



COMMISSIONER FOR HUMAN RIGHTS  
COMMISSAIRE AUX DROITS DE L'HOMME



Strasbourg, 14 February 2018

CommDH(2018)8

---

## **4<sup>TH</sup> QUARTERLY ACTIVITY REPORT 2017**

---

**by Nils Muižnieks  
Commissioner for Human Rights**

1 October to 31 December 2017

Presented to the Committee of Ministers  
and the Parliamentary Assembly

## **CONTENTS**

1. Overview .....	3
2. Missions and Visits .....	5
3. Reports and continuous dialogue .....	11
4. Themes .....	16
5. Other meetings .....	19
6. Human Rights Defenders.....	20
7. European Court of Human Rights.....	21
8. Communication and Information work .....	22
9. Next three months.....	24
10. Observations and reflections .....	25

## 1. Overview

The period under review was dominated by work in five different issue areas: migration, the rights of persons with disabilities, women's rights and gender equality, the administration of justice (including transitional justice), and media freedom and freedom of expression.

I devoted much time and effort to promoting the right to family reunification of refugees and other beneficiaries of international protection. In my view, family reunification is not only a key safe and legal venue for people in need of protection to come to Europe, but also an important precondition for their successful integration. I addressed the issue in country reports on and/or visits to Malta, Sweden and Switzerland. My Office organised an event on the issue together with the European Network of National Human Rights Institutions (ENNHRI). I was the keynote speaker at an event on the topic in Switzerland. I also wrote an opinion editorial for a German newspaper and a Human Rights Comment on the topic.

I found the active participation of Sweden and Malta in the EU refugee relocation programme to be heartening. I was also encouraged by the discontinuation by Malta of systematic migrant detention and the reform of Swiss asylum procedures to make them faster and of higher quality. However, I pointed to the need for further efforts to ensure the social rights of rejected asylum-seekers in Sweden, the housing rights of beneficiaries of international protection in Malta, and the need to make procedures and facilities more women and child-friendly in Switzerland.

In promoting the rights of persons with disabilities, I put particular emphasis on the need to ensure inclusive education. I raised the issue during a country visit to Liechtenstein and in meetings in Tiraspol in the framework of my mission to the Republic of Moldova. The need to ensure reasonable accommodation and individual supports for persons with disabilities in mainstream education was the essence of a third party intervention before the European Court of Human Rights in a case regarding Romania. Together with the Czech ombudsperson, I co-wrote an opinion editorial on the need for further efforts at inclusive education.

In Liechtenstein additional issues of interest were the desirability of ratifying the UN Convention on the Rights of Persons with Disabilities, the need to avoid congregated living arrangements, and the imperative of reviewing legal capacity legislation in light of the Convention's standards. In Sweden, I raised concerns about the reported decrease in the provision of personal assistance to persons with disabilities and about the use of coercion in psychiatry. Finally, I had an exchange of letters with the Romanian authorities about their co-operation with NGOs specialised in monitoring facilities for persons with intellectual and psychosocial disabilities.

In the realm of women's rights, my two big areas of focus were women's sexual and reproductive health and rights (SRHR) and preventing and combating violence

against women and domestic violence. I published an Issue Paper on women's SRHR and recommended that the authorities in Malta and Liechtenstein ensure access to safe and legal abortion care. My Office organised a seminar in Warsaw on women's rights and gender equality where the topics included not only women's SRHR, but also domestic violence and gender discrimination.

In visits to the Republic of Moldova and Liechtenstein and a letter to the Ukrainian parliament, I urged ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention). I welcomed progress on the legal framework to combat and prevent domestic violence in Malta and the Republic of Moldova, but there and in Liechtenstein I urged further training and awareness-raising for police, judges, and other professionals. Finally, in a country report on Bosnia and Herzegovina, I examined how adequately the needs of victims of wartime sexual violence were being met by the authorities.

I addressed other transitional justice issues in a report on Bosnia and Herzegovina as well, including regression in regional co-operation in prosecuting wartime crimes, shortcomings in witness support, and the need for more vigorous efforts to identify the fate of missing persons and to provide support to their loved ones. I analysed the broader situation of transitional justice in the region in a Human Rights Comment.

I raised concerns about pressures on defence lawyers in a statement on Azerbaijan and during my visit to the Republic of Moldova, where I also raised the issue of excessive recourse to detention on remand, the need to improve conditions of detention, and shortcomings in the treatment of persons with intellectual and psychosocial disabilities by law enforcement. Finally, concerns about two laws weakening the independence of the judiciary were at the centre of a mission to Poland.

I addressed media freedom and freedom of expression in my work on Bosnia and Herzegovina, Malta, and Turkey. In Bosnia and Herzegovina, I focused on the need to reform practice regarding penalties for defamation, address attacks and threats against journalists and find a sustainable funding solution for the public service broadcaster. In Malta, which I visited soon after the assassination of a prominent journalist, I urged the authorities to conduct an effective investigation and to keep both the family of the victim and the public informed about progress in this regard. Regarding Turkey, I followed up on previous work in the country by submitting two third party interventions on the freedom of expression and right to personal liberty of respectively, journalists and parliamentarians.

Finally, media freedom was a focus of my interaction with both the United Nations and the OSCE. I participated as a panellist in a side event on media freedom hosted by the Latvian representation to the UN, where I also had an exchange with the UN Special Rapporteur on freedom of expression and media freedom. Media

freedom was a focus of my exchange with the OSCE Permanent Council, where I also had a fruitful meeting with the newly appointed Representative on Freedom of the Media Harlem Désir.

## **2. Missions and Visits**

### ***Visit to Sweden***

The Commissioner conducted a visit to Sweden from 2 to 6 October, focusing on the human rights of migrants, including asylum seekers and refugees, the human rights of persons with disabilities, and human rights protection in the context of counter-terrorism.

In Stockholm, the Commissioner held discussions with the Minister for Foreign Affairs, Margot Wallström; the Minister of Justice and Home Affairs, Morgan Johansson; the Minister for Migration, Helene Fritzon; the Minister of Culture and Democracy, Alice Bah Kuncke; State Secretaries to the Minister for Employment and Integration, Irene Wennemon, Annica Dahl and Anders Kessling; the State Secretary to the Minister for Children, the Elderly and Gender Equality, Madeleine Harby Samuelsson; the State Secretary to the Minister of Defence, Jan Salestrand; and with the Swedish Ambassador for Human Rights, Annika Ben David. The Commissioner also held an exchange with the Vice Chair of the Swedish Delegation to the Parliamentary Assembly of the Council of Europe, Tobias Billström, and other members of the delegation. He met with representatives of the Ombudsman for Children and of the Equality Ombudsman and with the Director General of the Swedish Data Protection Authority. The Commissioner also held discussions with representatives of UNHCR and UNICEF, representatives of non-governmental organisations and other members of civil society, and met with a number of unaccompanied minors of Afghan origin. The Commissioner furthermore travelled to Malmö, where he met with the Head of Safety and Security of the Municipality of Malmö, and visited the Linnéskolan School.

At the end of the visit, the Commissioner recognised the leading role Sweden has played in providing assistance to persons in need of international protection. Welcoming Sweden's efforts within the relocation and resettlement programmes, the Commissioner reiterated the urgent need to increase European solidarity, as well as safe and legal avenues for people to reach protection in Europe.

Noting the rapid decline in the number of asylum seekers, after a record high of 163,000 in 2015, the Commissioner expressed the hope that the temporary measures which introduced restrictions in 2016 in response to that increase will be lifted before the 2019 deadline. Stressing that the need to move beyond emergency mode was particularly urgent concerning the limitations introduced to the right to family reunification, he urged the authorities to lift these limitations, which also impede integration, and to ensure that refugees and beneficiaries of subsidiary protection enjoy the same rights in this regard. The Commissioner also called on the authorities to ensure that rejected asylum seekers, who cannot be returned and are at risk of destitution, are treated in a manner that is both humane and human rights compliant so that their basic needs, including shelter, clothes and food, are met.

The Commissioner acknowledged that the reception of at least 35,000 unaccompanied minors who arrived in Sweden in late 2015 had put a strain on the system and welcomed the efforts that Sweden had deployed in this domain. However, the situation of these young people raised a number of concerns. The Commissioner stressed that the authorities should always treat the best interests of the child as a primary consideration in all decisions relating to asylum and migration. Any decisions on return should be based strictly on individual circumstances, such as the demonstrable existence of a family network or a secure environment upon return. The Commissioner also underlined that if doubts remain that the person may be underage, he or she should be treated as a minor. The Commissioner stressed that these cases should be prioritised to avoid long waiting periods, which contribute to psychological distress. As arrivals had slowed considerably, the authorities should also strengthen the support provided to these young people.

With regard to the human rights of persons with disabilities, the Commissioner was concerned by the decrease in the number of persons entitled to personal assistance under the Act concerning Support and Service for Persons with Certain Functional Impairments. He invited the authorities to closely monitor the impact of this decrease in terms of access to rights, in particular access to education and employment, and resort to congregate living arrangements. The Commissioner also remained concerned by the use of coercive and involuntary treatment in psychiatric institutions. The authorities should send a clear signal that the goal is to decrease coercive and involuntary treatment and ensure that sufficient safeguards are in place. Finally, the Commissioner welcomed the draft legislative provision aimed at lifting the exemption to the requirement of reasonable accommodation concerning companies having less than 10 employees.

At the end of the visit, the Commissioner also welcomed the role of local authorities in countering terrorism and extremist violence through prevention programmes and social intervention.

The Commissioner's report on this visit is forthcoming.

### ***Mission to the Republic of Moldova***

The Commissioner carried out a mission to the Republic of Moldova from 9 to 13 October, focusing on domestic violence and gender equality and following up on previous recommendations from his 2013 report on the administration of justice. During the mission, he held meetings with the Prime Minister, Pavel Filip; President of the Parliament, Andrian Candu; Deputy Prime Minister for Reintegration, Gheorghe Balan; Deputy Prime Minister and Minister of Foreign Affairs and European Integration, Andrei Galbur; Minister of Justice, Vladimir Cebotari; Minister of Education, Culture and Research, Monica Babuc; Deputy Minister of Internal Affairs, Dorin Purice;<sup>1</sup> Deputy Minister of Health, Labour, Family and Social Protection, Viorica Dumbraveanu;<sup>2</sup> and Prosecutor General, Eduard Harunjen. He also met with the President of the Superior Council of Magistracy, Victor Micu; the Ombudsman, Mihail Cotorobai, and the Ombudsperson for Children's Rights, Maia Bănărescu; the President of the Council on the Prevention and Elimination of Discrimination and Ensuring Equality, Ian Feldman; members of the Moldovan Bar Association; and representatives of civil society and international organisations.

---

<sup>1</sup> Following the recent public administration reform in the Republic of Moldova, Mr Purice became State Secretary in the Ministry of Interior.

<sup>2</sup> As part of the public administration reform, Ms Dumbraveanu became State Secretary in the Ministry.

While welcoming efforts to reform the justice system, including the adoption of the new Law on the Prosecutor's Office, the Commissioner noted with concern persisting reports of prosecutorial bias in judicial proceedings and of cases of intimidation and harassment of lawyers. Based on his discussions with various interlocutors, including officials, the Commissioner formed the impression that a number of long-standing issues still need to be addressed in an effective manner, including the excessive use of detention on remand, which has been identified as a key problem concerning the Republic of Moldova in the case-law of the European Court of Human Rights. With regard to access to justice, the Commissioner stressed that lawyers should be able to operate without impediments or pressure, which has in some cases reportedly taken the form of abusive prosecutions and searches.

Though the Commissioner commended progress achieved with regard to conditions of detention in certain police establishments, he regretted that overcrowding remains problematic in many places of deprivation of liberty. Furthermore, a widely publicised case of death in custody of a person with mental disabilities has shed light on a range of serious deficiencies in the protection of the rights, safety and physical integrity of detainees. The Commissioner recommended ensuring an effective investigation of this case and urged his interlocutors to take decisive measures to strengthen safeguards against ill-treatment and the existing National Preventive Mechanism.

The Commissioner was also made aware of several individual cases which contribute to the impression that justice is being carried out in a selective manner. He recommended resolute action to improve the credibility of the justice system, notably by ensuring public access to court hearings, including in high-profile and corruption-related cases (unless there are well-justified reasons to close parts of such hearings), and making all judgments accessible to the public. The Commissioner observed that the decision not to exclude the names of the parties in reports of judicial proceedings represented a positive step towards safeguarding the overall transparency of the justice system.

Other recommendations by the Commissioner made already in his 2013 report include: changing the composition of the Superior Council of Magistracy by abolishing the *ex officio* participation of the Prosecutor General and the Minister of Justice; revoking the initial five-year probationary period for judges; and further reforming the system of disciplinary proceedings against judges, so as to ensure the integrity of the system and promote the independence of the judiciary as a whole and of individual judges. Further sustained efforts are also needed to enhance the professional competence of the judiciary and improve the reasoning of decisions taken by courts, including in cases related to detention on remand.

The Commissioner welcomed the progress achieved as regards the legal framework and raised awareness about domestic violence and gender equality, and the increasingly important role played by the police and other law-enforcement agencies in ensuring the protection of survivors of violence and accountability for those who inflict it. He welcomed the decision to sign the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), and urged the Parliament to ensure its prompt ratification.

Within the framework of his mission, the Commissioner travelled to Tiraspol (Transnistrian region) where he had meetings with civil society organisations, the local Ombudsman,

Vyacheslav Kosinskiy, and representatives of the region's leadership: Vadim Krasnoselsky, Alexandr Shcherba, and Vitaliy Ignatiev. Issues discussed in Tiraspol included the situation in penitentiary establishments and conditions of detention; domestic violence; the situation of persons with disabilities, including children; and co-operation with human rights structures and mechanisms. In particular, he recommended setting up an effective system for the prevention of domestic violence, as well as ensuring the effective prosecution of perpetrators and provision of adequate support and rehabilitation for victims of violence. Furthermore, the Commissioner encouraged comprehensive measures to include children with disabilities in mainstream education and support the effective functioning of Latin-script schools in the region. He also urged his interlocutors to engage in co-operation with various local and international human rights institutions and mechanisms and, in particular, to resume co-operation with the Council of Europe Committee for the Prevention of Torture (CPT) by extending the possibility for CPT delegations to carry out visits in full compliance with their mandate.

### ***Visit to Malta***

The Commissioner visited Malta from 7 to 10 November, focusing on issues pertaining to gender equality and women's rights, as well as to the human rights of migrants. During his visit, the Commissioner held discussions with national authorities including: the President of Malta, Marie-Louise Coleiro Preca; the Prime Minister, Joseph Muscat; the Minister for European Affairs and Equality, Helena Dalli; the Minister of Justice, Culture and Local Government, Owen Bonnici; the Minister for Foreign Affairs and Trade Promotion, Carmelo Abela; and the Minister for Home Affairs and National Security, Michael Farrugia. In addition, the Commissioner met with: the Parliamentary Ombudsman, Anthony Mifsud; the Commissioner of the National Commission for the Promotion of Equality, Renee Laiviera; the Chief Executive Officer of the Foundation for Social Welfare Services, Alfred Grixti; and the Chairperson of the Commission on Domestic Violence, Joseph Gerada. He also held a meeting with the Director of the Agency for the Welfare of Asylum Seekers, Joseph Baldacchino and the Assistant Refugee Commissioner, Malcolm Cutajar. Meetings were also held with civil society organisations active in the field of human rights, representatives of the media sector and of international organisations. The Commissioner visited a shelter for victims of domestic violence in Balzan and an open migrant reception centre in Hal Far.

The Commissioner welcomed the then-pending Gender-Based Violence and Domestic Violence Bill transposing the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) into domestic law, as well the authorities' efforts to establish a global strategy aimed at coordinating public services, including the police. However, he stressed that more needs to be done to protect the human rights of women. Looking forward to a more developed and dissuasive case-law in this field, the Commissioner encouraged the Maltese authorities to provide on-going training to more law enforcement officers, prosecutors and judges and to collect and analyse domestic violence data in a systematic manner. The Commissioner further underlined that the legal response needs to be combined with strong social support. Noting that a large part of social care to victims of domestic violence is provided by civil society organisations, the Commissioner called on the government to allocate more financial support to these organisations and to address the shortage of places in shelters for victims of domestic violence.



Concerned by the low participation of women in public life and their under-representation in decision-making positions in economic life, the Commissioner encouraged the Maltese authorities to adopt a holistic approach based on gender equality. As regards sexual and reproductive rights, the Commissioner welcomed the authorisation in 2016 of the emergency contraceptive pill without a prescription and urged the authorities to ensure that the existing possibility for pharmacists to refuse to sell emergency contraception means on grounds of conscience does not compromise in practice the effective accessibility of those means. Noting that abortion remains a taboo issue not debated publicly and that Malta is among the most restrictive member states of the Council of Europe in this field, the Commissioner called for a public debate on abortion and the infringements of women's human rights resulting from its prohibition.

Concerning the human rights of migrants, the Commissioner welcomed a number of positive steps taken in the last two years, in particular the end of the policy of automatically detaining migrants as well as the participation of Malta in the EU refugee relocation programme. While noting ameliorations since his predecessor's 2011 visit to the Hal Far migrant reception centre, the Commissioner stressed that living conditions in the single men's unit, which consists of containers with poor sanitation facilities, need to be further improved. He also deplored a severe problem of access to housing, not only for migrants but also for low-income Maltese households, which needs to be urgently addressed by the government. As regards asylum procedures, the Commissioner expressed concern about, *inter alia*, the fact that most of the successful asylum seekers are granted subsidiary protection rather than refugee status, which prevents them from benefiting from family reunification under Maltese law. Welcoming the adoption of the first migrant integration strategy, the Commissioner invited the government to systematise its implementation and also encouraged the authorities to facilitate access to citizenship for long-term residents.

The Commissioner's visit took place in the direct aftermath of the assassination of the Maltese investigative journalist Daphne Caruana Galizia. At the end of his visit, the Commissioner called on the authorities to conduct an effective investigation into the assassination of Daphne Caruana Galizia and to keep the victim's family and the public informed about the progress of this investigation. Underlining the crucial watchdog role played by the press in a democracy, Commissioner Muižnieks stressed the need to safeguard a conducive environment for media freedom. He invited the authorities to seize the opportunity of the parliamentary discussion on the draft law on media and defamation to do so, in particular by lowering the pecuniary damages that may be imposed by courts and allowing journalists to access all public interest-related information.

Following his visit, the Commissioner sent two letters respectively to the Prime Minister and Minister of Home Affairs and National Security. These letters are available on the Commissioner's website along with the replies of the Maltese authorities.

### ***Visit to Liechtenstein***

The Commissioner conducted a visit to Liechtenstein from 22 to 24 November, focusing on the legal and institutional framework for the protection and promotion of human rights, women's rights and gender equality, and human rights of persons with disabilities.

During the visit, the Commissioner held discussions with the Hereditary Prince Alois; the Prime Minister, Adrian Hasler; the Minister for Foreign Affairs, Justice and Culture, Aurelia Frick; the Minister for Social Affairs, Mauro Pedrazzini; and the Minister for Interior,

Education and Environment, Dominique Gantenbein. The Commissioner also held an exchange with the Chair and members of the Liechtenstein Delegation to the Parliamentary Assembly of the Council of Europe and met with the President and the Vice-President of the Association for Human Rights and the Ombudsperson for Children and Youth. He also met with representatives of non-governmental organisations and visited a centre for persons with disabilities and the shelter for women victims of violence. The Commissioner also took the opportunity of the visit to give a public talk on “Human Rights in Europe: Challenges and Opportunities” at the town hall in Vaduz.

At the end of the visit, the Commissioner welcomed the solid legal and institutional framework for the protection and promotion of human rights in Liechtenstein and its recent strengthening through the establishment of the Association for Human Rights. He stressed the need to ensure sustainable and adequate funding for this new institution. He also called for the adoption of comprehensive anti-discrimination legislation applying in all fields of life and for all grounds of discrimination.

As regards women’s rights and gender equality, the Commissioner recommended the adoption of a national gender equality strategy addressing all aspects of women’s rights including work/private life balance, domestic violence, access to safe and legal abortion in the country and the fight against persisting gender stereotypes. He supported a holistic approach to finding solutions to the underrepresentation of women in political and business lives, including further research on existing barriers and consultation with women’s organisations. The Commissioner called on the authorities to ratify the Council of Europe Convention on preventing and combating all forms of violence against women and domestic violence (Istanbul Convention). He stressed that the authorities should continue awareness-raising activities in this field, provide specialised training to police, judges and other professionals, ensure sustainable funding for NGOs assisting victims, secure partnership protocols between these NGOs, social services and the police, and facilitate foreign women’s residence in the country once separated from their abusive partners.

The Commissioner called on the Liechtenstein authorities to ratify the United Nations Convention on the Rights of Persons with Disabilities. He stressed the importance of stepping up progress towards a more inclusive approach whereby persons with disabilities are able to live independently and access services in the community, rather than in separate congregated settings, and are educated in mainstream schools, with the necessary support. Concerning the ability of persons with intellectual and psychosocial disabilities to make decisions regarding their lives, the Commissioner underlined the need to sustain progress in moving from substitute decision-making to supported decision-making and to review legislation and policies regarding legal capacity and involuntary placement and treatment.

### ***Mission to Poland***

The Commissioner travelled to Poland from 5 to 8 December to deliver a keynote speech at the opening of the First Congress on Human Rights, organised to mark the 30th anniversary of the creation of the institution of the Ombudsman in Poland. He also had meetings with the First President of the Supreme Court, Małgorzata Gersdorf, the Chairman of the National Council of the Judiciary, Dariusz Zawistowski, and members of that body, as well as Undersecretary of State at the Ministry of Justice, Marcin Warchoł. In addition, the Commissioner met with selected human rights and legal experts as well as representatives of civil society organisations, and held a roundtable meeting with

organisations active in the areas of women's rights, sexual and reproductive health and rights, domestic violence, gender equality and anti-discrimination.

In a statement marking the end of his visit, the Commissioner regretted the adoption on the same day by the Sejm of two laws changing the composition and functioning of Poland's Supreme Court and the National Council for the Judiciary, expressing his concern that the bills, if signed into law, would further undermine the independence of the judiciary by subordinating it to the executive and the legislature, further eroding the separation of powers and the rule of law. He urged the Polish authorities to follow the recommendations of the Venice Commission's opinions adopted on the same day, and insisted that any reform of the judicial system should be subjected to careful reflection and consultation.

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

#### ***Letter to Juan Ignacio Zoido Álvarez, Minister of the Interior of Spain on the use of force by law enforcement authorities***

On 9 October, the Commissioner published a letter addressed to Juan Ignacio Zoido Álvarez, Minister of the Interior of Spain, raising concerns regarding allegations of disproportionate use of force by law enforcement authorities in Catalonia on 1 October 2017. The Commissioner reiterated recommendations he had addressed to the Spanish authorities in his 2013 report following his visit to Spain, notably as regards the use of anti-riot weapons, such as rubber bullets. Moreover, he urged the authorities to ensure that swift, independent and effective investigations be carried out into all allegations of police misconduct and disproportionate use of force, with a view to deterring any further police misconduct, preventing the escalation of violence and preserving public confidence in the work of law enforcement officials. Finally, he called on the authorities to establish an independent police complaints mechanism.

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

#### ***Letter to the Minister of Labour and Social Justice of Romania concerning persons with disabilities***

On 10 October, the Commissioner published a letter he addressed to Lia-Olguța Vasilescu, Minister of Labour and Social Justice of Romania, concerning the government's co-operation with expert non-governmental organisations in order to enhance monitoring of institutions providing care to persons with disabilities. In his letter the Commissioner noted that since 1 July, experts of the Center for Legal Resources (CLR) had been unable to visit institutions because the authorities had not renewed the Memorandum of Understanding concluded with CLR in 2013. Although a Monitoring Council was established to review the national implementation of the UN Convention on the Rights of Persons with Disabilities (UNCPRD), this body was not yet operational. This lack of effective monitoring puts the human rights of persons with disabilities in institutions at serious risk, and could lead to violations of the UNCPRD and the European Convention on Human Rights. Therefore, the Commissioner recommended the restoration of the Memorandum of Understanding, or the setting up of another form of collaboration between

the authorities and CLR, which would allow the latter and other expert organisations to continue their monitoring.

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

***Letter to Marco Minniti, Minister of the Interior of Italy on maritime operations in Libyan territorial waters***

On 11 October, the Commissioner published a letter addressed to Marco Minniti, Minister of the Interior of Italy, requesting information about Italy's maritime operations in Libyan territorial waters aimed at managing migration flows. Expressing appreciation for Italy's efforts in saving lives at sea and in receiving migrants arriving at its shores, the Commissioner underscored the duty of states to protect and safeguard the human rights of migrants even when migration flows pose considerable challenges. In light of reports on the human rights situation of migrants in Libya, handing migrants over to the Libyan authorities would expose them to a real risk of torture or inhuman or degrading treatment or punishment. The Commissioner therefore urges the Italian government to clarify the kind of support it expects to provide to the Libyan authorities in Libyan territorial waters and the safeguards put in place to avert such risks for people intercepted or rescued by Italian vessels in Libyan territorial waters. He also requested information about measures to ensure that search and rescue operations in the Mediterranean, including those conducted by non-governmental actors, can continue to be carried out effectively and safely.

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

***Letter to Ramil Usubov, Minister of Internal Affairs of Azerbaijan on the human rights of LGBT persons***

In a letter addressed to Colonel General Ramil Usubov, Minister of Internal Affairs of Azerbaijan, and published on 16 October, the Commissioner called for thorough investigations into serious allegations of human rights violations of LGBT persons recently arrested and detained in Baku. The Commissioner underscored that arrests based wholly or in part on sexual orientation or gender identity constitute discrimination and run counter to the European Convention on Human Rights. He requested information on measures taken to verify the lawfulness of the arrests and to investigate the allegations of physical ill-treatment and other forms of abuse, including forced medical examination, by law enforcement officials. He also requested that the Azerbaijani authorities provide information on measures taken to counter discourse by officials, politicians and local media outlets that fuels hate and violence against LGBT persons.

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

***Report on Switzerland***

On 17 October, the Commissioner published a report following his visit to Switzerland from 22 to 24 May, focusing on the institutional and legal framework for the protection and promotion of human rights and the human rights of migrants, including asylum seekers and refugees.

Noting that Switzerland had a solid institutional and legal framework for the protection and promotion of human rights, the Commissioner welcomed the decision to set up a national institution for human rights. However, he recommended broadening its terms of reference as far as possible and guaranteeing its independence by endowing it with its own legal status and adequate human and financial resources. Concerned about the existence of federal popular initiatives with a potential to weaken the protection of human rights in Switzerland, the Commissioner recommended that the authorities establish a mechanism to monitor the compatibility of popular initiatives with human rights, while preserving the democratic value of popular initiatives. He also called on the Swiss authorities to promote social rights, in particular by ratifying the Revised European Social Charter and its Protocol on collective complaints as soon as possible. He recommended that Switzerland supplement its antidiscrimination legislation and strengthen its awareness-raising measures targeted to society in general and the public service to combat all forms of discrimination. Switzerland should also review the new powers given to the intelligence services in the light of applicable human rights standards and set up fully independent bodies overseeing the activities of these services. Welcoming the adoption of a national action plan on business and human rights, the Commissioner stressed the importance of ensuring that human rights abuses attributable to Swiss-based companies give rise to civil liability in Switzerland and that there are no undue judicial barriers to civil action by victims abroad. On the issue of historical human rights abuses in Switzerland, including compulsory social measures, such as administrative detention and forced placements of children, the Commissioner welcomed the establishment of compensation funds and research programmes to redress these abuses. He called on the Swiss authorities to intensify their efforts to ensure full respect for applicable international standards, in particular by including history teaching about these abuses in school curricula throughout the country. Noting the significant number of Yenish people among the victims of such abuses, he also stressed the need to address the disadvantages they continue to suffer in many fields of life by taking targeted policy measures.

As regards the human rights of migrants, including asylum seekers and refugees, the Commissioner welcomed the new law on asylum, which should result in faster and higher quality procedures for determining refugee status, in particular through the provision of free legal assistance from the outset. Persons in need of international protection who receive a temporary admission status find themselves in a precarious situation that impedes their integration, notably due to the legal restrictions that this status imposes, including with regard to family reunification, geographical mobility, and social assistance. The Commissioner called on the authorities to establish an international subsidiary protection status guaranteeing the same rights as are granted to persons holding official refugee status. He also made a number of recommendations regarding reception conditions for asylum seekers with a particular emphasis on the need for a gender-based and child-friendly approach to issues related to asylum. He noted that there were still too many restrictions to freedom of movement of asylum seekers and that some federal reception centres were too isolated. Concerning the detention of migrants, the Commissioner called on the authorities to remove the possibility of administrative detention for migrant children over the age of 15, which is practiced in some cantons, and to stop detaining children -- with or without their family -- in transit zones of international airports. More generally, he recalled that administrative detention should only be used as a last resort, and that alternatives to detention should be promoted.

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

***Letter to the Swedish Parliament on the establishment of a national human rights institution***

In a letter addressed to the Committee on the Constitution of the Swedish Parliament published on 30 October, the Commissioner welcomed the current discussions to establish a national human rights institution and urged parliamentarians to ensure that the new body is adequately funded, independent and effective, in accordance with the Paris Principles adopted by the UN General Assembly in 1993. The Commissioner underscored that national human rights institutions are crucial for promoting and protecting human rights at the national level; to do so, they should have as broad a mandate as possible, be pluralistic, independent from the government, adequately funded and shielded from financial control which might affect their independence. Lastly, the Commissioner recalled that particular attention should be given to involving civil society in this process.

The letter is available on the Commissioner's website along with the reply from the Swedish Parliament

***Report on Bosnia and Herzegovina***

On 7 November, the Commissioner published a report following his visit to Bosnia and Herzegovina, which took place from 12 to 16 June, focusing on certain major issues pertaining to transitional justice and reconciliation, and freedom of the media.

Noting the reported regression in co-operation on the prosecution of wartime crimes in the region, the Commissioner called on all states in the region, including Bosnia and Herzegovina, to reverse this negative trend. Despite some advances in the prosecution of wartime crimes of sexual violence, the Commissioner was concerned about the slow progress in the prosecution of wartime crimes and the high number of such cases that remain to be tackled. The Commissioner urged the authorities to take all necessary measures to end impunity, and effectively address all shortcomings in the protection of and support to witnesses. The authorities were also urged to ensure that all direct victims of wartime crimes and their families are provided with effective access to justice and adequate reparation.

The Commissioner reiterated that additional efforts at the national and regional levels are necessary to resolve the pending cases of missing persons and urged the authorities to establish the long-awaited fund for support to families of missing persons, and to fully comply with their international obligations notably as regards the relevant case-law of the UN Human Rights Committee.

Addressing the situation of some 50 000 internally displaced persons in need of targeted assistance, including more than 7 000 persons living in 156 collective centres, the Commissioner urged the authorities to step up their work in this field with a view to creating adequate conditions for sustainable return. He also called on the authorities to resolutely fight ethnic intolerance and hate crime, which have impacted negatively on the returns of IDPs and reconciliation and to ensure that law enforcement officials and legal professionals are adequately and systematically trained to be able to recognise and effectively investigate and sanction these offences.

With regard to freedom of the media, the Commissioner noted that despite the existence in Bosnia and Herzegovina of an adequate legislative framework, the media operate in very

difficult conditions. He was seriously concerned that civil lawsuits for defamation are increasingly used against journalists and have had a chilling effect on their work and freedom of expression. He stressed that domestic court judgments in defamation cases should be fully compliant with the requirements of Article 10 ECHR. To this end the training and capacity of domestic judges in this domain must be strengthened.

The Commissioner was worried about acts of violence and threats which have affected journalists' freedom of expression. He called on the authorities to live up to their positive obligation to initiate prompt, thorough and transparent investigations into all cases of physical violence or threats against journalists, and to bring perpetrators to justice. Considering unacceptable the public use by certain leading politicians of inflammatory remarks, including personal insults, against journalists and their work, the Commissioner urges politicians to put an end to this and other forms of pressure on the media. The Commissioner also expressed his concern about the reported deterioration of journalists' working conditions and called on the authorities to engage in an open dialogue with the professional media community on this issue and take all necessary measures in order to create adequate conditions for media professionals' work. At the same time he underlined the need for media professionals to strengthen ethical journalism and to ensure that the mechanisms for self-regulation are effectively used by all media actors.

Last but not least, the Commissioner was seriously concerned by the failure of the authorities to find a sustainable funding solution for Bosnia and Herzegovina Radio-Television (BHRT). Expressing his grave concern about the existing tendency to organise the public service media along ethnic lines, the Commissioner regretted the lack of constructive and inclusive dialogue on necessary reforms of the public service media which would ensure that they effectively serve the needs of society as a whole with regard to information, education and culture. He urged the authorities to find a long-term, sustainable funding model for the public service media, to ensure that their independence is preserved, and to refrain from any action that could lead to censorship and threaten their editorial independence.

The report is available on the Commissioner's website.

### ***Letter to the Ukrainian Parliament on combating violence against women***

On 4 December, the Commissioner published a letter addressed to the Chairperson of the Parliament of Ukraine, whereby he strongly encouraged the members of the Ukrainian Parliament to accelerate the process of ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention).

The Commissioner addressed several objections and misconceptions - encountered in various countries and also present in the on-going public discussions in Ukraine - relating to this Convention, which aims to eradicate violence against women and domestic violence by establishing a comprehensive and effective system of prevention, protection and accountability.

The letter is available on the Commissioner's website.

## 4. Themes

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

On 18 October, the Commissioner and the European Network of National Human Rights Institutions (ENNHRI) organised a round table on refugee family reunification in Brussels. The round table brought together representatives of NHRIs from 11 Council of Europe member states. The basis for the discussion was the issue paper ‘Realising the right to family reunification for refugees in Europe’, which the Commissioner published in June 2017. The round table was used to exchange examples of NHRI engagement with the issue of family reunification, and to explore how the Commissioner, ENNHRI and individual NHRIs could reinforce each other’s work in this area.

In addition to the above round table, while in Brussels the Commissioner held meetings with the Children’s Ombudsman for the French-speaking community, a representative of the Flemish Children’s Ombudsman and with the anti-discrimination and equality institution Unia, and discussed issues concerning inclusive education.

On 26 October, the Commissioner published his Human Rights Comment ‘Ending restrictions on family reunification: good for refugees, good for host societies’. In the Comment, he highlighted the continuing separation of large numbers of refugees and persons with subsidiary protection from family members due to European states’ restrictions on family reunification. The Commissioner noted that restricting family reunification is a short-term reaction of states which focus on limiting the number of new arrivals, but is an ill-advised long-term policy. He pointed to the negative effects of family separation on integration efforts, as well as family reunification’s role in ensuring safe and legal migration to Europe. The Commissioner called for a long-term outlook, which would include lifting restrictions on family reunification. He noted that political debates about the usefulness of continuing restrictions are taking place in several member states. However, other avenues, such as launching legal challenges to such restrictions, remain important.

On 21 November, the Commissioner participated as keynote speaker in the Conference on the “Principle of Family Unity for refugees in Switzerland – Are international human rights standards applied?” organised in Bern by the UNHCR and the *Centre Suisse pour la Défense des Droits des Migrants* (CSDM). The Commissioner introduced the conclusions and recommendations from his issue paper on “Realising the right to family reunification of refugees in Europe” published in June 2017, recalling that international human rights standards require that people seeking protection can reunify with their families in an effective and timely manner and that all member states should lift persisting obstacles to family reunification and treat all people granted protection equally. In this context, he also recalled the recommendations he made to Switzerland in his recent country report concerning the establishment of an international subsidiary protection status and access to family reunification (see above).

### ***Transitional Justice***

On 21 November, the Commissioner published a Human Rights Comment in which he reflected on the current state of transitional justice in the Western Balkans and on what remains to be done. Whilst he acknowledged the progress made in the search for missing persons, the Commissioner was concerned that this process has been hindered by the



lack of political will and by inadequate financial and human resources for exhumations and necessary forensic work. Highlighting the important role played by the International Criminal Tribunal for the former Yugoslavia (ICTY) in the eradication of impunity for serious human rights violations in the region, the Commissioner noted that the fight against impunity at national level is moving far too slowly and a number of serious shortcomings persisted. The Commissioner stressed that many civilian war victims feel that their governments are failing them and comprehensive reparation mechanisms have not yet been established. Recalling states' positive obligation to tackle and eradicate school segregation, the Commissioner stressed that generations of children in the region are educated in ethnically segregated schools under the pretext of the protection of language and cultural rights of a certain ethnic group. The Commissioner concluded that in order to reverse these negative trends, all political actors need to put their short-term political goals aside and to focus on the strengthening of social cohesion instead of amplifying ethnic divisions.

### ***Freedom of expression and media freedom***

As part of his visit to the UN General Assembly in New York (see below), on 25 October the Commissioner participated as panellist in a side-event ("Stopping the erosion of media freedom: challenges, opportunities and solutions") hosted by the Permanent Mission of Latvia to the UN. In his speech, the Commissioner underlined the multifaceted safety threats faced by journalists in Europe; the obstacles to their work arising from laws against defamation and measures to counter terrorism that do not comply with human rights standards; shortcomings deriving from media ownership concentration and shrinking economic independence; and challenges related to unethical journalism and deliberate disinformation. He suggested eight steps to preserve press freedom and strengthen democracy, including the eradication of impunity for violence and intimidation against journalists; a human rights compliant defamation regime, which decriminalises defamation and deals with it through proportionate civil sanctions only, a framework for the protection of sources; the establishment of high quality public service broadcasting; and effective media self-regulation to stamp out unethical and illegal journalistic behaviour.

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

On 5 December the Commissioner published an issue paper entitled 'Women's sexual and reproductive health and rights in Europe'. The issue paper finds that, despite considerable progress, women in Europe continue to face widespread denials and infringements of their sexual and reproductive health and rights. Laws, policies and practices still curtail and undermine women's sexual and reproductive health, autonomy, dignity, and decision-making and pervasive gender inequality continues to have profound effects on their sexual and reproductive health and rights. Moreover, in recent years, resurgent threats to these rights have emerged jeopardising longstanding commitments to gender equality and women's rights. The issue paper addresses these concerns against the backdrop of the human rights obligations of Council of Europe member states as enshrined in international and European human rights instruments and as elaborated and interpreted by human rights mechanisms, in particular with respect to women's rights to life, health, privacy and non-discrimination as well as freedom from torture and ill-treatment. It focuses specifically on member states' obligations in the fields of comprehensive sexuality education; modern contraception; safe and legal abortion care; and quality maternal health care.

The issue paper contains 54 recommendations by the Commissioner to help Council of Europe member states to improve women's sexual and reproductive health and rights. In particular, the Commissioner recommends renewing political commitment to women's rights and guarding against retrogressive measures that undermine women's sexual and reproductive health and rights. He calls on member states to establish health systems that uphold and advance women's sexual and reproductive health and rights. Other recommendations include: ensuring the provision of comprehensive sexuality education; guaranteeing the affordability, availability and accessibility of modern contraception; and ensuring all women's access to safe and legal abortion care. The Commissioner also asks states to ensure that refusals of care by health care workers on grounds of conscience or religion do not endanger women's timely access to sexual and reproductive health care. He calls on member states to respect and protect women's human rights in childbirth and guarantee all women's access to quality maternal health care, as well as to eliminate coercive practices and safeguard women's informed consent and decision-making in sexual and reproductive health care contexts. He also recommends ensuring all women's access to effective remedies for violations of their sexual and reproductive rights. Finally, member states are called upon to eliminate discrimination in laws, policies and practices and guarantee equality for all women in the enjoyment of sexual and reproductive health.

### ***Non-discrimination***

On 10 October, the Commissioner sent a video message on the occasion of the 10<sup>th</sup> anniversary of the Network of European National Equality Bodies, Equinet. In his message, the Commissioner noted the progress achieved in Europe in the field of equality: there is a growing list of countries which have adopted non-discrimination laws that are increasingly comprehensive, many have established equality bodies that can handle complaints and work to promote non-discrimination, and co-operation between the institutions concerned is intensifying. At the same time, the Commissioner regretted that prejudices, stereotyping and discrimination remain widespread in Europe. Not enough headway has been made, for example, in the fight against racism, antisemitism and intolerance against LGBTI people. The Commissioner stressed that the work of equality bodies is of critical importance. In order to succeed, equality bodies must be truly independent from national authorities, be sufficiently staffed and resourced, and increase their communication efforts, both toward groups that tend to be subjected to discrimination and the public at large.

### ***Systematic human rights work***

On 20 December, the Commissioner published the conclusions of a workshop he organised in Strasbourg on 2 June on the implementation of national human rights action plans (NHRAPs).

The event followed up on a previous workshop organised in March 2014. As some countries have already completed one or several cycles of implementation of their NHRAPs, the Commissioner sought to examine what the impact of NHRAPs has been on the realisation of human rights. The 2 June workshop gathered participants from public administration, national human rights institutions and civil society from Council of Europe member states, as well as representatives from the EU's FRA and the UNDP.

The conclusions describe the most common challenges facing the implementation of NHRAPs, which can be conceptual, operational or related to insufficient political will, as

well as presenting the lessons learned and ways to overcome these challenges. The possibilities to do so include: devising NHRAPs that are both strategic and action-oriented; ensuring strong and broad ownership; better communicating with stakeholders and the public about the NHRAPs; improving the methodologies and indicators to monitor the implementation of the NHRAPs; and investing some resources in the structures necessary to lead and coordinate the implementation of the NHRAP. The conclusions make clear that NHRAPs have already had an impact in improving respect for human rights at the structural level (through, for example, improvement of the legislative framework on human rights, the creation of institutions and processes to promote human rights, and enhanced consultation processes on laws and policies). More efforts are required to measure the impact that NHRAPs have on real-life enjoyment of human rights throughout society. The conclusions also propose some opportunities to re-energise the work on NHRAPs, notably by linking them to work on the UN Sustainable Development Goals 2030.

The conclusions are available on the Commissioner's website.

## **5. Other meetings**

### ***UN General Assembly 3<sup>rd</sup> Committee meeting and additional meetings, New York***

The Commissioner travelled to New York from 22 to 25 October to take part in the 72nd session of the Third Committee of the UN General Assembly and meet with a number of UN Special Rapporteurs and officials. On 25 October, the Commissioner made an intervention as part of the Committee's Interactive Dialogue with Michel Forst, UN Special Rapporteur on the situation of human rights defenders, who presented his report on the situation of those who defend and promote human rights in the field of business. The Commissioner spoke about his activities involving human rights defenders and his work aimed at their protection, as part of the broader activities and work of the Council of Europe as a whole in this field.

On 24 October the Commissioner met with Dainius Pūras, UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of health. The discussions focused in particular on women's sexual and reproductive health and rights and coercion in psychiatry. At a meeting with Catalina Devandas Aguilar, UN Special Rapporteur on the rights of persons with disabilities, which took place on the same day, the discussions covered coercion in psychiatry and inclusive education. On 25 October, the Commissioner also met with David Kaye, UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, to discuss respective country and thematic priorities. Finally, on 24 October, the Commissioner met with Andrew Gilmour, Assistant Secretary-General for Human Rights and Head of the Office of the High Commissioner for Human Rights (OHCHR) in New York. They exchanged information about the situation in the field of human rights protection in a number of countries.

### ***OSCE Permanent Council, Vienna***

On 16 November, the Commissioner addressed the Permanent Council of the OSCE in Vienna. In his speech, the Commissioner shared some reflections on the broader human rights context within which he has worked over the last five and a half years and focused on two important issue areas – migration and media freedom.

The Commissioner stressed that the context of his mandate has been a series of overlapping human rights crises such as the economic crisis, the situation in and around Ukraine, the migration policy crisis, and the many terrorist attacks with the human rights implications of government responses to such attacks.

The Commissioner observed that migration is an issue that has inspired strong emotions and has often been accompanied by human rights violations. He recalled the rights at stake which are not only the prohibition on trafficking in persons or modern forms of slavery, but also the ban on torture and ill-treatment of persons in detention. The Commissioner emphasised that what is required are safe and legal venues for people in need of international protection to come to Europe, and that the two core means in this regard are resettlement and family reunification. He highlighted the need to think long-term about integration and about how to help the new arrivals to successfully find their way in our societies in order to maintain social cohesion.

The Commissioner also underlined a series of problematic issues affecting media freedom he has encountered in recent years. He spoke about threats and attacks against journalists and laws envisaging criminal liability for defamation cases. The Commissioner stressed that in some regions, a core concern is problematic counter-terrorism measures. He observed that sometimes governments invoke security concerns in arbitrarily blocking the internet, which can also have deleterious effects on freedom of expression and media freedom. He added that in many jurisdictions, the concentration of media ownership is the core issue. Lastly, the Commissioner noted that unethical or illegal behaviour by some journalists needs to be addressed through self-regulation and a greater focus on ethical, professional journalism.

## **6. Human Rights Defenders**

On 18 October, the Commissioner posted a statement on his Facebook page expressing concern about the continuing trend of judicial actions targeting the legitimate work of human rights defenders in Turkey. It followed up on previous statements the Commissioner made on the arrest of Taner Kılıç, the Chair of Amnesty International in Turkey, in June and the remand in custody of eight human rights defenders participating in a digital security workshop, including Ms İdil Eser, Director of Amnesty International Turkey, and two trainers, in July. The 18 October statement followed the acceptance by an assize court in Istanbul of the indictment against these persons for membership of and/or aiding an armed terrorist organisation and the request of the prosecutor to include Mr Kılıç among the suspects in this case. In addition to calling for the immediate release of the human rights defenders and trainers in question, the Commissioner expressed sadness regarding the chilling effect of these actions on civil society actors who carry out invaluable work to further human rights protection in Turkey.

On 22 November, the Commissioner posted another statement on his Facebook page expressing concern at the decision of the Bar Association of Azerbaijan to suspend the powers of Yalchin Imanov (a lawyer active in the protection of human rights and who represented a number of human rights defenders) as an advocate and to refer his case to

a court with a view to his disbarment. This decision followed recent amendments to the law regulating representation before the courts in Azerbaijan, imposing in practice a Bar Association monopoly on legal practice. In this respect, the Commissioner referred to his submission to the European Court of Human Rights in a case against Azerbaijan last year, in which he highlighted a pattern of harassment against human rights lawyers working on sensitive cases in Azerbaijan, in particular intimidation through lawsuits and disciplinary proceedings by the Bar Association. The Commissioner called on the Azerbaijani authorities to start reversing this trend and develop a more conducive environment for lawyers, so that they can discharge their functions freely without any fear of persecution, harassment or retaliation.

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

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

On 19 October, the Commissioner published his written observations submitted to the European Court of Human Rights concerning a group of ten applications relating to freedom of expression and the right to liberty of journalists in Turkey. These observations are based on two visits the Commissioner carried out to Turkey in April and September 2016 as well as on his continuous monitoring work on this country. The first part of the Commissioner's submission contains his findings about Turkey's long-standing problem regarding the overly broad interpretation of the concepts of terrorist propaganda and support for a terrorist organisation, including for statements and persons that clearly do not incite violence. He highlights that his visits in 2016 revealed that these problems had become more prevalent and pronounced than in 2011 when his predecessor had examined them. The Commissioner observes, notably, that many criminal proceedings against journalists were initiated on the basis of unsubstantiated charges and with no factual evidence other than purely journalistic activities. The second part of the submission deals with the questions of the excessive use of detention on remand and the lack of sufficient reasoning by courts, a pre-existing problem which has been exacerbated under the state of emergency. The final part provides the Commissioner's observations on a general pattern of increased targeting of all dissenting voices in Turkey beyond journalists, accompanied by an erosion of the independence and impartiality of the judiciary in Turkey. Against this background, the Commissioner highlights the strong chilling effect produced by the detention and prosecution of journalists, and concludes that it is difficult not to see the recent increase in their number as part of a broader pattern of repression against those expressing dissent or criticism of the authorities.

On 10 November, the Commissioner published his written observations submitted to the European Court of Human Rights regarding a group of twelve applications concerning the freedom of expression and the right to liberty and security of parliamentarians in Turkey. The observations are based on two visits carried out by the Commissioner to Turkey in April and September 2016, his ensuing Memorandum on Freedom of Expression and Media Freedom and on his continuous monitoring work on this country. In the first part, which contains his observations on the freedom of expression and the right to liberty and security of parliamentarians in Turkey, the Commissioner highlights in particular that the lifting of the parliamentary immunity of 154 MPs in Turkey, which was considered as a misuse of the constitutional amendment procedure by the Venice Commission and the PACE, disproportionately affected the political party the applicants belong to and that the

majority of the charges against them concerned their statements. Against the background of the overly broad interpretation of the concepts of terrorist propaganda and support for a terrorist organisation, including its application to people or statements that clearly do not incite violence, this situation had a negative impact not only on the applicants but also on public and parliamentary debate in general at a particularly crucial juncture. The second part of the submission sets out the Commissioner's observations on the intensification in recent years of a pattern of undue restrictions on freedom of expression and the right to liberty and security of those expressing views critical of official policy, particularly on issues related to the situation in South-Eastern Turkey. He also details his concerns regarding judicial independence and impartiality in the country. In his conclusions, the Commissioner states that he sees the recent detention and prosecution of opposition parliamentarians as part of a broader pattern of repression against those expressing dissent or criticism of the authorities.

On 13 November, the Commissioner published his written observations submitted to the European Court of Human Rights on a case concerning access of a student with a physical disability to mainstream education in Romania. The observations are based on the Commissioner's work on the right of children with disabilities to inclusive education in thirteen countries, a Position Paper he published on combating school segregation through inclusive education in September 2017 and his report of 2014 following his visit to Romania. In his submission, the Commissioner recalled that the majority of member states of the Council of Europe still failed to guarantee the right to access quality education without discrimination for children with disabilities. This failure manifests itself in practices which discriminate against these children on grounds of their disability, including the placement in segregated educational settings; enrolment denials; denials of reasonable accommodation and of necessary supports in mainstream education; and home-schooling proposed as the only available option. The Commissioner then commented on the implementation of this right in Romania, where he found that inclusive education, reasonable accommodation and individual supports functioned more as uncertain possibilities than as enforceable rights. He also provided observations on substantive aspects of the right to education without discrimination and on the basis of equal opportunity in light of the UN Convention on the Rights of Persons with Disabilities, as the international benchmark and legal reference point in all matters pertaining to disability. The Commissioner concluded that the right to equal access to education for children with disabilities can only be implemented through inclusive education; that the widespread practice of refusing to provide reasonable accommodation to children with disabilities to access mainstream education amounted to discrimination; and that withholding the necessary individual supports rendered the right of these children to equal access to education meaningless. Moreover, he stressed that their rights remained illusory and theoretical in the absence of prompt and effective remedies to challenge allegations of rights violations in the area of education.

## **8. Communication and Information work**

The main media coverage during the period under review concerned migration, women's rights and freedom of assembly. More than 300 news items were published by national and international media outlets between 1 October and 10 December.

The Commissioner's work on migration, and in particular on the right of refugees to family reunification, was widely covered by the press (*AGI, Agora Vox, ANSA, ANSAmed, Corriere della Sera, Deutsche Welle, Die Welt, Domradio.de, DPA, N-TV, Stern Online, FAZ, Stuttgarter Zeitung, Delano, Economist Intelligence Unit, EurActiv, Eurasia Review, Europa Press, La Vanguardia, Frankfurter Allgemeine Zeitung, Giornolettissimo, Il Fatto Quotidiano, Il Giornale, Il manifesto, Il Primato Nazionale, Jyllands Posten, La Libre Belgique, La Provincia Pavese, La Nuova di Venezia e Mestre, La Nuova Ferrara, Messaggero Veneto, La Tribuna di Treviso, Il Tirreno, Il Piccolo, La Repubblica, La Stampa, The Huffington Post, Left, L'Indro, Agenzia Nova, Alghero News Group, L'Orient le Jour, NTB, ABC Nyheter, Document.no, Opinione della liberta, Ouest France, Radio Padova, Rassegna sindacale, Reuters, Seattle pi, Stol, Süddeutsche Zeitung, The Associated Press, The Telegraph, The Canadian Press, Seattle Times, Seattlepi.com, Stars and Stripes, The Local, Libyan Express*).

The Issue paper on women's sexual and reproductive health and rights was also widely covered, in particular by *20 Minutes, Aljazeera Balkans, AndorraDifusio, ANSA, ARA, Aravot, Avvenire, Azadliq Radiosu, BBC, Bon Dia, Boursorama, Bz Basel, Cadena SER, der Standard, Diari d'Andorra, Dnevnik, EFE, El Confidencial, EU observer, Euractiv, La Prensa, EPD, Europe 1, FENA, Informativa, France Inter, France TV info, Gazeta Wyborcza, Globalist, Huffington Post, Index, Jutarnji Life, La Croix, LCI, Le Figaro, Le Journal des Femmes, Le Monde, Le Temps, Libération, Marie-Claire, Monaco-Matin, Nice-Matin, Oko Press, ORF, Ouest France, Plus Info, Publico, Lusa, Radio-Canada, RFI, Romea, RTBF, RTL, RTS Info, SEEbiz, SME svet, STA, The Irish Times, The Irish Examiner, The Journal, Times of Malta, Tribune de Genève, TSF and TV5 Monde*.

The Commissioner's letter to Juan Ignacio Zoido Álvarez, Minister of the Interior of Spain, in which he called for an investigation into allegations of disproportionate use of force by law enforcement authorities in Catalonia on 1 October 2017 was covered by *20 minutos, AFP, Agence Europé, Agência Lusa, ANSA, ARA, Askanews, Beta, Dagen Nyheter, EFE, El Mundo, El Nacional, El País, El Punt Avui, Europa Press, Insajder, Interfax, KrasNews, La Repubblica, La Vanguardia, Le sexta TV, L'indépendant, L'Orient-Le Jour, Nash-sport, News-russia, Nezavisimaya Gazeta, Novi magazin, Observador, Ovd-Info, Politica Oggi, Proceso, RAC 1, RT, RTV San Marino, Sky TV, Sputnik, Tass, The Local, The Sunday Times and The Telegraph Online*.

*ANSA, L'Orient Le Jour, Pan European Networks, ParsToday, RTS, SDA/ATS, Basler Zeitung, Neue Luzerner Zeitung, Aargauer Zeitung, Neue Zuger Zeitung, Bündner Tagblatt, SRF, Swissinfo, La Liberté, Blick, Terre des femmes, and TvSwizzera* covered the report on Switzerland, while the visit to the Republic of Moldova was covered by *Interlic News Agency, Moldpress, NewsMaker, Noi, Novosti Pmr, Open Democracy, Radio Chisinau, Deschide, RFE/RL, Siarul National, Trm, Vector European, Ziarul, and Ziarul de garda*.

A comment on the adoption of two new bills by the Polish Parliament that may undermine the independence of the judiciary in the country was covered by *AFP, Agence Europe, Frankfurter Allgemeine Zeitung, Gazeta Wyborcza and The New York Times*.

Further coverage concerned freedom of expression (*Aftenposten, Cumhuriyet, Der Tagesspiegel, Die Welt, Hurriyet Daily News, Reporter, Sputnik, TAZ, ZDF*), the rights of LGBTI people (*AFP, France 24, Yahoo News, APA, L'Orient Le jour, Open Democracy, Osservatorio Balcani e Caucaso, Pravda, Telegraf*), the visit to Sweden (*AftonBladet, Fria*

*tidningar, Omni, Svenska Dagbladet, Sydsvenskan, Norrbottensaffärer, The Local*), the Commissioner's work on Crimea (*BFM.RU, Vesti, ZN.UA*), the law on torture in Italy (*ANSA, Il Fatto Quotidiano, Il Manifesto*), media freedom (*EcoDiario, Heise*), and children's rights (*Baltic Daily, LETA*).

An opinion editorial on family reunification for beneficiaries of international protection in Germany was published in *Süddeutsche Zeitung*.

69 tweets were published up until 10 December, with a reach of over 1 000 000 users and an increase of over 1 300 followers in the period under review (10% more compared to the previous quarter). 25 Facebook posts were published, with a reach of over 100 000 users and an increase of over 500 page likes.

By 10 December, over 45,000 unique Internet users had visited the Commissioner's website, with over 1000 users visiting the special page created for the Issue Paper on Women's Sexual and Reproductive Health and Rights in the space of three days.

## **9. Next three months**

### January

- |             |  |
|-------------|--|
| 22-26/01    | PACE session   |
| 25/01       | Presentation of the Commissioner's Annual Activity Report 2017 |
| 29/01-02/02 | Mission to "The former Yugoslav Republic of Macedonia"         |

### February

- |          |                   |
|----------|-------------------|
| 14/02    | CM Deputies       |
| 19-23/02 | Mission to Serbia |

### March

- |          |   |
|----------|---|
| 06/03    | High Level Event "Beyond jargon: reframing our communication on human rights", Geneva, co-organised by the Office of the United Nations High Commissioner for Human Rights, the Office of the Council of Europe Commissioner for Human Rights, the EU Fundamental Rights Agency and national human rights institutions' networks ENNHRI and GANHRI. |
| 12-16/03 | Mission to Slovakia   |
| 21/03    | CM Deputies   |



## 10. Observations and reflections

For a long time, many of us thought that women's liberation had been largely achieved in most democracies. Women's suffrage, the development and availability of contraceptive means that can be controlled by women, the strengthening of anti-discrimination law and other gains appeared to mark steps in an inexorable process that would culminate in full equality. That has proved to be wishful thinking.

In almost every realm of women's rights in Europe, it seems that progress has stalled or we are even witnessing backsliding. Several years ago the landmark research of the European Union's Fundamental Rights Agency revealed the shocking prevalence of domestic violence experienced by women throughout Europe. I have seen in my country work the depth of resistance to change in this area in the reluctance of countries to ratify the Istanbul Convention or to rectify shortcomings in its implementation.

So many of us were taken by surprise by the recent revelations of the extent of sexual harassment and sexual violence experienced by women in politics, academia, the entertainment industry, media and elsewhere. The culture of male chauvinism, it seems, runs deep. I hope the recent revelations will prompt more women to come forward and denounce such human rights violations. I hope that all men who engaged in sexual assault, predation and extortion are held legally accountable for these violations. But I also hope that all men in positions of influence will reflect critically on their behaviour, especially towards women subordinate or in some way dependent on them: was that workplace comment or touch unwelcome? Is the atmosphere for women a hostile one?

Despite the adoption of anti-discrimination laws and the good work done by many equality bodies, gender discrimination in employment has proven to be persistent and widespread. It is even more pronounced among minority and migrant women, especially women who wear headscarves. The gender pay gap is universal and has proven stubbornly resistant to change, even though parental leave is supported in many jurisdictions, as are day care and ever more flexible work arrangements. I was surprised to learn that in the long history of the collective complaint procedure, the European Committee of Social Rights has only recently received its first collective complaints about the gender pay gap.

The most striking domain in which progress has stalled or is even being rolled back is in women's sexual and reproductive health rights. In some member states, sexuality education is not or is no longer comprehensive, evidence-based and mandatory. With regard to contraception, some states impede women's access through third party authorisation requirements or create financial barriers by denying health insurance reimbursements. In childbirth and maternal health care, coercive and discriminatory practices continue to be reported from various European countries. A number of countries maintain extremely restrictive legal frameworks denying or limiting women's access to safe and legal abortion care. Even in countries where abortion care may be accessible in theory, it is less so in practice because medical professionals often refuse service on grounds of conscience and governments do not regulate this sector to ensure the availability of care.

Finally and crucially, women's representation in leading positions in business and politics remains inexcusably low. According to a recent Council of Europe report on balanced

participation of women and men in decision-making in the 47 member states of the Council of Europe, heads of state or governments in Europe were still almost entirely male in 2016. The average percentage of women senior and junior ministers was 22.4% and out of the 44 countries surveyed, only four countries met the 40% minimum target of the Council of Europe regarding women ministers. Nowhere do women make up one half of all members of parliament. The same holds true for the average share of women in company boards. If women were equally represented in leading economic and political positions, the likelihood of laws and policies contrary to women's rights being maintained or adopted would decrease significantly.

Interestingly, in several member states I have visited recently, active public debates are under way about possible ways to increase women's representation in politics. As shown by the above-mentioned report, gender quotas can be fashioned in such a way that they can almost guarantee an outcome (i.e. that the proportion they set for women candidates is almost the same as the proportion of women elected). This makes me think that the only measure that leads to significant progress in the short-term is a strong system of quotas, an idea that does not enjoy overwhelming support, even among women. To achieve change in the long-term probably requires a cultural change that can only come about through a comprehensive set of measures. These include combating gender stereotypes in education, media and political discourse, creating more favourable conditions for an adequate work-life balance, providing adequate support for day care, and more. In addition, political parties need to become more woman-friendly. Moreover, women already in politics need to mentor newcomers and exhibit more solidarity towards each other across party lines.

But all the female solidarity in the world cannot alone overcome the many barriers women continue to face in achieving true equality. Men of good faith need to join their efforts in the struggle for it and, for instance, intervene when their male colleagues speak or act inappropriately towards women. All states need to step up, acknowledge the injustice and suffering created by gender inequality and violations of women's rights, reckon the costs to society thereof, and work to transform the situation.