senate, the Commissioner [welcomed](#) this decision, while also paying tribute to the victims who had had to campaign for justice for many years, and NGOs, lawmakers and independent bodies who had supported them in this process.

Letter to the Prime Minister and the Minister of Justice of the Slovak Republic on a compensation mechanism for victims of forced sterilisation

In a [letter](#) addressed to the Slovak Prime Minister, Eduard Heger, and the Minister of Justice, Mária Kolíková, published on 19 July, the Commissioner called for the setting up of a mechanism to ensure prompt and effective access to reparations for victims of forced or coercive sterilisation. She noted that this long-standing shortcoming had still not been fully remedied, finding in particular that existing mechanisms, in the form of domestic civil claims, had not provided an effective means of redress for this serious human rights violation, owing to the many obstacles faced by victims. She emphasised that neither apologies nor reparations could undo the harm inflicted on victims, both physically and mentally, but that such tangible steps would provide a measure of justice that had eluded victims for a long time.

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

Letter to the Prime Minister of Lithuania on migration-related challenges along the border with Belarus

On 24 August, the Commissioner published a [letter](#) addressed to the Prime Minister of Lithuania, Ingrida Šimonytė, calling for a human rights-compliant response to migration-related challenges the country has been facing as a result of increased arrivals through its border with Belarus. In particular, the Commissioner expressed her concern about amendments made to the Law on the Legal Status of Aliens and accompanying legislation, including the removal, in emergency situations, of significant safeguards in the asylum procedure. She also noted that the manner in which newly arrived asylum seekers and migrants were accommodated ran the risk of becoming de facto detention. Furthermore, she highlighted reported instances of summary returns to Belarus of persons having attempted to enter Lithuania in an irregular manner. The Commissioner recommended revising the legislation as amended in order to make it fully compliant with the country's human rights obligations and to ensure that no returns are effected to Belarus or other countries without sufficient safeguards being in place against refoulement or collective expulsions.

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

Letter to the German Federal Minister of Justice and Consumer Protection and Federal Minister for Family Affairs, Senior Citizens, Women and Youth on children's rights

On 31 August, the Commissioner published a [letter](#) to the German Federal Minister of Justice and Consumer Protection and Federal Minister for Family Affairs, Senior Citizens, Women and Youth, Christine Lambrecht, in which she urged the German authorities to ensure that the best interests of the child are treated as a top priority in all government action concerning children. Regretting the fact that the UN Convention on the Rights of the Child was still not anchored in the German Constitution, the Commissioner stressed the need to uphold international child protection standards, notably the right of children to have their views seriously considered in all matters affecting them. She stressed that the strict Covid-19 virus containment measures imposed on schoolchildren in Germany have had long-term adverse effects on them and called on the German authorities to ensure that the protection of children's rights and needs is given due weight in all future Covid-related decision-making.

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

Letter to the Secretary of State for Northern Ireland of the United Kingdom on the government's proposals on the legacy of the Troubles

In a [letter](#) to the Secretary of State for Northern Ireland, the Rt Hon Brandon Lewis MP, published on 23 September, the Commissioner warned that a new plan by the UK government for dealing with the legacy of the Troubles in Northern Ireland would undermine human rights protections. She noted that the proposal on ending investigations and prosecutions, including through a statute of limitations, would fall short of obligations under the ECHR to carry out effective investigations. The Commissioner also addressed the interlinkages between investigations and prosecutions, on the one hand, and truth and reconciliation, on the other, highlighting that impunity and the absence of justice can be a major impediment to achieving lasting peace and reconciliation. She noted that the

proposals, rather than bringing legacy issues to a close, would only create further delays in dealing with the past effectively. Finally, she noted the lack of a victim-centred approach.

The letter is available on the Commissioner's website, along with the reply from the Secretary of State for Northern Ireland.

2. Themes

Human rights of immigrants, refugees and asylum seekers

During the reporting period, the rights of refugees, asylum seekers and migrants continued to be a key area of activity for the Commissioner. In particular, the Commissioner addressed the emerging situation at Council of Europe member states' borders with Belarus in various ways. This included a letter to the Prime Minister of Lithuania (see 'Reports and continuous dialogue'). Subsequently, on 16 August, in a [press comment](#) to Public Broadcasting of Latvia she stressed that it is imperative for all Council of Europe member states to respect their international legal obligations on human rights and asylum, at all times, even in difficult circumstances. On 25 August, the Commissioner also issued a [statement](#) addressing the humanitarian situation of a group of people who had been stuck for many days in a vulnerable situation at the Polish-Belarusian border. Recognising that the situation was the result of actions by Belarus, the Commissioner nevertheless stressed that pushing people back, denying them access to fair asylum procedures or simply leaving them stuck in a humanitarian emergency could not be the response of a Council of Europe member state bound by international instruments such as the ECHR or the Refugee Convention. The Commissioner called on Poland to take immediate principled action to protect the human rights of the stranded people, to enable them to apply for international protection to which they may be entitled, and to ensure that their humanitarian needs were met. On 20 September, the Commissioner further [reacted](#) to reports of people found dead at the Polish-Belarusian border. Stressing that those stranded at the borders were victims and not a threat, she called on Council of Europe member states to protect them and to urgently find a humanitarian solution to their plight.

In response to Afghans seeking safety following the Taliban takeover of Afghanistan, the Commissioner issued a [statement](#) on 30 August, calling on member states to unequivocally commit to handling the arrival of persons fleeing Afghanistan in accordance with their human rights obligations. This required three key steps. First, to step up the preparation of their reception and asylum facilities. Second, to ensure that the goal of preventing irregular migration would not lead to de facto denials of human rights, including through non-criminalisation of persons arriving irregularly and investing in safe and legal routes. And third, by observing UNHCR's non-return advisory and reassessing earlier rejections of asylum in the light of the most recent events.

On 9 July, the Commissioner [reacted](#) to the judgment of the Grand Chamber of the Court in the case of *M.A. v. Denmark*, in which she had submitted a [third-party intervention](#). She noted that the finding of a violation of Article 8 ECHR owing to the imposition of a three-year waiting period was a clear recognition of the right to family reunification and a significant signal regarding overly restrictive policies in Europe in this field.

On 3 September, the Commissioner published a [statement](#) urging the Greek Parliament to reconsider a legislative proposal that risked hindering life-saving and monitoring work carried out at sea by NGOs. Noting that this bill raised serious concerns among the human rights community as

regards its impact on, for example, the right to asylum, the prevention of refoulement, remedies, safeguards in return procedures and the prevention of automatic, large-scale detention, she called on the parliament to draw on their recommendations to ensure that the bill fully reflected Greece's obligations, including under international human rights and refugee law.

Safety of journalists, freedom of expression and media freedom

On 6 July, the Commissioner [expressed](#) her shock at the shooting of journalist Peter R. de Vries in the Netherlands, who died from his injuries nine days later. She called for every effort to be made to bring the perpetrators and masterminds of this horrific crime to justice, and to ensure the safety of journalists in Europe.

Human rights of LGBTI persons

On 5 July, the Commissioner [condemned](#) violent attacks against media professionals and LGBTI activists in Tbilisi, Georgia, by opponents to the planned Pride march. She stressed that the authorities should uphold the right to freedom of expression and assembly, ensure the safety of demonstrators and journalists, and punish the perpetrators of violence.

On 6 August, the Commissioner sent a [message](#) to the Human Dignity Conference in Riga, Latvia, which was held on the occasion of Baltic Pride 2021. She expressed the hope to see further progress toward the recognition of same-sex partnerships, the effective tackling of hate speech and hate crimes against LGBTI people, and the protection of transgender people.

On 16 August, on the occasion of World Pride, which was held in Europe this year, the Commissioner published a [human rights comment](#) on political manipulation of homophobia and transphobia in the region. First, she regretted a notable rise in violence against and intolerance of LGBTI people in Europe. Drawing on her work in several member states, she observed that one clear cause of this phenomenon is the fact that politicians are exploiting societal prejudices and scapegoating LGBTI people for political gain. She further expressed concern about the increasing influence of so-called "anti-gender" groups, and encouraged member states to take steps to counter their attempts to erode human rights. The Commissioner underscored the harmful impact of political homo/transphobia on LGBTI people, including harassment and violence, increased obstacles to participate in society, mental health consequences, and the stalling or rollback of legislation protecting their rights. In conclusion, the Commissioner formulated recommendations to member states to tackle denigrating comments and hate speech against LGBTI people by politicians, and to bring about broader societal changes for inclusion, including through outreach campaigns, strong legislation and national human rights structures. The Commissioner noted that political homo/transphobia is a symptom of a broader attack against human rights, that should concern us all.

Children's rights

On 1 July, the Commissioner published a human rights [comment](#), titled "Boosting child and youth participation – from voice to choice", in which she called on member states to more energetically protect the right of children to be heard and to be taken seriously on all matters that affect them. The consequences of many of today's decisions will be borne by the children of today, whether in terms of their learning opportunities, their entry into the labour market, economic recovery programmes or debt burdens. Yet few governments have made systematic efforts to institutionalise

mechanisms at different levels for children to participate actively and meaningfully. In many countries children still face challenges in accessing information about their rights and the national policies that affect them. The Commissioner underlined that respecting the right of the child to participate not only leads to better and more effective decisions but also enriches democracy and helps young people develop citizenship life skills. She therefore encouraged member states to empower young children to shape their future through open and inclusive consultations, through close collaboration in setting agendas and designing relevant policies, and through promoting children's democratic participation, including by considering a lowering of the voting age.

Human rights of Roma

On 2 August, in commemoration of the Roma Holocaust, the Commissioner issued a [statement](#) in which she stressed the importance of confronting prejudices and stereotypes underlying persistent and widespread discrimination against Roma. Referring to her opening address delivered in March this year at a conference launching the Chachipen project on truth and reconciliation, she reiterated her support for this project's objectives of promoting the setting up of truth and reconciliation commissions, designing new ways of raising public awareness about Roma history and empowering Roma activists to take part in transitional justice processes. She stressed that the Covid-19 pandemic has magnified the impact of widespread discrimination against Roma and highlighted the need to combat antigypsyism and uphold Roma's human rights, including in times of crisis.

Transitional justice

On 5 July, the Commissioner met online with the Director General of the International Commission on Missing Persons (ICMP), Kathyne Bomberger. The Commissioner and Ms Bomberger discussed several topics of mutual interest to their institutions, including missing persons in the different member states of the Council of Europe as well as the challenge of dealing with missing migrants in Europe. The Commissioner and the Director General of ICMP agreed to continue to have regular exchanges.

On 11 July, on the occasion of the commemoration of the victims of the Srebrenica genocide, the Commissioner [emphasised](#) the importance of remembrance and establishing the truth about the genocide, keeping the legacy of international criminal justice alive to combat the widespread denial of genocide and war crimes in the region, and promoting a culture of peace through education as the key to overcome genocide denial.

3. Other meetings

Meeting with Cardinal Pietro Parolin, Secretary of State of the Holy See

The Commissioner met with the Holy See Secretary of State, Cardinal Pietro Parolin, on 5 July in Strasbourg. The meeting was a follow-up to the online dialogue held in November 2020. Discussions focused on the human rights of migrants, artificial intelligence, the right to health and racism.

Meeting with Vladimir Voronkov, Under-Secretary-General of the United Nations Counter-Terrorism Office

On 24 August, the Commissioner met online with the Under-Secretary-General of the United Nations Counter-Terrorism Office, Vladimir Voronkov. They exchanged views on the repatriation of suspected foreign fighters and their relatives, on democratic and effective oversight of national security services, on emerging and resurging terrorist threats, and on the rights of victims of terrorism, and discussed avenues of further cooperation between their offices.

Meeting with the President of the Polish Supreme Court

On 13 September, the Commissioner met in Strasbourg with the First President of the Polish Supreme Court, Małgorzata Manowska, and her delegation. Discussions focused, *inter alia*, on amendments to the rules on the functioning of the Supreme Court's Disciplinary Chamber and the importance of respecting recent judgments of the European Court of Human Rights and the Court of Justice of the European Union.

Meeting with Debbie Kohner, Secretary General of ENNHRI

On 16 September, the Commissioner met with Debbie Kohner, Secretary General of the European Network of National Human Rights Institutions (ENNHRI). They discussed the situation of national human rights institutions (NHRIs) in the Council of Europe area and steps needed to ensure the implementation of [Recommendation CM/Rec\(2021\)1](#) of the Committee of Ministers to member states on the development and strengthening of effective, pluralist and independent NHRIs. They also exchanged about human rights priorities of common interest, as well as ongoing and future cooperation.

Meeting with Michael O'Flaherty, Director FRA

On 22 September, the Commissioner met in Strasbourg with Michael O'Flaherty, Director of the EU Fundamental Rights Agency. In addition to an exchange on respective planned activities and ongoing and future cooperation, the meeting covered several human rights topics of common interest, including human rights of migrants.

Meeting with Gillian Triggs, Assistant High Commissioner for Protection, UNHCR

On 24 September, the Commissioner met with Gillian Triggs, Assistant High Commissioner for Protection at the Office of the United Nations High Commissioner for Refugees. The Commissioner and the Assistant High Commissioner discussed cooperation between the Commissioner's Office and UNHCR. They also discussed a diverse range of issues, including pushbacks, statelessness, the global impact of developments in relation to protection policy in Europe, as well as several country-specific situations.

4. Human Rights Defenders

During the period under review, the Commissioner continued to keep a close eye on the situation of human rights defenders in Council of Europe member states.

On 1 July, the Commissioner held several online meetings with human rights defenders from Ukraine and the Russian Federation, including representatives of minorities, journalists, lawyers and activists, working on the human rights situation in Crimea. The meeting gave the Commissioner an opportunity to obtain information about the human rights situation in Crimea, in particular as regards: restrictions on the work of human rights defenders; rights of minorities, including Crimean Tatars; respect for education and language rights; and freedom of expression and media freedoms.

Given the importance she attaches to supporting human rights defenders and partners everywhere in Europe, on 15 July the Commissioner [stated](#) that large-scale searches of human rights NGOs and arrests of human rights defenders in Belarus, including Ales Bialiatski and other Council of Europe partners, were unacceptable and that such reprisals must stop. She called for human rights defenders arrested for their work to be released.

In a [statement](#) published on 2 September, following another extension of the detention of Mr Osman Kavala, the Commissioner stressed that such a decision perpetuates the violation of both his human rights and Turkey's obligation to abide by a final judgment of the European Court of Human Rights. Noting that Mr Kavala should not have been in detention in the first place and that his prolonged illegal detention shows contempt for human rights and the rule of law, the Commissioner called for his immediate release.

On 17 September, the Commissioner held an online meeting with human rights defenders from Ukraine and the Russian Federation working on the human rights situation in Ukraine's non-government-controlled areas of the Donbas. The meeting gave the Commissioner an opportunity to obtain information about the human rights situation in the Donbas, in particular as regards restrictions on the work of human rights defenders; allegations of illegal detention, torture and ill-treatment; enforced disappearances and missing persons; human rights implications of restrictions on freedom of movement; and the situation of pensioners and IDPs.

5. System of the European Convention on Human Rights

Third Party Intervention before the European Court of Human Rights and participation in the Court's Grand Chamber hearing in the cases of H.F. and M.F. v. France and J.D. and A.D. v. France

The Commissioner published on 2 July her written observations to the European Court of Human Rights on the cases of [H.F. and M.F. v. France and J.D. and A.D. v. France](#) regarding the fate of European nationals held in camps in North-East Syria and took part to the hearing held on these cases by the Grand Chamber of the Court on 29 September. In her written and oral observations, the Commissioner stressed that nationals of the States Parties to the Convention being held in these camps fall within the jurisdiction of those states, and that the prevailing health and security situation in the camps endangers the lives and health of those detained there, especially children. She further underlined that such a situation cannot be compatible with the prohibition of torture or inhuman or degrading treatment laid down in Article 3 of the Convention and that the only way that States Parties can meet their obligation to take measures to prevent violations of this provision is to repatriate their nationals. Furthermore, she stressed that the refusal by certain States Parties to do so is such as to impede the effective exercise of these persons' right to respect for private and family life. The Commissioner also stated that the removal of all foreign children from the camps is an absolute and

mandatory priority from the perspective of the rights which apply to all children pursuant to the UN Convention on the Rights of the Child and its protocols, and that in order to safeguard their best interests their mothers must be repatriated with them. Lastly, the Commissioner considered that the repatriation of European nationals held in the camps in North-East Syria is essential to protect the rights of victims of terrorist acts and as a means of preventing terrorism.

6. Communication and Information work

The Commissioner's work generated more than 230 news items in different national and international news outlets. The main topics covered by the media were human rights issues pertaining to migration, women and transitional justice.

Many news outlets continued to report on the Commissioner's work on migration, including *ABC, AFP, ANSA, Associated Press, EFE, La Repubblica, Politico, Times of Malta, La Libre Belgique, Le Figaro, Avvenire, Corriere della Sera, Dagbladet, Delo, Die Tageszeitung, DPA, Euronews, Gazeta Wyborcza, Le Monde, Süddeutsche Zeitung, France 24, Balkan Insight, Kathimerini*.

The Commissioner's work on women's rights was covered mainly by *BHRT, CNN, Euractiv, France24, Reuters, SwissInfo, the Independent, Irish Independent, La Repubblica, RTV Slovenia, Slate.fr, TASR, The Slovak Spectator, Wiadomosci*.

On transitional justice the Commissioner was covered by *Fena, Vijesti, Euronews, The Associated Press, The Guardian, The Washington Post, BBC, Belfast Telegraph, The Irish Examiner, EFE, SwissInfo, Index.hu, Irish Examiner, The Press Association, Politico, The Financial Times, The Irish News, The Telegraph*.

The Commissioner's positions on the human rights of LGBTI persons were covered by *EurasiaNet, Foreign Policy, Open Democracy, Reuters, SwissInfo, Corriere della Sera, Il Giornale*.

Her work on media freedom and freedom of expression was covered by various news outlets, including *ABC News, The Associated Press, US News, ANP, ANSA, Avvenire, Radio Slobodna Evropa, Spiegel Online, The Guardian, The National, The Press Association, Yahoo News, Foreign Policy, The Independent, The Sunday Mirror, Le Monde*.

The Commissioner's intervention in proceedings before the European Court of Human Rights on a case concerning the fate of European nationals held in camps in North-East Syria was covered by *AFP, AlArabiya, The New Arab, La Nacion, Le Figaro, Mediapart, Ouest France, Aftenposten, Agence Europe, Agencia Lusa, Le Monde*.

Additional coverage concerned human rights defenders (*RFE/RL, TRT World, Dunya Gazetesi, DW, Reporter.gr*) and children's rights (*Modern Diplomacy, Berliner Zeitung, DPA, Deutschlandfunk*).

27 tweets were published, earning a total number of 1.1 million impressions, an engagement rate of 1.5% and an increase of 1417 followers (+2.4%). On Facebook, 13 posts reached 25 250 people and garnered 104 new page likes (+0.8%).

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Over 64 492 unique visitors consulted the Commissioner's website, similar to the trend observed in the third quarter of 2020.