

# ANNUAL ACTIVITY REPORT 2016



Nils Muižnieks  
Commissioner for Human Rights



COMMISSIONER  
FOR HUMAN RIGHTS

COMMISSAIRE AUX  
DROITS DE L'HOMME

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE



# ANNUAL ACTIVITY REPORT 2016

by Nils Muižnieks  
Commissioner for Human Rights

Presented to the Committee of Ministers  
and the Parliamentary Assembly

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Hundreds marched calling on the British  
government to relocate 3 000 child refugees  
into the UK,  
London, 15 October 2016

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” Systematic work is needed in order to make European and international human rights standards a reality at the national and local level

# Foreword by the Commissioner

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In the future, we will likely look back at 2016 as a critical turning point for human rights in Europe. In a positive scenario, we will look back and see it as a low point from which European countries individually and collectively bounced back to reaffirm their commitment to human rights and co-operation. In a darker scenario, we will look back to 2016 as the beginning of the end of the European human rights system and European integration. Why do I frame the year in such dramatic terms? After all, Russia's actions in Crimea, the conflict in Ukraine, which has had a devastating impact on human rights and the humanitarian situation in the country, the migration policy crisis and serious human rights backsliding in several Council of Europe member states began several years ago. Why will 2016 be remembered?

2016 will be remembered as the year of the Brexit referendum in the United Kingdom and a coup attempt in Turkey, followed by a massive crackdown in the country. Following Ukraine's and France's moves in 2015, Turkey became the third member state to derogate from the European Convention on Human Rights – an unprecedented situation. The year also stands out with the highly problematic EU-Turkey statement on migration, as well as a number of moves at the national level undercutting the right to asylum. It was a year in which policy initiatives in Poland created what the European Commission called a “systemic threat to the rule of law” in that country. Finally, 2016 was capped off by the election of Donald Trump as President of the United States of America – an exogenous shock to Europe and the broader world. Let us look in more detail at the human rights consequences of each of these events, to which I sought to respond within the parameters of my mandate.

As I noted in the conclusion to my second quarterly report, Brexit had several human rights aspects – it was accompanied by a noxious discussion on migration, followed by a spike in hate crimes. It also has the potential to destabilise Northern Ireland, negatively influence Franco-British co-operation on migration and embolden xenophobic populists on the continent. I visited the United Kingdom in January and published a memorandum on the migration issue in the country in March. One of the focuses in the memorandum was political and media discourse about migration, which only deteriorated in the run-up to the referendum. While Brexit is about leaving the European Union, by year's end it became clear that the desire to assert national sovereignty at the expense of European co-operation could affect the Council of Europe as well.

The desire to control or limit migration was a core animus of the “Brexiters”, as well as the EU-Turkey statement. In four different opinion editorials, I criticised the risks to migrant rights inherent in the EU-Turkey statement, especially its discrimination of non-Syrians, the likelihood of mass detention of migrants, including asylum seekers, and the risk of *refoulement*. By year’s end, several Greek islands had turned into large detention camps with substandard conditions, the EU-Turkey statement remained in place, and some European countries even advocated replicating it with other third countries, such as Tunisia or war-torn Libya.

I sought to push for upholding the human rights of migrants in country visits to and reports on Croatia, Cyprus, Greece and the UK. I sent letters addressing migration-related concerns to the authorities in Belgium, Denmark, France and Spain. I intervened as a third party in a migration-related case at the European Court of Human Rights, as I concluded that returns to Hungary carried the risk of chain *refoulement*. I intervened in the media regarding the weakening of the protection regime in Austria.

In Human Rights Comments, I sought to draw attention to the gender aspects of migration and the situation of the many migrants in limbo throughout Europe. In an Issue Paper on migrant integration, I urged member states to think long-term about the future of new arrivals. By the end of the year, European co-operation on migration had reached a low point – building fences had become a common practice and relocations from Greece and Italy had stalled, while the European Commission and several EU member states called for resuming returns to Greece, threatening that country’s asylum system with complete collapse and migrants there with even more suffering.

In the first half of the year, the human rights situation in Turkey had begun to deteriorate rapidly, prompting me to make a number of statements and to carry out a country visit in April, where I focused on threats to media freedom, the weakening of judicial independence and the extremely heavy-handed counter-terrorism operations in the south-east. July saw a dramatic coup attempt in which several hundred civilians were killed and the parliament sustained aerial bombing. I immediately condemned this attempt, reacted to the measures taken by the authorities in its aftermath through two statements and decided to carry out a visit in late September to assess the situation first-hand. In October I published a memorandum on the human rights implications of emergency measures in Turkey. Despite my efforts and those of other Council of Europe bodies, the human rights crisis in Turkey widened and deepened by year’s end.

Turkey was only one of several European countries where the struggle against terrorism was waged in a way that undermined human rights. In Turkey, the biggest concerns highlighted in a memorandum to the authorities I published in December were the imposition of draconian curfews, hugely disproportionate counter-terrorism operations displacing hundreds of thousands of civilians and creating massive property damage, and almost complete impunity for security forces despite widespread allegations of violations. I also addressed the French authorities about human rights concerns surrounding that country’s state of emergency. In numerous media interventions and a mission to meet then Interior Minister Cazeneuve in November, I pointed to the dangers of a prolonged state of emergency, including to the balance of powers and social cohesion.

I also addressed a memorandum to the UK Government and a letter to the Government of the Netherlands about surveillance and oversight of security services. In both of these interventions, as well as in seminars in Paris and London with experts, I sought to promote my Office's Issue Paper on democratic and effective oversight of national security services and strong oversight as an antidote to the human rights risks of granting increased powers to such services in the struggle against terrorism. Together with the European Network of National Human Rights Institutions (ENNHRI), my Office convened a meeting of national human rights institutions (NHRIs) to discuss their role in upholding human rights while their governments combat terrorism. This meeting also fed into a Human Rights Comment that I published on the topic.

Worrying developments in Poland attracted my attention numerous times over the course of the year. I made several statements expressing concern and visited the country three times – on a full country visit in February, to launch the report in June, and to attend the OSCE's Human Dimension Implementation Meeting in Warsaw in September. Each time, I sought to engage the authorities in a dialogue about the crisis around the government's steps which undermined the independence and effectiveness of the Constitutional Tribunal, as well as about other human rights concerns, such as media freedom and gender equality. However, by the end of the year, I and other human rights actors had made little headway. The government even refused to co-operate with the Venice Commission.

2016 also saw a continuation of previous trends of increasing pressures on human rights defenders and media outlets in a number of member states. I intervened as a third party in cases brought by defenders or their relatives from Azerbaijan and the Russian Federation before the European Court. I made statements after pressure, attacks or detentions of defenders in these two countries, as well as in Bulgaria, Montenegro and Turkey. I sought to support defenders working on the sensitive issue of missing persons by convening a roundtable for activists working on the topic and promoting their important work in a Human Rights Comment. I also co-operated actively in organising events on helping defenders with partners from international NGOs, the UN, the OSCE and the EU.

I addressed concerns surrounding media freedom in visits to and reports on Poland, Croatia and, to a certain extent, Turkey and Ukraine. In the first two countries, I stressed threats to the independence and pluralism of public-service broadcasting. In Turkey, I addressed media freedom issues in the April visit and criticised the closure of media outlets in the memorandum on the state of emergency. A memorandum analysing media freedom in Turkey in depth was in preparation at year's end and will be published in early 2017. During a visit to Ukraine, I raised concerns about threats and attacks on journalists. I also intervened via the media about concerns surrounding the treatment of journalists and/or bloggers in Azerbaijan and the Russian Federation.

The end of the year saw the election of President Trump in the United States. I explored the possible human rights consequences for Europe in the conclusion of my last quarterly report, including pressures to resume past practices of co-operation in torture and increased demands on European countries to do more on receiving refugees and protecting women's sexual and reproductive health and rights. If President Trump's approach of tearing up international agreements and asserting

the interests of one's own country over the collective good gains sway in Europe and globally, the post-war edifice of European human rights protection, already creaky in 2016, could collapse.

The severe strains on the European human rights system should give pause to those who call for "modernising" the European Convention and other international human rights treaties. The dramatic situation should also be kept in mind by those politicians and governments who have remained silent about threats to the system caused by individual member states, especially the growing number of cases in which member states have refused to co-operate with the various institutions and mechanisms of the Council of Europe. Remaining silent will only embolden those whose actions are undermining the system. The same holds true for non-implementation of the Court's judgments, and excessive delays in or selective implementation of judgments. If these pernicious practices continue and spread, they will only hasten the downfall of the European human rights protection system. Those who want to "shake the system up" should remember that the alternative to the current system may not be one more to their liking, but chaos.

The strains on Europe's institutional fabric notwithstanding, human rights defenders and ordinary people working individually or collectively continued to stand up against retrograde developments, help the most vulnerable and embody European values and principles through their everyday actions. Here, I think of the thousands of people volunteering to help internally displaced persons in Ukraine and migrants all over Europe. I recall the fantastic work of cultural figures and educators to empower those who have been excluded and to build bridges of understanding and solidarity. I think of the tireless activists who campaign on behalf of others less fortunate than themselves, not because it is their job, but because they believe it is the right thing to do. These people and their actions give hope that a Europe of human rights is still alive, that the negative scenario is not pre-ordained.

What should governments, including their representatives at the Committee of Ministers, and parliaments, including their representatives at the Parliamentary Assembly of the Council of Europe (PACE), do to ensure that the positive scenario materialises and 2016 is remembered as a low point followed by improvements? It is important that permanent representatives in Strasbourg and PACE members bring back to their colleagues in national governments and parliaments the gravity of the current situation. In my country visits, I often get the impression that the authorities in the capitals think that it is "business as usual" for the European human rights system.

Members of the Committee of Ministers should insist that prompt and full co-operation with the Secretary General, my Office, the monitoring mechanisms, the Venice Commission and PACE or Congress of Local and Regional Authorities rapporteurs is a *sine qua non* of membership in the Council of Europe. Non-co-operation should be seen as a fundamental threat to the whole system and treated with the utmost seriousness. Regarding non-implementation or selective implementation of judgments, the Committee of Ministers should work actively with the newly established European Implementation Network of NGOs. Parliamentarians can take a much more active role in calling their governments to account on implementation of court judgments by establishing special review commissions, holding hearings, allocating funds for implementation measures and proposing relevant legislation.

Regarding the migration crisis, all member states should do their part to alleviate the strains on the frontline countries. In particular, governments and parliaments must make the EU relocation scheme work – national governments and parliaments should ask each other to account for inaction and identify obstacles or reasons for delays. If a member state has created conditions that do not favour refugee integration, the result will be secondary movements and increased pressure on others to assume responsibility. Thus, countries should not be allowed to go unchallenged when they provide insufficient support to new arrivals and thereby encourage their non-integration and departure to another country.

Regarding human rights and counter-terrorism, governments and parliaments should challenge the quasi-automatic prolongation of states of emergency and derogations from the Convention (except in cases of loss of control of national territories). Terrorists will be with us for the long term – this is a marathon, not a sprint. There is an urgent need to strengthen democratic oversight of security services, which is weak or non-existent in many member states. Here, parliaments can play a key role in making the oversight democratic.

Regarding human rights backsliding, the Committee of Ministers and PACE should prioritise attention to the situation of human rights defenders and the media, as defenders and journalists make the whole system of human rights protection function. Co-operation and dialogue must result in real, measurable progress on the ground. Even if there is co-operation and dialogue, but no improvement after a certain period, the Committee of Ministers and PACE must consider more far-reaching steps to maintain the integrity of the system.

As the United States appears to be entering a new, more unilateralist phase with a more self-centred definition of its national interests, European countries – both individually and collectively – will have to step up and make their voices heard more forcefully on human rights issues within broader Europe, but also in the rest of the world. The only way that voice will have credibility and impact is if Europe brings its own human rights house in order and insists on better compliance with the standards Council of Europe member states have all voluntarily pledged to uphold.

Strasbourg, 10 February 2017

A handwritten signature in black ink, appearing to read "Nils Muijzer", followed by a horizontal line extending to the right.



” Political leaders and opinion makers should lead the way by adhering to human rights standards and the moral principles of tolerance, acceptance and solidarity which define Europe

# Chapter 1

## Country work

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### INTRODUCTION

In 2016 Commissioner Muižnieks continued to rely on country visits as an important means of pursuing a continuous, constructive dialogue with member states.

In his country visits, the Commissioner addressed specific human rights issues that he had identified as requiring particular attention. Issues covered by the visits include, among others: human rights of immigrants, refugees and asylum seekers; human rights of people with disabilities; the situation of Roma and Travellers; freedom of expression and media freedom; counter-terrorism and surveillance; equal treatment, including women's rights and gender equality, and the situation of ethnic and religious minorities; the human rights of lesbian, gay, bisexual, transsexual and intersex (LGBTI) persons; administration of justice and the human rights protection system; and transitional justice.

Reports and other documents published by the Commissioner after these visits contain both an analysis of the selected human rights issues and detailed recommendations to member states about possible means of improvement. In certain cases, as part of his dialogue with national authorities, the Commissioner addresses letters to them to outline concerns and provide advice on specific issues. These documents, along with the replies from the authorities, are made public on the Commissioner's website and are widely circulated among policymakers, NGOs and the media.

The present chapter contains brief summaries of the Commissioner's visits carried out in 2016 and of their outcome, as well as of other continuous monitoring and follow-up work.

## VISITS

### Visit to the United Kingdom

The Commissioner visited the United Kingdom from 17 to 23 January. His visit focused on three main issues: the government's proposals for a British Bill of Rights to replace the Human Rights Act 1998; the human rights of asylum seekers and immigrants; and surveillance and democratic oversight of national security services.

During his visit the Commissioner held discussions in Edinburgh, Belfast and London. He met with national authorities, including, in Edinburgh: Nicola Sturgeon MSP, First Minister for Scotland; and members of the Scottish Parliamentary Committee on European and External Relations; in Belfast: Martin McGuinness MLA, Deputy Minister of Northern Ireland and Emma Pengally MLA, Junior First Minister; David Ford MLA, Minister for Justice; John Larkin QC, Attorney General; in London: Rt Hon. David Lidington MP, Minister for Europe; Rt Hon. Theresa Villiers MP, Secretary of State for Northern Ireland; Rt Hon. James Brokenshire MP, Minister of State for Immigration; Rt Hon. Dominic Raab MP, Parliamentary Under-Secretary of State for Human Rights; Rt Hon. Jeremy Wright QC, Attorney General; Sir Michael Burton, President of the Investigatory Powers Tribunal; Rt Hon. Dominic Grieve QC, Chairman of the Intelligence and Security Committee; David Anderson QC, independent reviewer of terrorism legislation; and members of the Parliamentary Joint Committee on Human Rights. He also met with members of the Scottish Human Rights Commission, the Northern Ireland Human Rights Commission and the Equality and Human Rights Commission, as well as academics and representatives of civil society organisations active in the field of human rights. During his visit the Commissioner also took part in a conference at King's College London on democratic and effective oversight of national security agencies.

The visit was followed by the publication of two memoranda. On 22 March, the Commissioner published a memorandum on the human rights of asylum seekers and immigrants. He commended the UK's initiatives and generous response to international appeals to provide aid to Syrian refugees and to countries neighbouring Syria, as well as the UK's efforts in providing resettlement to Syrian refugees. However, he expressed a number of concerns regarding a trend of restrictive immigration policy and law which adversely affects the human rights of refugees and immigrants in the country. Particular issues tackled therein are: the development of policies and public discourse that criminalise and stigmatise migrants; migrant detention; migrants' right to adequate housing and the 'Right to Rent' scheme; and restrictions on migrants' entry for family reunification. The memorandum also highlighted the plight of the 67 refugees and asylum seekers who have been in the UK Sovereign Base Areas on Cyprus since 1998, urging the government to resettle them to the UK, thus putting an end to their extremely precarious legal and social situation.

In a memorandum on surveillance and democratic oversight, published on 17 May, the Commissioner, while welcoming a number of positive developments, such as the creation of a single unified Investigatory Powers Commissioner with responsibility for surveillance oversight, expressed his concern about certain issues such as the

compatibility of the bulk interception and equipment interference powers proposed in the bill with the European Convention on Human Rights. He also stressed that greater protection should be provided in the bill for legal professional privilege and for the communications of politicians and journalists. In addition, the Commissioner highlighted the need for oversight bodies and systems to be periodically evaluated to assess whether or not they possess the necessary attributes to be effective. The memorandum also covered the 'Prevent' anti-radicalisation programme. The UK authorities were called on to involve Muslim communities further in community dialogue and the development of such programmes, as well as to promote tolerance and social cohesion by enhancing inter-religious and cross-cultural dialogue.

## Visit to Poland

The Commissioner visited Poland from 9 to 12 February, focusing on the legal and institutional framework for the protection and promotion of human rights; administration of justice; media freedom; and women's rights and gender equality. During the visit, he held discussions with the Polish authorities, including the Deputy Prime Minister and Minister of Culture and National Heritage, Piotr Gliński; the Minister of Justice, Zbigniew Ziobro; the Minister of Foreign Affairs, Witold Waszczykowski; and the Minister in the Prime Minister's Chancellery, Maciej Wąsik. He also met the deputy ministers in the ministries of: Foreign Affairs, Aleksander Stępkowski; Justice, Łukasz Piebiak; Family, Labour and Social Policy, Renata Szczęch; Interior and Administration, Tomasz Zdzikot; Culture and National Heritage, Krzysztof Czabański; the Treasury, Filip Grzegorzczak; and the Deputy Minister and Government Plenipotentiary for Civil Society and Equal Treatment, Wojciech Kaczmarczyk. The Commissioner had further meetings with the Marshal of the Sejm, Marek Kuchciński; the Marshal of the Senate, Stanisław Karczewski; and the Chair of the Polish delegation to the Parliamentary Assembly of the Council of Europe, Włodzimierz Bernacki. He also met with the First President of the Supreme Court, Małgorzata Gersdorf; the President of the Constitutional Tribunal, Andrzej Rzepliński; and the President of the National Council of Judiciary, Dariusz Zawistowski, as well as the Polish Commissioner for Human Rights, Adam Bodnar, and the Commissioner for the Rights of the Child, Marek Michalak. The Commissioner also met with police officers dealing with domestic violence. He met with representatives of international and non-governmental organisations and visited a shelter and a counselling centre for women victims of domestic violence.

Following his visit, he published a report on 15 June. He found that while Poland possessed a solid legal and institutional framework for protecting and promoting human rights, recent far-reaching legal changes had raised important concerns both in the field of human rights and as regards the country's full adherence to the rule of law and democratic principles, on which the protection of human rights ultimately depends.

A worrying common feature of the new changes was their hasty adoption and the lack of an inclusive debate which required in a democratic society. The Commissioner was particularly concerned at the paralysis of the Constitutional Tribunal, which prevented it from playing its crucial role in upholding human rights. He called on the Polish authorities to urgently find a solution based on the respect and full

implementation of the judgments of the Tribunal. The Commissioner also called on the Polish authorities to guarantee the Ombudsman's full independence by ensuring that it can rely on stable and sufficient funding to carry out its mandates effectively, and by safeguarding the fairness, transparency and impartiality of the procedure for lifting the Ombudsman's immunity in the context of criminal proceedings.

Regarding administration of justice, the Commissioner welcomed Poland's efforts to address the excessive length of judicial proceedings, and the steady decrease in the use and duration of pre-trial detention and called on the authorities to solve remaining problems concerning length of proceedings. He expressed concern over recent amendments allowing for the use of pre-trial detention solely on the ground of the severity of the penalty faced and over new provisions on the use of illegally obtained evidence which might jeopardise the right to a fair trial. The Commissioner was also concerned at the recent merging of the positions of Minister of Justice and Prosecutor General, combined with the attribution of new, extensive powers, without the establishment of sufficient corresponding safeguards to avoid abuse of powers. He recommended a review of the new legislation in light of European standards and best practice in order to secure the autonomy and independence of the prosecution services from political and other interference.

Concerning media freedom, the Commissioner expressed concern at recent sweeping changes to the governance system of public television and radio broadcasters through the so-called "Small Media Law". He emphasised that putting public television and radio under the direct control of the government clearly ran contrary to Council of Europe standards on media freedom. Referring to a more comprehensive regulation of public-service media, the "Big Media Law", which was ongoing, the Commissioner urged thorough consultation with national and international partners and the introduction of safeguards to guarantee the independence of public-service media from political influence.

Regarding women's rights and gender equality, the Commissioner urged the Polish authorities to take long-term measures to fight against gender stereotypes. The range of measures taken by the Polish authorities to combat domestic violence, including the welcome ratification of the Istanbul Convention, should be strengthened through sustained action to address the following: gender bias among medical and judicial staff; shortcomings in the system of restraining orders and in the procedure of "Blue Cards", aiming at preventing further domestic violence from occurring; insufficient specialisation of public shelters; and inadequate funding of NGO-run shelters for women victims of violence. Addressing women's sexual and reproductive health and rights, the Commissioner called for mandatory sexuality education that is age-appropriate, evidence-based and non-judgmental to be taught in all schools. Access to safe and legal abortion, as provided by law, should be fully implemented in practice. The Commissioner encouraged the Polish authorities to further decriminalise abortion within reasonable gestational limits and strongly urged the authorities to keep lawful, at a minimum, abortions performed to preserve the physical and mental health of women, or in cases of fatal foetal abnormality, rape or incest.

## Visit to Ukraine

The Commissioner visited Ukraine from 21 to 25 March, focusing on serious human rights violations. He also followed up on issues raised in his 2015 report, notably access of humanitarian organisations to the conflict-affected population, freedom of movement and social payments. As part of this mission, he travelled to Kyiv, Dnipropetrovsk and the city of Donetsk situated on the territory outside government control.

In Kyiv, the Commissioner met with the President of Ukraine, Petro Poroshenko; the Minister of Finance, Natalie Jaresko; the Deputy Prosecutor General and Chief Military Prosecutor, Anatolii Matios; and officials of the Security Service of Ukraine, including Valery Hrebenuk, Chief Diplomatic Adviser, and Vitaliy Mayakov, Deputy Head of the Investigative Department. In addition, the Commissioner held an exchange of views with representatives of international organisations, including OHCHR and UNHCR, and NGOs.

In Donetsk, the Commissioner had discussions with Dmitry Popov, head of the office of the local commissioner (ombudsperson) for human rights, and representatives of international intergovernmental and humanitarian organisations operating on the ground. The Commissioner also visited a psychiatric hospital and a home for older persons.

In both Kyiv and Donetsk, the Commissioner and his delegation interviewed at length several persons, most of them civilians, who had previously been detained or held in captivity on either side of the contact line, and who claimed that they had been subjected to various forms of ill-treatment.

Following his visit the Commissioner published a report on 11 July, in which he once again drew attention to the enormous suffering, continued loss of life and severe hardship experienced by ordinary people as a result of the conflict.

The Commissioner observed that to re-establish lasting peace and reconciliation in society it was crucial to hold to account those responsible for serious human rights violations. During his visit he received credible allegations about cases of torture and ill-treatment from persons who had been detained or held captive in 2014 and 2015 on both sides of the contact line. He emphasised that those responsible for grave human rights abuses – such as summary and extra-judicial executions, war crimes committed against the civilian population and military personnel in captivity, indiscriminate shelling of populated areas, the shooting down of a civilian airplane in July 2014, enforced disappearances and torture – should be brought to account, as a matter of justice for the victims and to deter new violations. To this end, a number of significant shortcomings as regards the investigations into such abuses should be remedied, and full co-operation should be ensured with the relevant international mechanisms which may provide assistance and expertise in investigating the most complex cases, possibly involving mercenaries and/or foreign fighters.

Victims of conflict-related crimes should be provided with effective remedies and reparation, and long-term programmes for rehabilitation should be available to all victims of ill-treatment and their families. The Commissioner also urged the relevant

actors to renounce, as a matter of principle, the recourse to the death penalty, which had been incorporated in the “legislation” in the non-government controlled territories.

The Commissioner expressed concern about practices whereby certain individuals have been held incommunicado and/or in unacknowledged places of detention. He further emphasised that unimpeded access to persons deprived of their liberty on both sides of the contact line was indispensable to safeguarding their physical integrity and for ensuring their humane treatment and adequate conditions of detention, and should therefore be granted on either side of the contact line to all relevant actors.

As regards cases of enforced disappearances, the Commissioner called for greater efforts to investigate such cases in order to establish the fate and whereabouts of the persons concerned and to identify and hold to account those responsible. To this end, there should be an independent and impartial mechanism for the search for missing persons, and the national legislation regulating the punishment for enforced disappearances and the rights of victims and their families should be made fully compatible with international standards.

As a follow-up to his 2015 report on the humanitarian situation in the east of Ukraine, the Commissioner once again underscored the need to review the regulations on the movement of civilians and vehicles across the contact line and ensure that any security-related restrictions are proportional to the goal pursued, reviewed on a regular basis and lifted whenever possible. Any impediments to the access of international humanitarian organisations to all people in need – including those residing in territories outside government control, in the vicinity of the contact line and in the buffer zone – should be removed. The regulatory framework relating to internally displaced persons (IDPs) should be amended to de-link the payment of pensions and other entitlements from a person’s IDP status and to develop a separate procedure enabling those who permanently reside in the territories outside governmental control to have access to such payments and entitlements. The Commissioner urged the authorities to fully restore targeted assistance to persons who have been registered as IDPs, to carry out any verification on a case-by-case basis, and to ensure that the procedures for verification and suspension of payments are clearly defined in law and subject to due process and legal safeguards.

Lastly, the Commissioner urged all media reporting on the conflict to be carried out responsibly, ethically and professionally, in light of the acute need to promote a message of reconciliation and tolerance.

## **Visits to Turkey**

The Commissioner carried out two visits to Turkey in 2016. The first visit took place in April. Following an attempted coup d’état in Turkey in July 2016 and the declaration of a state of emergency by the Turkish Government, the Commissioner returned to Turkey in September in order to take stock of these developments and update himself on the topics of his first visit.

## a) Visit in April

The Commissioner's visit from 6 to 14 April, during which he travelled to Istanbul, Diyarbakır and Ankara, focused on the fight against terrorism and human rights, with particular attention to the situation in south-eastern Turkey, freedom of expression and media freedom, and the administration of justice.

In the course of his visit, the Commissioner held discussions with representatives of the national authorities, including the Minister of the Interior, Efkan Ala; the Minister of Justice, Bekir Bozdağ; the President of the Constitutional Court, Zühtü Arslan; Turkey's Chief Ombudsman, Nihat Ömeroğlu; the Chair of the Commission of Human Rights of the Turkish Grand National Assembly, Mustafa Yeneroğlu; the Chair of the Turkish Human Rights Institution, Hikmet Tülen; and members of the High Council of Judges and Prosecutors. In Diyarbakır, the Commissioner met the Governor, Hüseyin Aksoy, and several prosecutors. He also visited the site of the assassination of the President of the Diyarbakır Bar Association, Tahir Elçi, and presented his condolences to his widow. The Commissioner also held discussions with civil society organisations, including various professional associations and NGOs active in the field of protecting human rights, and several journalists, academics and lawyers.

At the end of his visit, the Commissioner issued a press release and held a press conference in Ankara, expressing his preliminary concerns about the deterioration of the human rights situation in the context of Turkey's fight against terrorism, in particular about the human rights implications of the curfews imposed in south-eastern Turkey.

The Commissioner followed up on these issues in a memorandum published on 2 December on the human rights implications of anti-terrorism operations in south-eastern Turkey. Having analysed in detail the legal basis of the round-the-clock curfews imposed and anti-terrorism operations conducted in the region since the summer of 2015, the Commissioner came to the conclusion that these measures, which resulted in extreme restrictions to the enjoyment of human rights by a vast population, did not satisfy the legal criteria as set out by the European Court of Human Rights. The Commissioner also explained the reasons for which the curfews, which were imposed uninterruptedly, round-the-clock, for weeks or months on certain occasions, cannot be considered proportionate to the legitimate aims pursued by Turkey. He pointed notably to the disproportion when the number of civilians affected and the scale of destruction in several big cities are compared to the number of terrorists neutralised and the declared aims behind the curfews.

Accordingly, while affirming the right and duty of Turkey to fight terrorism, which is a human rights violation, the Commissioner concluded that these curfews and the anti-terrorism operations accompanying them caused significant human rights violations in their own right and due to their very nature.

Regarding additional human rights violations allegedly perpetrated by the Turkish security forces, the Commissioner was concerned that the Turkish authorities were not paying due attention to these allegations – despite their high number, consistency and the credibility of their sources. The Commissioner also stated that, contrary to their obligations, the Turkish authorities did not appear to conduct effective

*ex officio* investigations into each and every death and injury occurring during anti-terrorism operations, in order to prove convincingly that the security forces had taken all reasonable precautions to avoid casualties. He was further concerned about the widely reported chauvinistic behaviour of security forces, which had fuelled a perception of the curfews and anti-terrorism operations as collective punishment.

The Commissioner regretted that, instead of investigating these cases and fighting against impunity, the priority for the Turkish authorities had rather been to reassure the security forces and shield them from prosecution. He observed that there were only very few criminal cases where security forces were treated as suspects or even interrogated, and that even for egregious forms of blatant misconduct they had only faced limited disciplinary sanctions. The Commissioner also expressed deep concern about attempts by the authorities to vilify the activities of human rights NGOs and lawyers bringing forward allegations of human rights violations which occurred in zones cut off from the rest of the world where there were no independent observers.

The Commissioner considered that investigations into these casualties and allegations did not appear to have been immediate, diligent and thorough. He further observed the elapsed time since some of the operations, the fact that evidence might have been destroyed, and the long-standing, state-centrist attitude of prosecutors, and considered that it was unlikely that future investigations would fully satisfy the criteria for effectiveness as established in the case law of the European Court of Human Rights. According to the Commissioner, this should be seen against the background of his previous findings and the very large number of judgments against Turkey, which have yet to be executed, concerning the entrenched problem of impunity and lack of accountability.

The Commissioner further examined the issue of compensation for moral and material damage suffered by the people in the region either because of terrorism or as a direct result of the curfews and anti-terrorism operations themselves. The Commissioner's impression was that the existing compensation framework was inadequate given the scale of the damage. The Commissioner further expressed concern about the government's plans to expropriate residents in affected areas which, rather than offering a form of redress, may well amount to an additional human rights violation in its own right.

Considering that impunity had consistently undermined efforts to protect and promote human rights throughout Turkey's recent history, the Commissioner called on the Turkish Government to acknowledge publicly the mistakes and human rights violations committed and to adopt measures able to compensate moral and material damage suffered by the people concerned. Such recognition would not be a sign of weakness, but on the contrary would support the improvement of the human rights situation and of public trust in the state, a fundamental requisite for peace and stability in the country.

As an additional follow-up to his April visit, the Commissioner will publish a memorandum on freedom of expression and freedom of the media in Turkey at the beginning of 2017.

## **b) Visit in September**

While the Commissioner was drawing up his report following the April visit, a coup attempt occurred in Turkey on 15 July. The Commissioner immediately condemned this attempt and reacted to certain measures taken in its aftermath through two statements issued on 20 and 26 July. He decided to return to Turkey to express in person his solidarity with the country's democratic forces in the aftermath of this attempted coup, as well as to receive updated information on relevant human rights developments, both on the human rights implications of the state of emergency declared in Turkey and on topics he had examined during his April visit.

Thus, the Commissioner visited Ankara from 27 to 29 September and met with the Minister of Foreign Affairs, Mevlüt Çavuşoğlu; the Minister of Justice, Bekir Bozdağ; the President of the Constitutional Court, Zühtü Arslan; and the Undersecretary of the Ministry of the Interior, Muhterem İnce. He also met with Turkish ombudspersons, representatives of opposition political parties and a number of NGOs. The Commissioner enjoyed the full co-operation of the Turkish authorities in the preparation and the execution of this visit.

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

The memorandum examines the criminal law aspects of the measures taken under the state of emergency; administrative measures affecting public employees, civil society and the private sector, as well as family members of suspects; the question of legal remedies against these measures; and a number of other issues.

The Commissioner stressed that a series of emergency decrees adopted since July 2016 created very far-reaching, almost unlimited discretionary powers for the Turkish executive and administrative authorities. These decrees introduced significant deviations from ordinary procedural and human rights guarantees in the context of both administrative and criminal law and engendered by their very nature a degree of arbitrariness, thereby eroding the rule of law. Their necessity and proportionality need to be tested against the risks they seek to eliminate, which vary widely depending on the different groups and individuals they affect, as well as the time elapsed since the attempted coup. However, the Commissioner observed that the measures touched a very large population and all sectors of society. He noted, in particular, that they applied in an indiscriminate and analogous way to civil servants, including those who do not exercise the sovereign power of the state, such as teachers or academics, as well as private entities, including media outlets, NGOs, private schools or hospitals. This blanket approach raised serious problems of proportionality.

Furthermore, the Commissioner observed that the decrees allow very harsh sanctions on the basis of vague criteria regarding "connections" with a terrorist organisation, accompanied by a suspension of due process and legal remedies. The use of stereotypical and non-individualised reasoning, the lack of any evidentiary

requirement and the impossibility for the persons concerned to hear charges against them and to defend themselves were further issues of very grave concern. In addition, the Commissioner drew attention to a number of very problematic provisions regarding measures automatically affecting family members of suspects, leading to a perception of “guilt by association”, as well as the fact that certain measures applying to civil servants go beyond what is normally associated with a disciplinary procedure, thereby blurring the distinction between criminal and administrative law.

The Commissioner further expressed his concern that the emergency decrees appeared to introduce lasting changes into ordinary legislation of key importance for the protection of human rights, such as the criminal procedural code or the anti-terrorism law, while bypassing ordinary parliamentary scrutiny and procedure. The lack of clarity and widespread confusion as to the remedies available to the persons concerned, or the lack thereof, was another element damaging the rule of law.

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

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

## Visit to Croatia

The Commissioner visited Croatia from 25 to 29 April, focusing on certain major issues concerning: transitional justice and social cohesion; the human rights of immigrants, refugees and asylum seekers; and freedom of the media.

During his visit, the Commissioner held discussions with national authorities, including the Deputy Prime Minister, Božo Petrov; the Minister of Foreign and European Affairs, Miro Kovač; the Minister of Justice, Ante Šprlje; the Minister of Culture, Zlatko Hasanbegović; the Deputy Minister of the Interior, Davor Blažević; the Deputy Minister of Social Affairs and Youth, Ante Babić; the State Attorney General, Dinko Cvitan; the Assistant Minister for Public Administration, Boris Milošević; and the Deputy Head of the Government’s Office for Human Rights and Rights of National Minorities, Bahrija Sejfić. In addition, Commissioner met with the Ombudswoman, Lora Vidović, and the President of the State Council for National Minorities, Aleksandar Tolnauer. He also had meetings with representatives of the Jewish and Serb communities.

He also met with civil society organisations active in the field of human rights, and representatives of the media sector and the international community. In addition, the Commissioner visited the Porin reception centre for asylum seekers in Zagreb, and the Ježevo detention centre for foreign nationals. He also delivered a lecture at the Faculty of Law of the University of Zagreb, focusing on the human rights of migrants.

On 5 October, the Commissioner published his visit report in which he expressed concern about certain developments which put at serious risk Croatia's achievements in human rights and practice in previous years. He was seriously concerned at the reported rise in ethnic intolerance, hate speech and other forms of hate crime targeting members of national minorities and their negative impact on social cohesion. He urged Croatia to enhance awareness raising and the effective implementation of the relevant legislation in this field, particularly by improving the system of recording hate crime data and by systematically training law enforcement officials and legal professionals. The Commissioner also underlined that political leaders needed to send an unequivocal message against violence, discrimination and intolerance, in particular against members of national minorities and journalists.

Regarding issues of transitional justice, he was concerned at the regression of inter-state co-operation in the region on the prosecution of wartime crimes committed during the 1990s and the persistence of impunity in Croatia for certain serious human rights violations committed in the past. He called on the authorities to put an end to this, and effectively prosecute, try and sanction the perpetrators of wartime crimes.

Addressing the issue of reparations, he urged Croatia to ensure that all victims of war-related crimes and their families are provided with effective access to justice and adequate reparation. He welcomed the enactment of a law which provided for reparation to the victims of wartime crimes of sexual violence, urging the authorities to remedy the remaining shortcomings in the law and in its implementation. He also called for stepping up national and regional efforts to solve the pending cases of missing persons and recommended Croatia's accession to the International Convention for the Protection of All Persons from Enforced Disappearance.

Commending the authorities' efforts to ensure adequate conditions for the return of persons displaced during the 1991-1995 armed conflict, the Commissioner recommended that the authorities pay more attention to the needs of returnees belonging to national minorities, so that they can fully enjoy their economic, social, cultural and linguistic rights. He urged Croatia to accede to the Council of Europe treaties concerning nationality and statelessness and to improve its legislation to resolve the problem of more than 2 800 persons, including Roma without permanent or temporary residence in the country, who remain stateless or are at risk of statelessness.

The Commissioner commended the authorities' humanitarian approach in dealing with migrants, including asylum seekers, who transited through the country in 2015 and 2016. Nevertheless, he recommended avoiding weakening the legal safeguards which apply to migrants. In this context, he stressed the importance of repealing from the draft Aliens Law the provisions which criminalise social and humanitarian assistance to irregular migrants and which oblige migrant detainees subject to deportation to pay for their accommodation and removal. The Commissioner welcomed Croatia's commitment to accept more than 1 600 refugees under the EU relocation and resettlement schemes. However, he was concerned about the existence of many obstacles to migrant integration and urged the authorities to eradicate these obstacles through the designing and implementation of comprehensive, long-term and adequately funded integration policies.

The Commissioner was concerned that, despite the existence in Croatia of a sound legal framework for the protection of media freedoms, an adequate environment for the work of the media had not yet been created. He called on the authorities to repeal all criminal provisions concerning defamation and to condemn, investigate and sanction all acts of violence which have affected journalists' freedom of expression. The Commissioner was also concerned about abrupt and numerous staff changes in public-service media and allegations of censorship. He called on Croatia to ensure that the independence of public-service media is preserved and to refrain from any action that could lead to censorship or may be detrimental to public media editorial independence. The authorities were also called upon to shield the media from any undue interference and ensure the broadcast regulator's independence, including by avoiding political bias in the domestic procedures for the nomination, appointment and tenure of its members. Lastly, stressing that non-profit media make an important positive contribution to pluralism, the promotion of democracy, tolerance and multiculturalism, the Commissioner recommended that Croatia reconsider the decision to abolish state subsidies allocated to these media.

## **Visit to Andorra**

The Commissioner visited Andorra from 10 to 11 May. The main subjects of the visit were the legal and institutional framework for the protection and promotion of human rights, and the protection of women's and children's rights.

During his visit, the Commissioner met with the Prime Minister of Andorra, Antoni Martí Petit; the Minister of Foreign Affairs, Gilbert Saboya Sunyé; the Minister of Social Affairs, Justice and Interior, Xavier Espot Zamora; and the Minister of Education and Higher Education, Eric Jover Comas. He also met with the Ombudsman, Josep Rodríguez Gutiérrez; members of the Andorran delegation to the Parliamentary Assembly of the Council of Europe; and representatives of civil society organisations. The Commissioner visited a school (in which he gave a presentation of his work to a group of children), a kindergarten, an institution for children deprived of parental care, a safe house for women victims of violence and a police station. The Commissioner also gave a lecture to an audience of judges, prosecutors, police officers and social workers. He presented his mandate and his work and discussed some of the human rights issues he raised during his visit to Andorra.

In a press release published at the end of the visit, the Commissioner welcomed progress achieved in recent years to advance children's rights, notably the accession to several key international treaties, the complete ban on corporal punishment against children in all settings and the fact that children have direct access to remedies such as the office of the Ombudsman. He also praised the advanced system of inclusive education, which makes it possible for all children to learn together.

In order to sustain progress, he called on the authorities to design and implement a national strategy for the protection of children's rights, in co-operation with all the relevant stakeholders. Based on reliable and updated information on the situation of children in different areas, the strategy should aim at improving the co-ordination of services provided and awareness of children's rights in society at large.

As regards women's rights, the Commissioner urged the authorities to adopt a comprehensive anti-discrimination law, providing effective protection against discrimination based on a wide range of grounds, including gender. He also called on the authorities to engage with the private sector, in particular the banking sector, to find ways of remedying reported inequalities and discrimination in this sector. The Commissioner welcomed the accession of Andorra to the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention) and the adoption, in 2015, of a comprehensive law on violence against women. He expressed the hope that the new inter-ministerial commission, tasked with the implementation of this law, would help improve the co-ordination of measures in this field. Furthermore, noting that Andorra has one of the most restrictive legal frameworks on abortion in Europe, the Commissioner expressed the hope that future debates about abortion would lead to its decriminalisation, at least in the cases of risks for the health of the mother, fatal foetal abnormality and rape or incest.

Lastly, he invited the authorities to continue to strengthen the institutional framework for the protection of human rights by setting up a national preventive mechanism against torture and an independent institution in charge of equality and non-discrimination.

## Visit to Iceland

The Commissioner visited Iceland from 8 to 10 June. The main focus of the visit was on the human rights of persons with disabilities and the human rights protection system. In the course of the visit the Commissioner held discussions with the Icelandic authorities, including President Ólafur Ragnar Grímsson; Foreign Minister Lilja Alfreðsdóttir; Minister of Welfare Eygló Harðardóttir; Parliamentary Ombudsman Tryggvi Gunnarsson; officials of the Ministry of the Interior; and members of Iceland's delegation to the Parliamentary Assembly of the Council of Europe. He also held meetings with civil society representatives. The Commissioner urged the authorities to ratify the UN Convention on the Rights of Persons with Disabilities (CRPD) and align Iceland's legislation and practice with international standards and the case law of the European Court of Human Rights. In this area, the priority should be to abolish full deprivation of legal capacity and plenary guardianship of persons with disabilities, including persons with psychosocial and intellectual disabilities. Subsequently, on 22 September, the Icelandic Parliament ratified the CRPD, which the Commissioner welcomed as an important step towards improving the lives of persons with disabilities.

In relation to the institutional framework for the protection of human rights, the Commissioner's recommendations included: establishing an internationally accredited national human rights institution; adopting comprehensive equal treatment legislation and creating adequate institutional mechanisms to promote its implementation; ratifying the Optional Protocol to the UN Convention Against Torture and establishing an adequately resourced national preventive mechanism; and adopting a comprehensive national human rights action plan that would serve as an umbrella framework to implement human rights and anti-discrimination

policies. The Commissioner commended the long-standing practice of the Icelandic authorities of receiving refugees through UNHCR's resettlement programme, and emphasised integration policies that focused on the need to uphold the right to family reunification, and took into account effective equality measures to facilitate migrant integration.

The refugee and migrant crisis, the situation in Ukraine and the Commissioner's work with regard to the protection of human rights defenders and journalists in Europe were the main highlights of his lecture at the Nordic House in Reykjavik, organised by the Ministry for Foreign Affairs, in co-operation with the University of Iceland Human Rights Institute.

## **Visit to Greece**

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

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

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

As regards the human rights of asylum seekers and immigrants, at the end of his visit the Commissioner noted and commended the efforts undertaken by Greece in order to enhance its reception and protection systems. However, he said there was a need to further improve both the living conditions in refugee reception facilities and the processing of asylum claims, and he encouraged Greece to design and implement an ambitious migrant integration policy.

The Commissioner also underlined the importance of effective protection from all forms of discrimination. Finally, he stressed that other European countries must live up to their responsibilities, fulfil their solidarity commitments towards Greece and facilitate refugee relocation and family reunification.

Following his visit, the Commissioner published a letter on 19 August addressed to Nikolaos Toskas, Alternate Minister of Interior and Administrative Reconstruction of Greece and to Nikolaos Paraskevopoulos, Minister of Justice of Greece, concerning the bill on a complaint mechanism covering law enforcement and detention facility agents. In his letter, the Commissioner welcomed the fact that the Ombudsman will be empowered to investigate following receipt of complaints and to carry out *ex officio* investigations. However, the Commissioner invited the Greek authorities to envisage enlarging the scope of the mechanism's competencies, which should not be limited to issuing non-binding recommendations to the disciplinary bodies of the relevant authorities.

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

Also as a follow-up to the same visit, on 12 September, the Commissioner published a letter he addressed to Andreas Xanthos, Minister of Health of Greece, and to Theano Fotiou, Alternate Minister of Social Solidarity of Greece, concerning the human rights of persons with intellectual and psychosocial disabilities and their deinstitutionalisation. While noting with interest in his letter the efforts made by Greece since the mid-1980s in order to end the institutionalisation of persons with intellectual and psychosocial disabilities and to develop community care services, the Commissioner expressed his grave concern about the instances of deaths and of physical restraint of patients in certain institutions. He stressed that the persisting, grave deficiencies in the state mental health care system require more proactivity and co-ordination by the state, more rigorous planning and a stronger and more effective monitoring system.

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

## Visit to Latvia

The Commissioner visited Latvia from 5 to 9 September and discussed issues pertaining to gender equality and women's rights, with a particular focus on violence against women, the human rights of children and the human rights of LGBTI persons.

In the course of the visit the Commissioner held discussions with the Latvian authorities, including the Prime Minister, Māris Kučinskis; the Minister of the Interior, Rihards Kozlovskis; the Minister of Education and Science, Kārlis Šadurskis; the Minister of Foreign Affairs, Edgars Rinkēvičs; the Prosecutor General, Ēriks Kalnmeiers; the Parliamentary Secretary of the Ministry of Welfare, Karīna Ploka; the Deputy Head of the State Inspectorate for Protection of Children's Rights, Anita Gotharde; officials at the Ministry of Justice; and Riga City Council officials. The Commissioner also had exchanges with representatives of different parliamentary factions; the Ombudsman, Juris Jansons; and civil society representatives.

On 13 December, the Commissioner followed up this visit by publishing a report. While noting the ongoing work in Latvia to develop long-term gender equality policies, the Commissioner encouraged the authorities to redouble their efforts towards rendering gender equality effective in reality, overcoming stereotypes and prejudices about gender roles, and increasing women's participation in public and political life.

Expressing concern about survey data showing high levels of violence against women and domestic violence in Latvia, the Commissioner called on the authorities to proceed promptly with the ratification of the Istanbul Convention. To this end, the authorities should invest in raising public awareness about the objectives of the Istanbul Convention and ensure that debates on gender equality and violence against women are based on facts, including gender-disaggregated data. The engagement of men and the responsibility of political and community leaders to send a message condemning violence against women and domestic violence are particularly important. The Commissioner further stressed that it is essential to ensure that there is the requisite capacity among law enforcement, prosecutorial and judicial authorities to investigate, prosecute and punish all instances of violence against women and attend to their protection needs by establishing a sufficient number of adequately resourced specialised shelters.

Although the legal and institutional framework for the protection of children's rights is largely in line with international human rights obligations, the Commissioner noted a persistent implementation gap. In particular, he underlined the obligation of the Latvian authorities to prevent statelessness among children, and to this end recommended that the relevant legislation be amended to grant citizenship automatically to stateless children born to "non-citizen" parents. Pending such an amendment, the authorities should step up awareness raising and design effective communication strategies addressing "non-citizen" parents, with a view to ensuring that every child born in Latvia acquires nationality at birth.

In the area of children's rights, the Commissioner also expressed concern about the placement of orphans and children without parental care in institutions, and called on the authorities to instead prioritise other types of care in a family-like environment

and to allocate sufficient funds and implement information campaigns and training so as to increase the number of guardians and foster families. Invigorating the stalled process of deinstitutionalisation of children will require improved co-operation between state and local authorities. In line with the CRPD, a more inclusive system of education should be put in place where children with disabilities have access to mainstream schools close to their residence. The Commissioner underlined that the placement of students with disabilities in mainstream classes can only be successful if accompanied by structural changes and adequate support services.

The Commissioner welcomed improved policies to protect freedom of assembly and expression of LGBTI persons, as reflected in measures to protect gay-pride events. Regarding LGBTI rights more generally, the Commissioner encouraged the authorities to address protection gaps in a systematic manner by designing an action plan in co-operation with the Council of Europe. The authorities should improve their responses to homophobic and transphobic crime and hate speech, including by explicitly prohibiting discrimination on grounds of sexual orientation and gender identity, and improving training for the police, prosecutors and judges to ensure the effective investigation, prosecution and punishment of hate crimes and hate speech. There is also a need to provide legal recognition to cohabiting different-sex and same-sex couples, in line with the case law of the European Court of Human Rights.

## **Cancellation of the visit to the Russian Federation**

On 11 October, the Commissioner issued a statement announcing with regret that he was obliged to cancel a visit to the Russian Federation in view of restrictions imposed upon the programme. The visit under discussion was to take place during the third week of October and had the aim of addressing several pressing human rights themes, including issues relating to migration, freedom of expression and freedom of assembly and association. As per his usual practice, the Commissioner envisaged meeting with various state and local authorities, national human rights structures and civil society representatives, and also sought to conduct several site-visits to places of human rights relevance, including outside the capital. The details concerning the planned visit to the Russian Federation were duly conveyed to the Russian authorities, who subsequently indicated that the visit would be limited to only one full working day in Moscow, which clearly would have not allowed the Commissioner and his team sufficient time to carry out a substantive country visit. In his statement, the Commissioner observed that accepting these special conditions submitted by the Russian authorities would have been contrary to the principle of treating all countries equally, and expressed the hope that the Russian authorities will restore full co-operation with his office and facilitate the independent and effective performance of his mandate in the future.

## **Visit to Ireland**

The Commissioner visited Ireland from 22 to 25 November. The main topics of the visit were the human rights of Travellers and Roma; women's rights and gender equality; and the human rights of children. In the course of the visit the Commissioner held discussions with the President of Ireland, Michael D. Higgins; the Tánaiste (Deputy

Prime Minister) and Minister for Justice and Equality, Frances Fitzgerald; the Minister for Foreign Affairs and Trade, Charles Flanagan; the Minister for Children and Youth Affairs, Katherine Zappone; the Minister for Housing, Planning, Community and Local Government, Simon Coveney; the Minister for Education and Skills, Richard Bruton; the Minister of State for Justice, David Stanton; and the Minister of State for Communities and the National Drugs Strategy, Catherine Byrne. He also met with members of Ireland's delegation to the Council of Europe's Parliamentary Assembly. The Commissioner held discussions with the Chief Commissioner, Emily Logan, and other members of the Irish Human Rights and Equality Commission, and with the Ombudsman for Children, Niall Muldoon. He also met with representatives of NGOs and other members of civil society. The Commissioner conducted field visits to two Traveller sites in the Dublin area and to a shelter and a counselling centre in Dublin for women victims of domestic violence. Finally, he took part as a keynote speaker in the round table "Ireland and the Council of Europe Today" co-organised in Dublin on 25 November by the Centre for Criminal Justice and Human Rights, University College Cork and the Irish Council for Civil Liberties, with the support of the Irish Department of Foreign Affairs and Trade.

As concerns the human rights of Travellers, the Commissioner expressed his deep concern at the persisting social exclusion and discrimination Travellers were confronted with in Ireland. Travellers had been affected in a gravely disproportionate manner by budget cuts as a result of austerity and there was an urgent need to re-invest in this community. The Commissioner welcomed signals that Travellers would soon be recognised as an ethnic group in Ireland and called for targeted policy measures and more effective involvement of Travellers themselves to address the serious inequalities that continue to affect the members of this community in accommodation, health, education and other fields of life. It was particularly urgent to address the insufficient provision of Traveller-specific accommodation, the inadequate condition of many Traveller sites and the inadequate safeguards against forced evictions.

As regards women's rights and gender equality, the welcome signature by Ireland of the Istanbul Convention in November 2015 should rapidly be followed by the ratification of the Convention and concrete measures to tackle domestic violence, including provisions of funds to address the shortage of shelter spaces for women victims of violence and awareness-raising initiatives about domestic violence and gender-based violence among all relevant stakeholders. Austerity measures have exacerbated older forms of gender inequality, which hamper women's access to justice and jeopardise progress in women's rights. The Commissioner stressed that Ireland possesses one of the most restrictive legal frameworks on abortion in Europe. Noting the establishment of a Citizens Assembly that would consider the Eighth Amendment of the Irish Constitution, which currently limits the scope of any reforms of this framework, the Commissioner called for moves towards the decriminalisation of abortion, at least in the case of risks for the health of the mother, fatal foetal abnormality and rape or incest.

Further efforts should also be made to deal with all historical abuses against women and children that occurred in Ireland in different contexts, including women's homes, schools and health care institutions. Noting a number of measures taken by the authorities to address these abuses, including compensation schemes,

the Commissioner emphasised the need to ensure full respect of international human rights standards in this field. In particular, all groups of victims have a right to truth, full support and effective remedies, as well as prompt, independent and thorough investigations into allegations of abuses to ensure accountability.

Finally, the Commissioner called on Ireland to move towards more inclusive education that would better respond to the needs of an increasingly diverse society. The current system, whereby over 95% of primary schools are denominational and run by private institutions, posed a number of challenges in terms of access to school without discrimination, particularly on religious grounds. The Commissioner noted the Irish Government's commitment to opening 400 non-denominational/multi-denominational schools by 2030 but the state should urgently address the remaining barriers faced by students in securing access to school without discrimination and take measures to ensure that all schools better reflect the diversity of Irish society.

The Commissioner's report following his visit to Ireland will be published in 2017.

## **Visit to Lithuania**

The Commissioner visited Lithuania from 5 to 9 December. His visit focused on the rights of children; the rights of persons with disabilities; and domestic violence and gender equality.

During this visit, the Commissioner held discussions with the national authorities, including: the acting Prime Minister, Algirdas Butkevičius; the acting Minister of Justice, Juozas Bernatoniš; the acting Minister of Interior, Tomas Žilinskas; the acting Minister of Foreign Affairs, Linas Linkevičius; the acting Deputy Minister of Social Affairs and Labour, Algirdas Šešelgis; the acting vice-ministers of Healthcare, Jūratė Sabalienė and Valentin Gavrilov; the acting Vice-Minister of Foreign Affairs, Neris Germanas; the Deputy Prosecutor General, Žydrūnas Radišauskas; the Chancellor of the Ministry of Education and Science, Tomas Daukantas; and advisers to the President of the Republic of Lithuania, Dovydas Špokauskas and Marija Dautartaitė. In the Parliament (Seimas), the Commissioner met with the Chair of the Social Affairs and Labour Committee, Algirdas Sysas; the Chair of the Human Rights Committee, Valerijus Simulik; and members of the delegation to the PACE. Furthermore, the Commissioner engaged in dialogue with the Parliamentary (Seimas) Ombudspersons, Augustinas Normantas (Head of the Office) and Raimondas Šukys; the Ombudsperson for Children's Rights, Edita Žiobienė; the Equal Opportunities Ombudsperson, Agneta Skardžiuvienė; and the Inspector of Journalist Ethics, Gražina Ramanauskaitė-Tiumenevienė. The Commissioner also met with civil society representatives and visited a home in Vilnius for children with developmental delays and the Vėliučionys socialisation centre for minors in the vicinity of Vilnius.

The Commissioner welcomed the authorities' commitment to departing from the practice of placing children without parental care and people with disabilities in institutions, and to securing alternative arrangements for those who already live in an institutional environment. However, this process started fairly recently and the progress thus far has been slow. Efforts towards deinstitutionalisation, therefore, should be significantly stepped up. To this end, the authorities should

take a strategic approach towards preventing child neglect and provide multifaceted support to families experiencing difficulties in caring for their children, including by establishing an efficiently functioning network of community-based services for such families and for persons with disabilities. The foster care system should be further strengthened, including by providing adequate support to foster parents. Children experiencing emotional and behavioural problems should be rehabilitated in a family-like environment rather than placed in institutions. Access to mainstream schools should be improved for children with disabilities, including through infrastructural changes to buildings to aid those children whose mobility is impaired.

Lithuania has started a reform of the regulatory framework relating to legal capacity. Pending the review of more than 6 700 cases of people who have been fully deprived of their legal capacity on the basis of the old legislation, further decisive steps should be taken to promote reforms in the mental health care system, most notably towards ensuring the availability of supported decision-making alternatives and drastically reducing and progressively eliminating coercive practices in psychiatry.

As regards gender equality and domestic violence, the Commissioner welcomed the existence of the legislative framework to combat domestic violence, and observed that law enforcement authorities, most notably the police, appear to be quite effective in responding to instances of violence. At the same time, he urged his interlocutors in parliament to proceed rapidly with the ratification of the Istanbul Convention.

Further efforts may be needed to ensure harmonisation between the 2011 Law on Protection Against Domestic Violence and specific provisions of the Criminal Code and Criminal Procedure Code. The judicial authorities should be made aware of the special role they play in protecting victims of violence from repeated cases of abuse. A unified and systematic approach to preventing violence and responding to calls for help should be adopted and promoted throughout the country.

The Commissioner welcomed the authorities' efforts to raise public awareness about the root causes and consequences of domestic violence, and the situation of children in institutional care, but called for more engagement in addressing issues such as the gender wage gap, and strengthening the capacity of the Equal Opportunities Ombudsperson's Office to more effectively address gender-based discrimination.

The Commissioner's report following his visit to Lithuania will be published in 2017.

## **MISSIONS**

### **Mission to Warsaw**

To mark the publication of the report following his visit to Poland from 9 to 12 February (see country work above), the Commissioner presented his report at a press conference at the Foksal Press Centre in Warsaw on 15 June. On the same day, he also met with the Deputy Minister of Foreign Affairs, Aleksander Stępkowski, to present the report to him.

## Mission to Paris

The Commissioner carried out a mission to Paris on 28 and 29 November. In the course of this mission he held a meeting with Bernard Cazeneuve, Minister of Interior, and discussed issues relating to the protection of human rights while countering terrorism in the context of the state of emergency, and issues relating to law enforcement. The Commissioner also met with representatives of national human rights structures, academics, law professionals and a number of NGOs, with whom he addressed the issue of the impact of state of emergency and counter-terrorism measures on human rights. Lastly, the Commissioner took part in an expert seminar at Sciences Po Paris, and gave a keynote speech on the democratic and effective oversight of national security services (see section on thematic activities below).

## CONTINUOUS DIALOGUE

### Observations on Georgia

On 12 January, the Commissioner published his observations on the human rights situation in Georgia following his visit from 9 to 13 November 2015. The observations, addressed to the Prime Minister of Georgia, provided an update on justice reforms, tolerance and non-discrimination, as a follow-up to the Commissioner's 2014 report.

While welcoming the dynamic pace of the reforms and certain positive trends in the justice sector, the Commissioner highlighted the need to address in a speedy and efficient way the remaining challenges to the independent and efficient functioning of the justice system. The progress achieved relates to the decrease in the concordance between the opinions of judges and those of prosecutors, the decrease in the number of convictions, the use of custodial sentences and recourse to pre-trial detention for juveniles.

At the same time, concerns persist regarding the selection, appointment and transfer of judges. For example, the practice of filling vacant judge positions by transfer and not through competition was found to be problematic, as transfers and promotions did not appear to be regulated by specific rules and criteria. The Commissioner urged the Georgian authorities to introduce the necessary amendments to ensure that the selection, appointment and transfer of judges are transparent, merit-based and carried out in accordance with clear criteria, while incorporating the recommendations of the Venice Commission and the Directorate of Human Rights of the Council of Europe. Moreover, the probationary period for judges before their appointment for life should be further reviewed.

A procedure for the random allocation of cases among judges should be introduced in order to improve the functioning of the judiciary and to better protect judges from any possible internal or external interference. Furthermore, any allegations of unlawful interference with the work of judges should be made subject to appropriate sanctions. At the same time, the Commissioner underlined that it is important for judges to remain accountable and, to this end, the disciplinary mechanisms should function properly.

Referring to allegations of politically motivated measures and a biased approach towards members of the opposition, in particular the United National Movement, the Commissioner observed that despite an overall decrease in recourse to pre-trial detention as a preventive measure, certain problems could be observed in the use and extension of pre-trial detention in relation to members of the opposition.

As regards the functioning of the Prosecutor's Office, further efforts are needed to increase the impartiality and accountability of the work of prosecutors in practice. The competence and capacity of prosecutors must be strengthened in order to perform effective investigations into allegations of human rights violations in accordance with the criteria defined in the case law of the European Court of Human Rights. This notably pertains to the alleged abuse, including ill-treatment, in some penitentiary institutions and police stations. A detailed and comprehensive account should be provided to the public regarding the scale of human rights violations which were the subject of complaints received after October 2012, including those occurring under the former administration, and the actions undertaken to end the violations, punish the perpetrators, provide redress and compensation to the victims, and prevent similar occurrences.

As regards the anti-discrimination regulatory framework, the Commissioner urged the authorities to adopt the proposed amendments to the law which would strengthen the role of the Public Defender and extend the deadline for the submission of cases to courts. Law enforcement and judicial bodies should be able to adequately identify, qualify and investigate hate crimes and correctly apply the relevant legislative provisions. Most notably, the bias motive should be taken into account as an aggravating circumstance, and perpetrators should receive punishment commensurate with the gravity of the offence. Authorities, public figures and community leaders should consistently send an unambiguous message in favour of human rights and tolerance, and against violence, hate speech and discrimination. The Commissioner noted with regret persistent reports of intolerance and discrimination against members of religious minorities and stressed that this issue should be tackled urgently and in a human-rights-compliant manner.

## **Letter to the Minister for Immigration, Integration and Housing of Denmark**

On 15 January, the Commissioner published his letter to Inge Støjberg, Minister for Immigration, Integration and Housing of Denmark. The letter focused on changes to Danish asylum and immigration law introduced in November 2015, which he considered raised concerns of compliance with human rights standards. The Commissioner referred in particular to amendments to the Aliens Act which increased possibilities for detaining asylum seekers under "special circumstances" and weakened the judicial review of detention. He also expressed concerns regarding another package of amendments, which aimed at limiting access for beneficiaries of international protection to family reunification, tightening criteria to obtain a permanent residence permit and significantly diminishing the duration of residence permits, notably for those granted international protection. He considered that such proposals would hamper the integration in Denmark of the persons targeted by the

law. Lastly, the Commissioner expressed dismay at the proposal to seize the assets of asylum seekers arriving in Denmark in order to cover their subsistence needs, a measure that could amount to an infringement of their human dignity. He urged the authorities to ensure that law and practice fully comply with Denmark's obligation to uphold refugee protection standards.

### **Letter to the Minister for Urban Development of Albania**

On 16 February, the Commissioner published a letter he had sent to Eglantina Gjermeni, Minister for Urban Development of Albania, in which he expressed his concern about reports concerning forced evictions of Roma and Egyptians, especially after the enactment of the Law on Legalisation, Urbanisation and Integration of Illegal Constructions. It was of concern to the Commissioner that these evictions reportedly took place without provision of adequate alternative accommodation to the affected families nor of official notice of the evictions, or consultations with the persons concerned prior to the evictions. The Commissioner urged the authorities to take all necessary measures in order to put an end to evictions without provision of adequate alternative accommodation. He also stressed that persons who had already been evicted must urgently be provided with adequate housing, giving priority to families with children and to other vulnerable groups. Finally, he strongly recommended the development and implementation of long-term housing solutions and of a strategy aiming at the full and effective social integration of Roma and Egyptians in Albania.

### **Letter to the Prime Minister of Bulgaria**

On 16 February, the Commissioner published a letter addressed to the Prime Minister of Bulgaria, Boyko Borissov, concerning reports of evictions of Roma families in different localities in Bulgaria, including Varna and Garmen. The Commissioner recalled that any eviction without due process and without the offer of adequate alternative housing is a violation of Bulgaria's international obligations, particularly if these evictions result in homelessness. Referring to alternatives proposed to evicted persons that included the placement of children in institutions for social care, the Commissioner recalled that children should never be separated from their families on the basis of the socio-economic situation of their parents. The Commissioner urged the authorities to stop forced evictions of Roma families without provision of adequate alternative accommodation and to provide alternative solutions and effective remedies to the families already evicted. He also stressed the need to identify long-term housing solutions which respect international human rights standards for all persons at risk of eviction. Noting that the above-mentioned evictions had taken place in a context of manifestations of anti-Roma hostility, he also called on Bulgarian political leaders to speak up and take action against anti-Gypsyism in all its forms.

### **Letter to the Minister of Interior of France**

On 16 February, the Commissioner published a letter he had sent to Bernard Cazeneuve, Minister of Interior of France, concerning forced evictions of Roma. The Commissioner recalled that in his 2015 report on France he had deplored the

persistence of evictions from illegally occupied land without long-term rehousing solutions for all occupants of such sites, in spite of the inter-ministerial circular of August 2012 aiming at anticipating and supporting evictions. He noted that NGOs had reported 111 forced eviction operations concerning 11 128 migrant Roma in 2015 and reiterated his recommendation to stop forced evictions without the provision of adequate alternative housing. The Commissioner also reiterated his concerns regarding the long-standing climate of anti-Gypsyism in France, illustrated by a series of hate acts including hate speech against Roma, and invited the French authorities to inform him about the measures taken to ensure effective respect for the human rights of Roma.

### **Letter to the Minister of Human Capacities of Hungary**

On 16 February, the Commissioner published a letter addressed to the Minister of Human Capacities of Hungary, Zoltán Balog, concerning reports of planned evictions of hundreds of Roma families in the “Numbered Streets” neighbourhood of the city of Miskolc, without provision of alternative accommodation. The Commissioner also expressed concern about recurrent joint raid-like checks carried out by a number of administrative authorities in segregated areas of Miskolc. The Commissioner recalled that any eviction without due process and without the offer of adequate alternative housing is a violation of Hungary’s international obligations, particularly if these evictions result in homelessness. He urged the authorities to address this problem as a matter of priority and to take urgent measures to protect Roma from forced evictions. Furthermore, he underlined the need to identify long-term housing solutions, respectful of international human rights standards, for all persons at risk of eviction. Noting the continuing general negative climate of opinion against Roma, he called on Hungary’s political leaders to counter all forms of anti-Gypsyism.

### **Letter to the Prime Minister of Italy**

On 16 February, the Commissioner published his letter to the Prime Minister of Italy, Matteo Renzi, concerning reported evictions of Roma families in various localities, particularly Rome and Milan. He was concerned that evictions had often taken place in violation of international standards, without formal notice or sufficient advance warning, meaningful consultation of the persons concerned and offers of adequate alternative accommodation, sometimes resulting in homelessness. The Commissioner recalled that the segregation that characterises the “equipped villages” built during the so-called “Nomad emergency” hampered education, gainful employment, interaction with non-Roma persons and integration in society and stressed that these settlements should therefore not be considered as adequate alternative housing in the context of forced evictions. In line with Italy’s own National Strategy for the Inclusion of Roma, Sinti and Camminanti Communities, the Commissioner called on the Italian authorities to take concrete measures to prevent homelessness, stop forced evictions that are incompatible with international standards and close existing Roma-only settlements and reception facilities, offering genuinely integrated alternatives to the families concerned.

## **Letter to the Deputy Prime Minister of Serbia**

On 16 February, the Commissioner published a letter addressed to Zorana Mihajlović, Deputy Prime Minister of Serbia, in which he expressed his concern at the continuing forced evictions of Roma from informal settlements and the authorities' failure to comply with legal safeguards during these operations. He noted that most of these evictions were carried out without prior consultation with the families concerned and often at very short notice, while adequate alternative accommodation was not always provided. In this context, the Commissioner welcomed the preparation by Serbia of the draft Housing Law, which included provisions concerning forced evictions. The Commissioner urged the authorities to ensure that any new legislation affecting access by Roma to adequate housing and regulating forced evictions is fully in line with the relevant European and international human rights standards, notably the European Convention on Human Rights and the European Social Charter. He also called on the authorities to take all necessary measures in order to ensure that no further evictions of Roma are carried out without provision of adequate alternative accommodation and to provide those already evicted with adequate housing immediately.

## **Letter to the Minister for Culture and Democracy of Sweden**

On 16 February, the Commissioner published his letter to Alice Bah Kuhnke, Minister for Culture and Democracy of Sweden, regarding reports of evictions of Roma immigrants in Sweden. He was particularly concerned about the reported eviction of about 200 people – mostly Roma from Romania and Bulgaria – which took place in the Sorgenfri district of Malmö on 3 November 2015, as a result of which many Roma were left homeless. The Commissioner recalled that rendering people homeless as a result of evictions was in contradiction with Sweden's human rights obligations under the revised European Social Charter and requested information on the measures the authorities intended to take to prevent homelessness among Roma immigrants and to ensure that evictions which could not be avoided took place under conditions that fully respected human rights.

## **Letter to the Minister of Justice of Albania**

On 11 March, the Commissioner sent a letter to Ylli Manjani, Minister of Justice of Albania, in which he raised some outstanding issues concerning the implementation of the 2008 Law on Free Legal Aid. The Commissioner expressed his concern about the shortcomings in the work of the State Commission for Legal Aid, as a result of which most legal aid continued to be provided by NGOs. In view of that situation, the Commissioner stressed that the authorities should step up their efforts towards establishing an effective national system of legal aid. The Commissioner also followed up on the issue of the exemption from payment of court fees in civil proceedings of persons with financial constraints, which was addressed in his 2014 report on Albania. He noted reports indicating that few persons benefited from such exemptions due to the reluctance of judges to grant it. The Commissioner regretted the lack of legal clarity on this issue and enquired about steps taken by the authorities to provide domestic court judges with clear guidance on the implementation of the relevant

Constitutional Court judgment concerning this matter. Recalling the Council of Europe Committee of Ministers Resolution 78(8) on legal aid and advice, the Commissioner urged the authorities to review and fully align the national legal aid system with Council of Europe standards.

### **Letter to the Minister of the Interior of Spain**

On 12 July, the Commissioner published a letter to the Minister of the Interior of Spain, Jorge Fernández Díaz, in which he expressed concerns about the persisting practice of summarily returning persons attempting to reach the cities of Ceuta and Melilla to Morocco. He expressed particular concerns about the lack of identification and of assessment of the individual situation of the persons concerned.

He urged the Spanish authorities to adopt a procedural framework for border police in Ceuta and Melilla, with instructions on how to handle mixed migration flows in full compliance with Spain's international human rights obligations, a call he had already made following his visit to Melilla and Madrid in January 2015. Such a procedural framework should include safeguards of the right for each person to be identified, to have their international protection needs duly assessed, to have access to a lawyer, an interpreter and medical assistance as appropriate, as well as to an effective remedy to challenge any violation of the European Convention on Human Rights of which the persons concerned could allege to be the victims.

### **Letter to the Prime Minister of Romania**

On 23 August, the Commissioner published a letter he addressed to the Prime Minister of Romania, Dacian Cioloş, requesting updated information on certain major issues affecting the human rights of Romania's Roma population. The letter followed up on a number of key recommendations made in the Commissioner's 2014 visit report. Concerning anti-Roma public rhetoric, the Commissioner asked whether any self-regulatory measures had yet been adopted to sanction racist hate speech used by politicians. As regards forced evictions, the Commissioner reiterated his concern about Roma living under the continual threat of having to leave their homes. The question of the segregation of Roma children in schools was also raised, and in particular the importance of having official data. The Commissioner urged the authorities to set up the relevant commission within the Ministry of Education in charge of putting into operation the Romanian Government's strategy for improving Roma education. A number of pending cases before the European Court of Human Rights on the issue of police violence against Roma still attest to the fact that this remains an issue of concern. The establishment of a fully independent police complaints mechanism was highlighted as a priority.

### **Letter to the Minister for Labour, Co-operation and Information of the Republic of San Marino**

On 9 September, the Commissioner published a letter to the Minister for Labour, Co-operation and Information of the Republic of San Marino, Iro Belluzzi, concerning the final draft of a Code of Conduct for Media Operators, which the Minister had

transmitted to him. Stressing that codes of ethics are important tools in promoting ethical journalism, the Commissioner welcomed efforts made by San Marino to set clear duties and responsibilities for journalists and media operators, in particular as concerns the protection of minors and disadvantaged groups and the protection of privacy and fundamental rights. However, the draft code did not allay the concerns the Commissioner had expressed in his last report on San Marino. In particular, the body which was entrusted with the enforcement of the code of conduct, and which ultimately retained the power to interpret and apply the said code in individual cases, was an externally appointed body in which journalists were not necessarily represented. The risk of undue interference and the potential chilling effect that this system might entail was of serious concern. Therefore, the Commissioner reiterated his recommendation to replace this mechanism with a system which is more respectful of freedom of the media and the principle of self-regulation.

### **Letter to the Minister for Labour, Employment, Veterans and Social Affairs of Serbia**

On 23 September, the Commissioner published a letter addressed to Aleksandar Vulin, Minister for Labour, Employment, Veterans and Social Affairs of Serbia, in which he noted that a bill on the rights of veterans, disabled veterans, civilian disabled war victims and their family members had significantly improved the legal status of veterans and military victims of war, but excluded certain categories of war victims (estimated at 15 000), such as families of missing persons, victims of wartime sexual violence and victims of action by Serbian armed forces. The Commissioner stressed that he had received reports indicating that the valuable expertise of civil society organisations that have been active in this field for many years had not been fully taken into account in this legislative process. The Commissioner requested information on the bill's progress and on the possibility of expanding its scope so that all victims of wartime crimes are provided with adequate and effective reparation, in line with internationally established standards.

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

On 4 November, the Commissioner published a letter addressed to the Prime Minister of the Czech Republic, Bohuslav Sobotka, focusing on the human rights of Roma and of persons with disabilities. In his letter the Commissioner reiterated his recommendation to establish an extra-judicial mechanism for compensating Roma women who were victims of forced sterilisations and stressed the need to improve access for Roma to inclusive education and to adequate housing. He also called on the government to redouble its efforts to combat and eradicate anti-Gypsyism. In this context, he urged the authorities to remove the pig farm from the site of the former Nazi concentration camp in Lety, in order to provide a dignified memorial for the Roma murdered there. Lastly, while welcoming the latest changes of the Civil Code concerning legal capacity, the Commissioner called on the Czech Republic to take resolute action in favour of the deinstitutionalisation of persons with disabilities, including children, in order to enable them to live independently and be integrated in their communities.

## **Letter to the Minister of Interior and the Minister of Security and Justice of the Netherlands**

On 29 November, the Commissioner published a letter he had addressed to the Minister of Interior of the Netherlands, Ronald Plasterk, and the Minister of Security and Justice of the Netherlands, Ard van der Steur. In the letter, he expressed concerns about three bills in relation to counter-terrorism, dealing with administrative measures taken against persons connected to terrorist activities; the possibility to revoke the nationality of persons having joined terrorist organisations; and the powers of the intelligence and security services. He raised several questions about the adequacy of the safeguards in these bills to prevent violations of rights. These included questions about the use of wording in the bill on administrative measures that could be open to very wide interpretation; the potential adverse effects of the bill on revocation of nationality on specific religious or ethnic groups; and the strength of oversight of the intelligence and security services after the expansion of their powers.

The Commissioner further noted that the fight against terrorism cannot be won solely by repressive measures and that prevention is key. Repressive measures, unless applied in a very restrictive, proportionate and precise manner, lead to the stigmatisation and alienation of affected social groups. He stressed the need to promote tolerance, including by encouraging systematic inter-religious and cross-cultural dialogue, and to prevent tensions that contribute to “the marginalisation of individuals and the commission of terrorist offences”.

## **Letter to the Secretary of State for Migration and Asylum of Belgium**

On 19 December, the Commissioner published a letter he had addressed on 12 December to Theo Francken, Secretary of State for Migration and Asylum of Belgium. In the letter, he raised concerns about the intention expressed by the Secretary of State to resume the practice of detaining migrant families with children in closed facilities, to be built in the near future next to Brussels airport. He stressed the particularly detrimental impact detention has on children and reiterated that detaining migrant children is never in their best interests, even when detention is a measure of last resort and is limited to a short period of time, as also stated by other international human rights bodies. The Commissioner therefore urged the authorities to reconsider their decision to resume this practice. He invited them to maintain and develop existing alternatives to the detention of migrant and asylum-seeking families, an area in which Belgium had played a leading role in recent years.





” In 2016, the Commissioner continued to work systematically on a wide range of issues pertaining to the human rights of immigrants, refugees and asylum seekers. Furthermore, issues related to transitional justice, and missing persons in particular, also remained high on the Commissioner’s agenda

## Chapter 2

# Thematic activities

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### INTRODUCTION

In his work in 2016, the Commissioner covered a wide range of human rights themes. He paid particular attention to the human rights of immigrants and refugees; freedom of expression and media freedom; and transitional justice and missing persons. The Commissioner continued to highlight children's rights, the human rights of people with disabilities, LGBTI persons and Roma, and women's rights. Racism and intolerance, trafficking in human beings, statelessness and counter-terrorism and human rights protection were also among his concerns.

Two major research papers, together with the Commissioner's recommendations, were published. The Issue Paper on *Missing persons and victims of enforced disappearance in Europe* outlines recommendations to governments for strengthening human rights protection for victims of past and ongoing conflicts. The Issue Paper on *Time for Europe to get migrant integration right* tackles the long-term challenges posed by increased arrivals of refugees and migrants in Europe.

Although not referred to in detail in this chapter, the Commissioner's activities also covered human rights and business. In a Human Rights Comment published in April, he stressed that the effects of business practices on human rights have become a central issue for human rights protection. While states remain the ultimate duty-bearers for the protection of human rights, there is now wide recognition that business should also respect human rights. In October, he sent a video message to the 2nd Session of the UN Open-ended Intergovernmental Working Group on transnational corporations and other business enterprises with respect to human

rights. In his message he said that business enterprises have an increasing role to play in promoting human rights and preventing violations. This responsibility in terms of human rights should be better discharged by businesses and governments alike.

## **FREEDOM OF EXPRESSION AND MEDIA FREEDOM**

In 2016, the Commissioner addressed media freedom in country reports on Poland and on Croatia, and in country visits to Turkey. In both Poland and Croatia, he expressed concerns about government efforts to influence the independence and pluralism of public-service broadcasting. Another focus in Croatia was the need to respond adequately to threats and attacks on journalists. In Poland and in particular in Turkey, the Commissioner underlined the dangers to media freedom in applying criminal penalties for defamation. In Turkey, he also addressed the wide use of legislative provisions regarding insulting the president to restrict media freedom and expressed alarm at the increasing recourse to an overly wide interpretation of what constitutes a terrorism-related offence and at the impact of this on media freedom. Blocking of websites, Twitter takedown requests and the takeover of newspapers and TV stations by trustees were further threats to media freedom and pluralism that the Commissioner addressed in Turkey.

In addition, the Commissioner reacted to a number of negative developments affecting media freedom in Europe through statements on his website and on social media (Facebook and Twitter), including several cases reported on the Council of Europe's internet Platform to promote the protection of journalism and safety of journalists, launched in 2015. On 5 January, the Commissioner published a statement on his website calling on the President of Poland not to sign a law on public-service media governance. Noting that the law placed public-service media under direct government control, by giving the Polish Government the powers to appoint and dismiss the members of the supervisory and management boards of public-service television and radio, the Commissioner stated that these arrangements contradicted Council of Europe standards, which notably require that public service media remain independent of political or economic interference. In a statement published on his website on 4 March, the Commissioner deplored the decision of an Istanbul court to entrust to court-appointed trustees the control of the media group to which the newspapers *Zaman* and *Today's Zaman* belong. The Commissioner saw this as an extremely serious interference with media freedom which should have no place in a democratic society, particularly considering what happened after a similar appointment of trustees to the Koza Ipek media group. The Commissioner urged the Turkish authorities to take all necessary measures to reverse the effects of these interferences and to prevent them in the future. On 9 and 10 March, the Commissioner condemned a violent attack against several journalists and human rights defenders from the Joint Mobile Group (an association of several human rights NGOs) in Ingushetia. The Commissioner emphasised that resolute action should be taken by the Russian authorities to shed full light on these events and to bring those responsible to justice. Following the failed coup attempt in Turkey, on 20 July the Commissioner regretted that journalists were once more victims of violence in

Turkey, at the hands of coup plotters, as well as of citizens resisting them, and that access to several news media on the internet was blocked once more.

International co-operation in the area of media freedom continued in 2016, with regular contacts with the OSCE Representative on Freedom of the Media, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and UNESCO. On 22 June the Commissioner met with the OSCE Representative on Freedom of the Media, Dunja Mijatović, in Vienna. The discussions covered the situation of freedom of expression and media freedom in a number of countries, including Croatia, Poland, the Russian Federation, Turkey and Ukraine, and current challenges to public-service media.

## **HUMAN RIGHTS OF IMMIGRANTS, REFUGEES AND ASYLUM SEEKERS**

In 2016, the Commissioner continued to work systematically on a wide range of issues pertaining to the human rights of immigrants, refugees and asylum seekers. In January, he published the written observations he submitted to the European Court of Human Rights concerning two applications against Austria relating to the transfer of the asylum-seeking applicants from Austria to Hungary under the Dublin Regulation. Drawing on his visit to Hungary in November 2015, the Commissioner noted, *inter alia*, that the very restrictive measures taken in the previous months by the Hungarian authorities translated into a deliberate intention to deter asylum seekers from entering the country and applying for asylum therein.

During his country visits to the United Kingdom, and Cyprus and Croatia, followed up by a memorandum and reports respectively, the Commissioner raised various issues pertaining to immigration, access to asylum, migrant detention, migrant integration and the situation of unaccompanied migrant children. In January, the Commissioner published his letter addressed to Denmark's Minister for Immigration, Integration and Housing conveying his concerns about the compatibility with human rights standards of the restrictive changes to asylum and immigration law in Denmark that had been introduced in November 2015. Although migration issues were not per se a focus of the Commissioner's visit to Greece in March, he used that opportunity to address the situation of the refugees and migrants living in the country in difficult conditions. The Commissioner continued his dialogue with the Spanish authorities concerning the country's migration measures at Ceuta and Melilla by sending a letter, in July, to the Minister of Interior of Spain in which he urged the authorities to adopt a procedural framework to ensure that border police in Ceuta and Melilla have clear instructions on how to handle mixed migration flows in full compliance with human rights. The Commissioner's observations and recommendations concerning the situation of internally displaced persons in Ukraine were addressed in a report which was published in July following the Commissioner's third visit to this country since the beginning of the conflict in the east of Ukraine in 2014. In December, the Commissioner sent a letter to the Secretary of State for Migration and Asylum of Belgium, in which he warned against resuming the practice of detaining migrant families with children which the Secretary of State had announced in his general policy statement.

In 2016 the Commissioner published two Human Rights Comments focusing on the human rights of refugees and migrants. In a Human Rights Comment published in March, which addressed the situation of refugee and migrant women and girls, he underlined that single women travelling alone or with children, pregnant and nursing women, adolescent girls and elderly women are among those who are particularly at risk and require a co-ordinated and effective protection response. In the Human Rights Comment “Migrants in limbo in Europe have the right to live in dignity”, published in November, the Commissioner raised awareness about the situation of the many migrants living in protracted legal and social limbo in Europe without any long-term prospects. He highlighted human rights issues arising in this context and proposed steps that European countries need to take to address these matters effectively.

In May, the Commissioner published the Issue Paper *Time for Europe to get migrant integration right*. Noting that European governments have lost sight of long-term challenges posed by the increased arrival of refugees and migrants in Europe and the lack of any significant debate in this context, the paper aims at filling this gap and provides guidance to governments and parliaments on the design and implementation of successful integration policies.

” Europe will need to look again to the long term and see integration as a long-term investment

The Commissioner published five opinion editorials on migration in international and European media outlets in March, four focusing on the EU-Turkey migration agreement and one focusing on Hungary’s duty to refugees. The *New York Times* and *Tagesschau* published the Commissioner’s opinion editorials in the wake of the EU-Turkey agreement, in which he warned about the agreement’s possible negative human rights implications. The *Huffington Post* and *EurActiv* published the Commissioner’s opinion editorials in which he stressed the importance for European states of paying particular attention to the agreement’s implementation in order to dispel a number of serious concerns that it elicits from a human rights perspective.

The Commissioner participated in several events where migration issues were discussed, starting with the High-Level Panel Discussion “EU Fundamental Values, Immigration and Integration: A Shared Responsibility,” in February, organised by the Netherland’s EU Presidency. In June, in his speech at the 2016 Fundamental Rights Forum, focusing on empowering rights holders, he stressed that real empowerment of rights holders comes from participation that leads to change for the better, and that this was becoming far too rare in Europe. He noted backsliding in human rights protection in many areas, highlighting the backsliding in inclusion, in refugee protection and in digital rights. In September, the Commissioner addressed the 12th Conference of the European Society of International Law with a speech on refugee protection in Europe, in which he underlined that while the international and European legal framework was largely adequate, the failure of states to abide by their legal obligations under the UN Refugee Convention and the European Convention on Human Rights resulted in a significant “implementation gap”. The Commissioner also gave a keynote speech in Tallinn in November at the Conference

on children's rights in the migration crisis and in the digital environment, in which he addressed a number of human rights concerns for migrant children, including detention, statelessness and integration challenges.

## CHILDREN'S RIGHTS

In 2016, the Commissioner continued to extensively address issues pertaining to children's rights during country visits and in reports. He raised the subject of the situation of unaccompanied minor migrants in several of his country reports, including those on Belgium, Croatia and Cyprus, and in the memorandum to the authorities of the United Kingdom on asylum and immigration.

Persisting risks of statelessness facing children were addressed in Cyprus and Latvia. In the report on Cyprus, the Commissioner also evaluated the impact of austerity measures on children's rights. He dealt extensively with the human rights of children with disabilities, in particular their access to mainstream education, in his reports on Belgium and Latvia. In addition, during his visits to Andorra and Ireland, the Commissioner focused on inclusive education. In the report on Latvia, he also highlighted gaps in the policy of deinstitutionalisation of children in care.

There is a need for proactive policies addressing child poverty, and children in general

The Commissioner also attended two international conferences on children's rights. On 5 April, he gave a keynote address at the conference launching the Council of Europe strategy for the rights of the child, organised in Sofia by the Bulgarian Chairmanship of the Council of Europe. The Commissioner highlighted the impact on children's rights of some of the crises facing Europe in the context of the current refugee movements. He called for the urgent development of inclusive education systems to better cope with the entry into education systems of many refugee children. He also raised concerns over the persisting high rates of institutionalisation of children in several member states and recalled some of his findings regarding the impact of the austerity measures on children's rights. Lastly, he called for more attention to be paid to the situation of children in the context of the conflict in Eastern Ukraine. The Commissioner encouraged all member states to support the full implementation of the new Council of Europe strategy.

On 4 November, the Commissioner gave another keynote address on the occasion of the conference on children's rights in the migration crisis and in the digital environment, held in Tallinn by the Estonian Chairmanship of the Council of Europe. Once again, in the first part of his intervention he focused on gaps in the protection of the child's best interests in migration and asylum proceedings, calling for easier family reunification policies and reforms of education systems in order to prevent further segregation. As regards children's rights in the digital environment, the Commissioner described some of the threats to children's rights on the internet, including harmful content, cyber-bullying and risks to the protection of private life. However, risks and threats should not overshadow the potential that the internet

represents for children. The Commissioner called for new approaches to the protection of children's rights on the internet that take into account technological developments and focus on the empowerment of children through education.

On 20 September, the Commissioner published a Human Rights Comment on violence against children, a phenomenon that remains widespread in Europe. He highlighted in particular violence faced by migrant children, conflict-related violence affecting children in Eastern Ukraine and physical and psychological violence with which children living in institutions are often confronted. He also recalled that racism and prejudice generated violence, notably against Roma and LGBTI children, and that austerity measures had led to higher risks of domestic violence. He urged member states where widespread patterns of past violence against children had been uncovered to provide justice. As regards sexual violence against children, he called on states that have not yet done so to accede to the Lanzarote Convention against sexual abuse and sexual exploitation of children. He supported a ban on all forms of corporal punishment at national level. He also welcomed the development of new initiatives to combat violence, notably at UN level, and provided a set of recommendations to combat this phenomenon.

On 18 November, on the occasion of the second European Day on the protection of children against sexual exploitation and sexual abuse, the Commissioner recorded a video message focusing on the particular vulnerability of children living in institutions to these phenomena and to violence more generally. He urged member states to take measures to ensure better protection of these children and to provide them with accessible remedies, rehabilitation and reparation.

## **HUMAN RIGHTS OF PERSONS WITH DISABILITIES**

The protection and promotion of the human rights of persons with disabilities remained a major topic for the Commissioner in 2016 and was one of the issues examined in his visits and in his reports concerning Belgium, Greece, Iceland and Lithuania. He also tackled these issues in two letters addressed to the Prime Minister of the Czech Republic and to the Minister of Health and the Alternate Minister of Social Solidarity of Greece.

The Commissioner paid significant attention to the human rights of persons with intellectual or psychosocial disabilities, in particular their segregation from mainstream society in "special" institutions and their right to legal capacity. He also raised concerns over the persisting high rates of institutionalisation of children in several member states on grounds of disability. In his reports, he urged the national authorities to align their legislation and practice with international standards, particularly the CRPD and the case law of the European Court of Human Rights. The Commissioner stressed that alternatives to institutions and community-based services should be made available to persons with disabilities to enable them to lead an autonomous life and be included in the community. Priority should be given to phasing out substituted decision-making, starting with the immediate abolition of plenary guardianship, while developing supported decision-making alternatives.

The right of children with disabilities to inclusive education was another common theme which was examined in Andorra, Belgium and Lithuania. The Commissioner stressed the need to end school segregation of entire groups of children, including children with disabilities. In this respect he praised the advanced system of inclusive education established by Andorra, which has successfully incorporated children with disabilities. By contrast, he expressed concern at the high number of children with disabilities who are educated separately from other children in specialised schools in Belgium.

In addition to raising these issues in the framework of his country work, the Commissioner also addressed the Parliamentary Assembly on 22 April to support a call for the withdrawal of plans under way within the Organisation to draw up a binding legal instrument (in the form of an additional protocol to the Oviedo Convention) concerning the involuntary placement and involuntary treatment of “persons with mental disorder”. Based on the comments he submitted during a public consultation organised by the DH-BIO, the Commissioner stated that the additional protocol was unlikely to fulfil the aim of reducing human rights violations in psychiatry, as the legal safeguards it foresees often do not work in practice. Moreover, he emphasised that there was a real risk of incompatibility with the CRPD, as also confirmed by all UN bodies commenting on the draft additional protocol. He therefore urged the members of the Parliamentary Assembly to vote in favour of a draft recommendation asking the Committee of Ministers to instruct DH-BIO to withdraw the proposal to draw up such an additional protocol. The recommendation was subsequently adopted.

On 20 September, together with the Polish Ombudsman, Adam Bodnar, the Commissioner participated in the opening of the 2016 Polish Congress of Persons with Disabilities, where he introduced his work on promoting and protecting the human rights of persons with disabilities in the member states of the Council of Europe.

## **HUMAN RIGHTS OF LGBTI PEOPLE**

Regarding the human rights of lesbian, gay, bisexual, transgender and intersex (LGBTI) people, in 2016 the Commissioner spoke up in particular about rights to free expression and assembly; the right to family and private life; legal gender recognition; and the need to end the pathologisation of LGBTI people and medically unnecessary surgery on intersex children and adults.

He discussed LGBTI rights during his visits to Greece and Latvia. In a letter to the Greek authorities on 29 August, the Commissioner noted with concern an increase in hate crime, including of a homophobic nature, and urged the government to promptly adopt comprehensive equal treatment legislation and to organise anti-discrimination training for law enforcement officers, prosecutors and judges. In Latvia, the Commissioner encouraged the authorities to improve their response to homophobic and transphobic crime and hate speech through adopting legislation and offering training; to provide legal recognition to cohabiting different and same-sex couples; and to put in place educational policies that provide factual information about sexuality and gender diversity in schools.

On 17 June, the Commissioner sent a video message on the occasion of the Baltic Pride 2016 human rights conference. And on 20 June, he regretted in a Facebook statement the decision by the Governor of Istanbul to ban, for the second year in a row, the Pride March that was due to take place there. In his statement, the Commissioner said that LGBTI people are entitled to freedom of expression and assembly and stressed that the Turkish authorities have a positive obligation to enable them to enjoy these freedoms, including by providing protection if there are fears for the security of demonstrators.

On 24 February, the office of the Commissioner participated in a meeting in Paris co-organised by the Council of Europe Sexual Orientation and Gender Identity Unit and the French Defender of Rights. The meeting provided an opportunity to exchange views on best practices regarding legal gender recognition for transgender people. On 3 June, the Commissioner delivered the keynote speech at the 6th European Transgender Council in Bologna, Italy. In his speech, the Commissioner observed that real progress had been made in fulfilling transgender people's human right to determine and express their individual gender identity and be fully included in society. At the same, he noted that real challenges remain and should be addressed, such as abusive conditions for legal gender recognition and discrimination and hate crimes against transgender people. He pointed out that governments have a responsibility to raise awareness about gender diversity to address the root causes of intolerance and violence against transgender people.

The Commissioner continued to call for an end to the pathologisation of LGBTI people and medically unnecessary treatments and surgery. On 12 May, the Commissioner joined a statement by the UN Committee on the Rights of the Child, a group of UN human rights experts, the Inter-American Commission on Human Rights (IACHR) and the African Commission on Human and Peoples' Rights (ACHPR) against the pathologisation of LGBTI adults and children. Published ahead of the International Day against Homophobia, transphobia and biphobia (IDAHOT), the statement condemned abusive, harmful and unethical treatments of LGBTI people on the basis of pathologising classifications. On 26 October, on the occasion of Intersex Awareness Day, the Commissioner joined an international statement supported by several UN committees and rapporteurs, and representatives of the ACHPR and the IACHR on intersex people. The statement called on states to prohibit medically unnecessary surgery on intersex children and infants, to provide support and counselling to intersex children and their parents, and to uphold the rights of intersex people to health, physical and mental integrity and to live free of harmful practices.

In March, the Commissioner sent video messages on the occasion of the 10th anniversary conference of the NGO Mozaika in Latvia and for a conference in Ukraine entitled "LGBT issues and the European Integration in Ukraine". In a video message on 10 May to a side event of the 4th European IDAHOT Forum in Copenhagen, the Commissioner stressed the need for stronger political leadership and well-targeted advocacy to build alliances among policy makers, legislators, media and NGOs to achieve greater social acceptance of LGBTI rights.

On 17 November, the Commissioner gave the keynote speech at a Meeting of the European Governmental LGBTI Focal Point Network in Strasbourg. In his address, he

highlighted three specific concerns that had come up in his recent work: harmful medical practices against intersex children, bullying of LGBTI children in school and the difficulties faced by LGBTI asylum seekers in Europe.

On the same day, the Commissioner also held an exchange of views with the first United Nations Independent Expert on protection against violence and discrimination based on sexual orientation and gender identity, Vitit Muntarbhorn.

We must aim for a society in which LGBTI people will no longer be treated as second-class citizens

## HUMAN RIGHTS OF ROMA AND TRAVELLERS

As in previous years, the Commissioner raised concerns on several occasions about the human rights of Roma and Travellers. One of the main areas of focus was the widespread practice of forcibly evicting Roma without providing them with adequate alternative accommodation. Thus, in February the Commissioner published the letters he had addressed to the authorities of seven member states (Albania, Bulgaria, France, Hungary, Italy, Serbia and Sweden) urging them to stop forced evictions without due process and without the offer of adequate alternative accommodation, which are in breach of international standards, particularly if such evictions result in homelessness.

On 29 June, the Commissioner and the Director of the OSCE Office for Democratic Institutions and Human Rights, Michael Georg Link, published a joint opinion editorial on Roma evictions in *openDemocracy*. The two officials recalled that international standards provide that a state's right to evict must be counterbalanced by its duty to provide adequate alternative housing, to respect people's dignity and ensure that those being evicted have access to effective remedies. They advocated for easier access of Roma to sustainable housing and invited states to stop wasting money on initiatives that lead to human rights violations, such as segregated housing, and to refrain from using Roma as scapegoats for electoral purposes.

In February, the Commissioner issued a Human Rights Comment in which he addressed the deep-rooted hostility and discrimination Travellers still face in several countries. He pointed to a history marked by policies of forced sedentarisation and eradication of their culture and way of life. He stressed the widespread lack of halting sites and frequent evictions. Tense relations with the police, pervasive discrimination and lack of access to education for children of Traveller families were also

The history of Travellers in Europe is marked by persecutions, expulsions and rights violations aimed at forced sedentarisation and at eradicating their culture and way of life

issues of serious concern. The Commissioner urged member states to eliminate all discriminatory provisions regulating the life of persons living in caravans, to fully acknowledge the specific cultural identity and way of life of Travellers and to firmly condemn and sanction all racist statements targeting them.

On 2 August, on the occasion of the commemoration of the liquidation of the Auschwitz “Tzigeuner Lager” (2 August 1944), the Commissioner published a statement in which he recalled that the extermination of the Roma came after centuries of exclusion, expulsions and violence against Roma in Europe. He reminded politicians and media that stigmatising anti-Roma speech had a profound impact on public opinion and could lead to the trivialisation of past atrocities and the legitimisation of discrimination and racially motivated crime.

The attention the Commissioner devoted to the human rights of Roma and Travellers in 2016 was also reflected in his country work, where this was a recurrent topic. Thus, in his report on Belgium the Commissioner reviewed, *inter alia*, issues related to access to education and housing for the members of these groups, including the availability of caravan sites, and evictions. A letter he sent to the Prime Minister of Romania highlights persisting concerns in the fields of police brutality, forced evictions, educational segregation, hate speech and hate crime. A similar letter to the Prime Minister of the Czech Republic addresses segregation in education and housing, hate speech and hate crime and the lack of adequate remedies offered to victims of sterilisation without consent. One of the main themes of the Commissioner’s visit to Ireland was the human rights situation of Travellers and Roma, with a special focus on Travellers’ accommodation.

## WOMEN’S RIGHTS AND GENDER EQUALITY

Women’s rights and gender equality have continued to feature prominently in the Commissioner’s work in 2016. The Commissioner examined these issues during his visits to Andorra, Ireland, Latvia, Lithuania and Poland. In all these visits and in his reports, the Commissioner paid attention to the problem of violence against women and domestic violence. In an opinion editorial published in *New Europe* in January, he stressed that fighting violence against women must become Europe’s

” All states have international human rights obligations to achieve equality between men and women

priority. In the observations and reflections concluding his third quarterly activity report, the Commissioner expressed concern at criticism of the so-called “gender ideology” and “gender theory” among both religious and secular stakeholders. This criticism is having an increasingly harmful effect on the protection of women’s rights, notably by mounting a growing challenge against the Istanbul Convention. In response to these challenges, the Commissioner continued throughout the year to recommend that states ratify that Convention and combat gender stereotypes that feed into violence against women and constitute serious obstacles to the achievement of real gender equality.

The Commissioner paid increasing attention to the issue of women’s sexual and reproductive health and rights, including in his reports on Poland and during his visits to Andorra and Ireland. In a Human Rights Comment entitled “Protect women’s sexual and reproductive health and rights” published on 21 July, the Commissioner

expressed concern at attempts to exert control over women's bodies and sexuality. He recalled that these rights were linked to the enjoyment of many other human rights, including the right to the highest attainable standard of physical and mental health and the right to decide about the number and spacing of one's children. The Commissioner called on states to ensure that women have full access to sexual and reproductive health information, goods and services, including in the context of maternity health care, contraception and sexuality education. The Commissioner also noted that some countries in Europe had kept restrictive abortion laws in contradiction with the case law and guidelines of international human rights treaty bodies. In other countries, even when access to abortion was provided for by law, there could be barriers to access in practice. The Commissioner stressed that states should make lawful, at a minimum, abortions performed to preserve the physical and mental health of women, or in cases of fatal foetal abnormality, rape or incest. He also encouraged them to move towards the decriminalisation of abortion within reasonable gestational limits. In a letter addressed to the Czech authorities on 4 November (see continuous monitoring above), the Commissioner reiterated his recommendation to establish an extra-judicial mechanism for compensating Roma women who were victims of forced sterilisations.

On the occasion of International Women's Day, both in a Human Rights Comment "Human rights of refugee and migrant women and girls need to be better protected", and in a joint statement with Filippo Grandi, United Nations High Commissioner for Refugees, the Commissioner emphasised the protection needs of refugee women and girls arriving in Europe (see also Human rights of immigrants, refugees and asylum seekers above).

## **COMBATING RACISM AND INTOLERANCE**

On many occasions the Commissioner raised concerns at growing manifestations of racism and intolerance directed at various groups of society, especially refugees and migrants, Roma and other minority groups. His reports published after the visits to Belgium and Croatia and the memorandum on the human rights of asylum seekers and immigrants in the United Kingdom address issues pertaining to racism and intolerance.

On 18 October, the Commissioner published a Human Rights Comment on Holocaust remembrance. According to the Commissioner's frequent monitoring missions, antisemitism is still very much alive in Europe. The internet and the explosion of online hate speech have only exacerbated an existing problem. He noted that outright denial of the Holocaust still exists in Europe and that the European Court of Human Rights has taken a robust approach in dealing with Holocaust denial.

On 20 October, the Commissioner took part in the OSCE Chairmanship Conference on Tolerance and Diversity organised in Berlin by the German Federal Ministry for Foreign Affairs. The aim of the conference was to highlight the role of governments, civil society organisations, the media, business and the general public in shaping social coexistence in diverse societies undergoing changes, including in relation to

displacement and migration. The Commissioner intervened during the first panel discussion entitled “Respect for Human Rights and Fundamental freedoms as a Basis for Tolerance and Social Cohesion”, alongside Michael Georg Link, Director of OSCE ODIHR (Office for Democratic Institutions and Human Rights), Lotte Leicht, EU Director, Human Rights Watch, and Anastasia Crickley, Chair of the UN Committee on the Elimination of Racial Discrimination. Based on his experience as Commissioner and on his previous work, he summarised several long-term trends – both positive and negative – affecting the fight against racism and intolerance, and stressed the importance of adhering to human rights obligations in this area.

On 14 November, the Commissioner addressed the World Jewish Congress Global summit for its Jewish Diplomatic Corps (a network of young Jewish professionals who voluntarily engage in diplomacy and public policy). The Diplomatic Corps was meeting in Strasbourg to find new ways of engaging with the Council of Europe. In his keynote speech the Commissioner spoke about fighting antisemitism in Europe and gave examples from his country monitoring work. Meetings with Jewish communities during his monitoring missions have led the Commissioner to conclude that Jews in Europe are feeling increasingly vulnerable and this is heightened by the spread of online hate speech. The Commissioner underlined that it was important to address not only violent antisemitism, but also low-level antisemitism, which sometimes manifests itself in coded language. A strong political and legal response remains essential.

## **NATIONAL MINORITIES**

In February 2016, the Commissioner held an exchange of views with the Advisory Committee on the Framework Convention for the Protection of National Minorities (ACFC). The discussion focused on areas of work of the Commissioner of interest to the ACFC, including the situation of Roma and other persons belonging to minorities in a number of countries. Other topics that were debated included prospects for further ratification of the Framework Convention and co-operation with other international bodies on national minority protection.

On 11 October, the Commissioner gave a presentation on the occasion of the conference launching the 4th Thematic Commentary of the Advisory Committee on the scope of application of the Framework Convention. He focused on diversity management in Europe today and the main human rights challenges that this raised. He highlighted the increasingly negative impact of populist discourse on diversity management and referred to growing religious intolerance and persisting worrying phenomena such as anti-Gypsyism, highlighting the high cost that segregation of entire groups of children in education has for society as a whole. The Commissioner deplored the lack of effectiveness of existing mechanisms to cope with discrimination and underlined the importance for member states to step up migrant integration policies.

## SYSTEMATIC IMPLEMENTATION OF HUMAN RIGHTS

Systematic work is needed in order to make European and international human rights standards a reality at the national and local level. This requires an inclusive and participatory approach by national authorities, civil society, the business sector and national human rights structures. It also requires setting measurable objectives, effective co-ordination and the independent evaluation of results. To this end, the Commissioner has long encouraged the adoption of national human rights action plans, and continued to do so in 2016.

During his visit to Ukraine from 21 to 25 March, the Commissioner urged his interlocutors to ensure an effective implementation of the activities envisaged in the national human rights strategy and action plan adopted in 2015. During his visit to Iceland from 8 to 10 June, the Commissioner called for the adoption of a comprehensive national human rights action plan that would serve as an umbrella framework to implement human rights and anti-discrimination policies.

On 21 April, the Commissioner sent a video message for the Human Rights Consortium conference on the development of human rights action plans in regions of the United Kingdom. In his message, the Commissioner said that national action plans for human rights had been prepared or were being implemented in nearly 20 European countries. He stressed that those plans have been useful tools for clarifying the authorities' responsibilities and for identifying and addressing gaps in human rights protection at the national level.

## STATELESSNESS

Statelessness, and especially its transmission to children, continued to be a regular feature of the Commissioner's work in 2016. He raised issues related to statelessness during his country visits to Croatia, Cyprus and Latvia. On the occasion of an event organised on 22 November at the European Parliament by the European Network on Statelessness, he recorded a video message in which he reiterated his commitment to working towards the eradication of child statelessness in Europe.

Highlighting progress achieved in some countries, he pointed to the need for more political resolve and for the identification of practical solutions, as well as for continued international co-operation, in order to stop the perpetuation of statelessness.

## TRANSITIONAL JUSTICE AND MISSING PERSONS

Issues related to transitional justice, and missing persons in particular, remained high on the Commissioner's agenda and featured in his country and thematic work. The Commissioner's visits to Croatia and Ukraine and the subsequent reports focused, *inter alia*, on issues pertaining to fighting impunity for serious human rights violations; establishing the truth about missing persons; reparations to wartime victims; internally displaced persons; and institutional reforms to prevent future human rights violations. In his letter to the Serbian Minister for Labour, Employment, Veterans and Social Affairs, which was published in September, the Commissioner reiterated the need for Serbia to ensure that the civilian wartime victims who remain without access to reparations, in particular families of missing persons and victims of wartime crimes of sexual violence, are provided with adequate and effective reparation in line with internationally established standards.

In March, the Commissioner published an Issue Paper entitled *Missing persons and victims of enforced disappearance in Europe* in which he noted that tens of thousands of persons remain missing or are victims of enforced disappearance across Europe as a result of past or ongoing conflicts. He proposed a set of recommendations which may help governments improve their law and practice in this field, focusing on: direct victims and their families; enhancement of processes of exhumation and identification; support to mechanisms working on missing persons and enforced disappearances; training of public officials; truth-seeking initiatives; access to information and archives; strengthening of domestic legislation; effective investigations and eradication of impunity; and the promotion and implementation of relevant international and European standards.

In order to promote the recommendations contained in this paper and to further reflect on the situation of missing persons and victims of enforced disappearance

in Europe, the Commissioner convened, in June/July, a round table with human rights defenders which gathered human rights defenders from over 20 countries in the Council of Europe area and experts in this field. In addition, in August, the Commissioner published a Human Rights Comment in which he stressed the importance of human rights defenders' work for redress to victims of enforced disappearance. Highlighting persisting

” Clarifying the fate of missing persons and victims of enforced disappearance should be a matter of priority for the governments concerned

obstacles in addressing cases of missing persons and enforced disappearance and the challenges facing human rights defenders working on transitional justice issues, the Commissioner presented his reflections on the way forward in addressing the outstanding issues in this context, drawing on the discussion at the aforementioned round table (see chapter 3 below).

Lastly, in his keynote speech at the 2016 OSCE Human Dimension Implementation Meeting in Warsaw in September, the Commissioner referred to several remaining human rights challenges linked to the commitments made by the signatories of the

Charter of Paris, including the legacy of the past and transitional justice issues. He highlighted that impunity for serious violations of human rights and humanitarian law remained serious problems and that thousands of victims had not yet received redress and thousands of people were still missing.

## COUNTER-TERRORISM AND HUMAN RIGHTS PROTECTION

In the course of 2016, the Commissioner on several occasions expressed concern about national developments relating to counter-terrorism and its impact on human rights. On 17 May, the Commissioner published a memorandum on surveillance and oversight mechanisms in the UK, commending the UK Government for its attempt to overhaul the investigatory powers framework by providing a world-leading Investigatory Powers Bill, but expressing concern about certain provisions of the bill. On 26 July, the Commissioner issued a statement expressing his profound concern about the first decree with the force of law adopted within the framework of the state of emergency declared in Turkey the previous week. The Commissioner further published two additional memoranda regarding the situation in Turkey: one on 7 October concerning the human rights implications of the measures taken under the state of emergency by the Turkish authorities; the other on 2 December concerning a number of human rights violations resulting from curfews and counter-terrorism operations conducted in the south-east of the country since August 2015. On 29 November, the Commissioner also published a letter he had sent to the Minister of the Interior and Kingdom Relations and the Minister of Security and Justice of the Netherlands to raise his concerns about the possible detrimental impact that three counter-terrorism bills under discussion may have on the protection of human rights.

The Commissioner reiterated these concerns in a series of interviews and opinion editorials in which he urged governments and legislators to carefully assess the impact of counter-terrorism measures on human rights before their adoption and implementation. In relation to derogations to the European Convention on Human Rights and states of emergency in force in certain member states, the Commissioner underlined that terrorism cannot be easily defeated and should therefore be combated by means of ordinary laws rather than by renewed emergency measures derogating from human rights standards.

The way we respond today to the challenges posed by terrorist threats will either destroy or strengthen our democracies

Expressing serious doubts about the effectiveness of a number of emergency measures, he highlighted the risks of abuses entailed by extraordinary powers and their potential damaging effects on social cohesion.

Pursuing his work on democratic and effective oversight of national security services, the Commissioner presented the conclusions and recommendations of his Issue Paper on this topic at a conference held at King's College London on 21 January and at the fourth seminar of the Queen Mary Reflection Group on Terrorism and Human Rights which took place in Paris on 28 November.

Lastly, the Commissioner also focused his work on the role of national human rights structures in the context of state action against terrorism. On 20 May, the Commissioner's Office and the European Network of National Human Rights Institutions organised a brainstorming meeting in Paris on this issue. On 6 December, the Commissioner published a Human Rights Comment in which he stressed the need for states to enhance the role and capacities of national human rights structures given the vital role they play in human rights protection in the context of counter-terrorism. This is achieved notably by: raising human rights awareness and fostering trust in democracy; advising national authorities; handling individual complaints; and overseeing counter-terrorism activities.

## **TREATMENT OF PRISONERS AND REHABILITATION OF VICTIMS OF TORTURE**

In 2016 the Commissioner examined issues relating to the treatment of prisoners in his country and to thematic work. In particular, the treatment of prisoners and the need for their rehabilitation was one of the main focuses of his country visit to Ukraine in March. The treatment of prisoners in Turkey and Belgium was also raised by the Commissioner in September 2016. Furthermore, the Commissioner paid attention to the treatment of migrants in detention in Croatia and Cyprus.

On 18 July the Commissioner joined a group of human rights experts with a mandate relating to detention in a public statement in support of the Nelson Mandela Rules, the revised Standard Minimum Rules for the Treatment of Prisoners, which had been adopted on 17 December 2015. In the joint statement which called for the speedy implementation of the revised rules, the Commissioner notably stressed that they provided an additional resource to governments to transform prisons from mere places of punishment into places of rehabilitation.

The Commissioner also drew attention to the far-reaching consequences of ill-treatment of persons deprived of their liberty upon the individual victims and upon society at large. In June he published a Human Rights Comment "Torture survivors have the right to redress and rehabilitation", in which he highlighted the international human rights standards relating to the right to rehabilitation and the scope of states' responsibility in this area. The document also analysed the specific needs of victims of torture inflicted in different contexts: during armed conflicts, ill-treatment involving sexual violence, and/or in cases of asylum seekers, refugees or other displaced persons fleeing places where they had experienced torture. Special attention was given to the need for a holistic approach towards survivors of torture, with the ultimate goal being the restoration of the dignity of the victim. Redress includes not only monetary compensation, but also various forms of restitution, psychosocial rehabilitation and guarantees of non-repetition, as well as an effective remedy which encompasses the victim's participation in legal proceedings. The Commissioner gave specific examples from his country work as regards the fulfilment by states of their obligation to provide redress, and highlighted both good practices and an array of legislative

or other shortcomings. Finally, the Commissioner reiterated his recommendations to various states in order to eradicate torture through preventive means, including a zero-tolerance message, awareness-raising and professional training for public officials, as well as a firm commitment to combating impunity.

” Civil society actors and other human rights defenders are crucial to human rights, democracy and the rule of law. If they are not able to operate, then these values and standards are under threat

” 2016 also saw a continuation of previous trends of increasing pressures on human rights defenders

## Chapter 3

# Human rights defenders

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**T**he situation of human rights defenders and the responsibility of states to ensure a safe and enabling environment for their work remained at the forefront of the Commissioner's attention in 2016. The Commissioner organised and participated in round tables and side events, and in two inter-mechanism meetings, related to the role and the situation of human rights defenders in various parts of Europe. He also published thematic documents relating to the important role and contribution of human rights defenders with respect to the protection of human rights. As part of his continued monitoring, the Commissioner published several statements on the situation of human rights defenders in various regions of Europe. Moreover, the Commissioner intervened before the European Court of Human Rights as a third party in three cases relating to human rights defenders: *Khadija Ismayilova v. Azerbaijan*; *Svetlana Khusainovna Estemirova v. the Russian Federation*; and *Khalid Bagirov v. Azerbaijan* (for further information on third party interventions, see chapter 6 below).

In March, the Commissioner issued statements about a series of violent attacks against journalists, human rights defenders and NGOs in Chechnya and Ingushetia in the North Caucasus. The Commissioner contacted the Russian authorities indicating the need for immediate protection of those who had come under attack, and for a prompt and thorough investigation with a view to holding those responsible to account.

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

On 30 June and 1 July, the Commissioner organised in Strasbourg a round table with human rights defenders on missing persons and victims of enforced disappearance in Europe. In addition to human rights defenders from more than 20 different European countries, the event was attended by experts in the field, including the UN Special

Rapporteur on the situation of human rights defenders, Michel Forst, and a member of the UN Working Group on Enforced or Involuntary Disappearances, Henrikas Mickevičius. During the round table, the participants discussed the recommendations contained in the Commissioner's Issue Paper *Missing persons and victims of enforced disappearance in Europe*. The participants also exchanged important information on issues relating to missing persons, victims of disappearances and transitional justice in European countries affected by these issues. In particular, they raised the importance of establishing the truth, instituting efficient and effective domestic legal and institutional frameworks, and combating impunity through prosecution and punishment of those responsible for enforced disappearances, and the necessity to provide support and reparation for victims. The round table was also aimed at reviewing the situation of human rights defenders working on those issues, including obstacles that human rights organisations and defenders face in carrying out their activities and possible ways to overcome them.

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

In August, the Commissioner published a Human Rights Comment “Human rights defenders’ work is vital for redress to victims of enforced disappearance”. In his comment, he raised a number of issues relating to the crime of enforced disappearance and the vital work of human rights defenders in this area. In particular, he highlighted the persisting problem of impunity for crimes of enforced disappearance as a result of the lack or ineffectiveness of criminal investigations. There is also the ongoing lack of or very slow implementation by respondent states of judgments of the European Court of Human Rights in cases of missing persons and enforced disappearance. The Commissioner underlined the crucial role of civil society actors and human rights defenders in establishing the facts and in pursuing justice. Specific attention was paid to the obstacles they face in their work, which include legal and administrative restrictions, judicial harassment, smear campaigns, threats and intimidation, unlawful arrest or detention, ill-treatment, and even killings and enforced disappearance of defenders themselves. The Commissioner recommended a series of measures to be taken by member states and emphasised the importance of building the capacity and expertise of human rights NGOs active in this field.

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

In September, the Commissioner participated in a side event “Addressing the deteriorating situation of civil society actors and human rights defenders in Europe”, which was organised by the Council of Europe and the Office of the UN High Commissioner for Human Rights in the framework of the OSCE Human Dimension Implementation Meeting. Officials and representatives from the Council of Europe, the UN and the OSCE ODIHR participated in the side event. The Commissioner recalled that support to and protection of human rights NGOs and defenders are at the core of his mandate and referred to the main tools at his disposal to fulfil this task, including regular consultations with human rights defenders, intervention in urgent

cases of defenders at risk, and assessment of laws and practices which affect the working environment of human rights actors. The Commissioner described current trends and expressed concern about the numerous obstacles to the important work of human rights defenders as well as the shrinking space for critical voices in various European countries.

## **7th Inter-Mechanisms Meeting for the Protection of Human Rights Defenders**

On 30 November, the Commissioner participated in the 7th Inter-Mechanisms Meeting for the Protection of Human Rights Defenders, in Brussels, which is aimed at discussing trends and emerging issues pertaining to the protection of human rights defenders, the exchange of experiences in responding to challenges and the identification of possible paths of co-operation and synergies between the existing mechanisms. Apart from the Commissioner, participants in the meeting included the UN Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on Human Rights Defenders of the African Commission on Human and People's Rights; representatives of the Rapporteur on Human Rights Defenders of the Inter-American Commission for Human Rights; the OSCE ODIHR; the EU External Action Service; the Chair of the EU Human Rights Working Group (COHOM); the European Commission (DG DEVCO); the international organisation of La Francophonie; the PACE Committee on Legal Affairs and Human Rights; the newly established EU mechanism to protect human rights defenders; several international human rights NGOs, and human rights defenders. An interactive dialogue took place with EU representatives on ways to streamline the co-ordination between EU institutions and member states on the one hand, and intergovernmental mechanisms established to protect and support human rights defenders on the other, notably in difficult situations.



## Chapter 4

# Co-operation with national human rights structures

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**N**ational human rights institutions (NHRIs) – such as ombudsman institutions, human rights commissions and equality bodies – are essential partners in the Commissioner’s dialogue with member states, as envisaged in the Commissioner’s mandate. The Commissioner meets with representatives of NHRIs during his country visits and in Strasbourg to discuss human rights concerns. He regularly uses information provided by NHRIs when he prepares country visits and refers to it in the ensuing reports. The Commissioner also promotes the independence and effectiveness of NHRIs.

In 2016, the Commissioner specifically focused on enhancing the work of NHRIs with regard to the protection of human rights in the context of state action against terrorism. On 20 May, the Commissioner’s Office and the European Network of National Human Rights Institutions (ENNHRI) organised a brainstorming meeting in Paris with representatives of nine NHRIs to exchange and generate ideas on the role of NHRIs in that field. ENNHRI dedicated its General Assembly meeting in October, attended by a member of the Office, to the same topic. The Commissioner published a Human Rights Comment on 6 December entitled “National Human Rights Institutions: protecting human rights while countering terrorism”. The comment outlined the possible functions of NHRIs in this field including: raising awareness about the importance of a human-rights-compliant counter-terrorism response; advising authorities on counter-terrorism legislation; and handling individual complaints related to counter-terrorism activities. The comment also underscored that states must grant NHRIs the appropriate mandate and resources to carry out this work (see section on counter-terrorism and human rights protection above).

During his visits to Poland, Andorra and Iceland, the Commissioner analysed the national human rights framework and made recommendations regarding national human rights institutions. In Poland, the Commissioner called on the authorities to respect and guarantee the Ombudsman's full independence by ensuring that the institution can rely on stable and sufficient funding to enable the Ombudsman to carry out his mandate effectively and by safeguarding the fairness, transparency and impartiality of the procedure for lifting the Ombudsman's immunity in the context of criminal proceedings. On 20 September, the Commissioner participated in an expert seminar in Warsaw in co-operation with the office of the Polish Ombudsman, to discuss issues relating to the administration of justice that had been raised in the visit report.

On 22 February, the Commissioner's Office participated in a meeting of the Council of Europe Fundamental Rights Agency-Equinet-ENNHRI platform on the rights of migrants and asylum seekers. On 23 March, a representative of the Office attended the 29th general meeting of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (now renamed Global Alliance of National Human Rights Institutions (GANHRI)). On 18 October, the Commissioner's Office participated in a conference in Sarajevo marking the 20th anniversary of the Human Rights Ombudsman of Bosnia and Herzegovina. On 28 and 29 November in Warsaw, the Commissioner's Office participated in a meeting co-organised by the Council of Europe, OSCE ODIHR, OHCHR and ENNHRI on strengthening and maintaining the independence of NHRIs. A representative of the Office presented the role of the Commissioner in supporting NHRIs, including through joint work, the promotion of recommendations by NHRIs and lending political support to NHRIs under attack.

## Chapter 5

# Co-operation with European and international organisations

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### EUROPEAN UNION

**T**he Commissioner met with the High Representative of the European Union for Foreign Affairs and Security Policy, Federica Mogherini, in November. The discussions focused on the general human rights situation in Europe as well as the Commissioner's visits to and reports on Turkey and Ukraine and the human rights developments in those countries.

The Commissioner met with the Director of the European Union Agency for Fundamental Rights (FRA), Michael O'Flaherty, in February, June and October. The two officials regularly exchanged on their respective current priorities and ongoing activities, particularly in the field of asylum and immigration. They also discussed co-operation between the two institutions and ways to further develop this.

The Commissioner participated in the Fundamental Rights Forum 2016 convened by the FRA in June. In his address to the Forum, he examined ways to empower rights holders in the fields of inclusion, refugee protection and the digital age.

In November, the Commissioner was invited by the Foreign Affairs Committee of the European Parliament to present his memorandum on the human rights implications of the measures taken under the state of emergency in Turkey and to engage in an exchange of views with the Committee's members.

In December, the Commissioner met with the EU Special Representative for Human Rights, Stavros Lambrinidis. The discussion focused on Azerbaijan, the Russian Federation and co-operation between the institutions. Frequent contacts were maintained with the European Ombudsperson, Emily O'Reilly.

Information on human rights was regularly exchanged with relevant Commission services, the European External Action Service and the FRA. Major themes covered included the asylum system, the human rights of vulnerable groups and the situation of human rights defenders.

## **ORGANISATION FOR SECURITY AND CO-OPERATION IN EUROPE**

In March, the Commissioner met with the Director of the OSCE ODIHR, Michael Georg Link. The discussion focused on human rights defenders, the human rights situation in a number of countries including Turkey and Ukraine, and other matters of common interest.

In June, the Commissioner and Director Link jointly published an opinion editorial in *openDemocracy* where they addressed forced evictions and housing segregation of Roma. They called on states to break the cycle of discrimination against Roma and start treating them as equal European citizens by facilitating Roma access to housing, which is a precondition for the enjoyment of many other human rights, in particular the right to education (see section on human rights of Roma).

The Commissioner maintained regular contact with the OSCE Special Representative on Freedom of the Media, Dunja Mijatović. In June, they met in Vienna and discussed the situation of freedom of expression and media freedom in a number of countries, including Croatia, Poland, the Russian Federation, Turkey and Ukraine, and current challenges to public-service media.

In June, the Commissioner held an exchange of views with the OSCE High Commissioner on National Minorities, Astrid Thors. They shared information on their country work, with a particular emphasis on Ukraine, the Russian Federation and Croatia.

In September, the Commissioner, the OSCE Special Representative on Freedom of the Media and the Executive Director of Human Rights Watch, Kenneth Roth, were keynote speakers at the 2016 OSCE Human Dimension Implementation Meeting in Warsaw. They addressed the challenges facing the OSCE area 25 years after the signing of the Charter of Paris.

In October, the Commissioner took part in the OSCE Chairmanship Conference on Tolerance and Diversity organised in Berlin by the German Federal Ministry for Foreign Affairs. The Commissioner intervened during the first panel discussion entitled "Respect for Human Rights and Fundamental freedoms as a Basis for Tolerance and Social Cohesion", alongside Michael Georg Link, Director of OSCE ODIHR, Lotte Leicht, EU Director, Human Rights Watch, and Anastasia Crickley, Chairperson of the UN Committee on the Elimination of Racial Discrimination. The aim of the conference was to highlight the role of governments, civil society organisations, the media,

business and the general public in shaping social coexistence in diverse societies undergoing changes, including in relation to displacement and migration.

The Commissioner met with representatives of OSCE field missions during his country visits. Co-operation in the field was particularly intensive during his visit to Ukraine.

## UNITED NATIONS

Co-operation with UN institutions focused on migration and refugees, freedom of expression, transitional justice, the protection of human rights defenders, the human rights of LGBTI persons and children's rights.

The Commissioner and his Office maintained frequent contacts with the following persons: UN Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence, Pablo de Greiff; UN Special Rapporteur on the situation of human rights defenders, Michel Forst; UN Special Rapporteur on internally displaced persons, Chaloka Beyani; UN Special Rapporteur on the promotion and the protection of the right to freedom of opinion and expression, David Kaye; and UN Special Representative of the Secretary-General on Violence against Children, Marta Santos Pais.

The Commissioner and his Office continued to work closely with the UNHCR Representation in Strasbourg, and with field missions, in the context of his ongoing work on Austria, Croatia, Denmark, Greece, Ireland, Spain, Turkey and Ukraine.

In February, the Commissioner met with the Chair of the UN Working Group on People of African Descent, Mireille Fanon-Mendès-France. The discussion focused on human rights violations against People of African Descent, including hate crimes and other forms of discrimination.

In March, the Commissioner and the UN High Commissioner for Refugees, Filippo Grandi, issued a joint statement on the high risk of certain forms of violence faced by refugee women and girls, especially those travelling alone along the migration route. They called for better protection and access to legal pathways of admission to Europe.

In March a representative of the Commissioner's Office took part in the Expert Meeting on "Establishing a Joint Strategy for Addressing Racism and Xenophobia", which was organised in Geneva by UNHCR. IOM, OHCHR and UNICEF also participated. The meeting aimed at developing a joint strategy for addressing racism and xenophobia.

In April, during the Council of Europe conference entitled Strategy for the Rights of the Child 2016-2021 in Sofia, the Commissioner met with Marie-Pierre Poirier, UNICEF Regional Director for Central and Eastern Europe and the CIS countries and Special coordinator of UNICEF for the refugee and migrant crisis in Europe. Regular exchanges of information took place with UNICEF, in particular with the Office for Central and Eastern Europe and the CIS countries based in Brussels. UNICEF provided the Commissioner's Office with relevant information and contacts ahead of country visits.

In May, the Commissioner, the UN Committee on the Rights of the Child, a group of UN human rights experts, the Inter-American Commission on Human Rights and the African Commission on Human and Peoples' Rights issued a statement against the pathologisation of LGBTI adults and children. The statement criticised policies and practices that define persons as ill based on their sexual orientation, gender identity or gender expression.

In June, the UN Special Rapporteur on the situation of human rights defenders, Michel Forst, and a member of the UN Working Group on Enforced or Involuntary Disappearances, Henrikas Mickevičius, took part in a round table with human rights defenders on missing persons and victims of enforced disappearance in Europe. Organised by the Commissioner, the event provided an opportunity to exchange information on the situation in European countries affected by these issues and of human rights defenders working on transitional justice (see section on Human Rights Defenders).

In July, the Commissioner and a group of UN human rights experts issued an open statement calling for the implementation of the UN Nelson Mandela Rules, the revised Standard Minimum Rules for the Treatment of Prisoners, adopted on 17 December 2015. The Commissioner, together with the UN Special Rapporteur on torture, Juan E. Méndez; Med Kaggwa, the Special Rapporteur on prisons, conditions of detention and policing in Africa; and James Cavallaro, the Rapporteur on the rights of persons deprived of liberty of the Inter-American Commission on Human Rights, stressed that the revised rules are a welcome step forward and provide governments with an additional tool to transform prisons from places of punishment into places of rehabilitation.

In September, the Commissioner participated in a side event organised by the Council of Europe and the Office of the UN High Commissioner for Human Rights on "Addressing the deteriorating situation of civil society actors and human rights defenders in Europe". Held in the framework of the OSCE Human Dimension Implementation Meeting, the side event examined obstacles having a negative impact on the situation and work of human rights civil society actors, the shrinking space for critical voices in Europe and the importance of raising public awareness of positive narratives about the work of human rights defenders.

In October, the Commissioner contributed to the campaign "High time to end violence against children", launched by Marta Santos Pais, the UN Special Representative of the Secretary-General on Violence against Children. He wrote an article on violence against children in emergency situations for the book initiated by Santos Pais on the occasion of the 10th anniversary of the Global Study on Violence against Children.

Also in October, the Commissioner sent a video message to the 2nd Session of the UN Open-ended Intergovernmental Working Group on transnational corporations and other business enterprises with respect to human rights. He stressed that business enterprises have an increasing role to play in promoting human rights and preventing violations. This responsibility in terms of human rights should be better discharged by both businesses and governments.

In November, the Commissioner met with Irina Bokova, Director-General of UNESCO, and highlighted media freedom and the protection of journalists, migrant integration and inclusive education in their discussions.

In November, the Commissioner met with Vitit Muntarbhorn, the UN Independent Expert on the protection against violence and discrimination based on sexual orientation and gender identity. The discussion focused on the priorities and challenges encountered in their respective mandates and the issue of the widening gap between countries where a high degree of protection and equal rights for LGBTI persons has been achieved and countries where the basics are still lacking, and possibilities for co-operation.

During country visits, the Commissioner frequently met with UN country offices. Co-operation in the field was especially intensive in Turkey and Ukraine in the context of the Commissioner's visits.



## Chapter 6

# European Court of Human Rights

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### IMPLEMENTATION OF JUDGMENTS

**O**n 23 August, the Commissioner published a Human Rights Comment on challenges to the Convention system and in particular on prolonged non-implementation of a number of judgments of the European Court of Human Rights and direct attacks on the Court's authority. The Commissioner expressed concern at the increase in cases pending for more than five years before the Committee of Ministers, as well as the rising number of "leading" cases that had not been implemented for more than ten years. Prolonged non-implementation of the judgments of the Court is a challenge to the Court's authority and thus to the Convention system as a whole. Direct challenges to the authority of the Court within a handful of member states have also become more explicit and vocal in recent years. These are of particular concern because the integrity and legitimacy of the Convention system is at stake. Lines of action for the future include reinforcing subsidiarity through better domestic implementation, improving the efficiency of the procedures before the Court, and improving the Committee of Ministers' supervision of the execution process.

On 2 December, the Commissioner took part in a panel discussion in Strasbourg at an event organised at the European Court of Human Rights to launch the European Implementation Network (EIN), an NGO that aspires to serve as a bridge between the Council of Europe and civil society, and to advocate the full, effective and

rapid implementation of judgments. The event focused on how to improve the implementation of the Court's judgments. In his intervention, the Commissioner noted that the backlog crisis at the Court has now been replaced by an implementation crisis. He called for the identification of "implementation champions" at the national level, who could push for implementation and take targeted action.

## **THIRD PARTY INTERVENTIONS BEFORE THE EUROPEAN COURT OF HUMAN RIGHTS**

In 2016, the Commissioner made three interventions as a third party, pursuant to Article 36, paragraph 3 of the ECHR. The three cases deal with human rights defenders, whom the Commissioner is specifically tasked to assist under his mandate.

On 13 January, the Commissioner also published written observations he had submitted to the European Court of Human Rights on 17 December 2015 at the invitation of the latter pursuant to Article 36, paragraph 2 of the ECHR, in proceedings relating to two complaints against Austria (*S.O. v. Austria* and *A.A. v. Austria*, applications Nos. 44825/15 and 44944/15). The two complaints concerned the transfer of the applicants from Austria to Hungary under the Dublin III Regulation. Basing his observations on his visit to Hungary from 24 to 27 November 2015, the Commissioner found that the very restrictive measures taken in the previous months by the Hungarian authorities translated into a deliberate intention to deter asylum seekers from entering the country and applying for asylum therein. He noted that a considerable proportion of those returned to Hungary in recent months under the Dublin III Regulation were detained in asylum detention centres, where a restrictive detention regime applies, without access to effective remedies against such detention. He also noted that these persons did not, as a rule, have their asylum applications examined on the merits, due to the fact that Hungarian legislation considered Serbia (the country through which the vast majority of asylum seekers initially entered Hungary) as a safe third country. This situation deprived asylum seekers of the right to have their claims properly assessed and exposed them to a very high risk of being subjected to deportation to Serbia and to further *refoulement* to other countries, with the corresponding risk of treatment contrary to the ECHR.

On 16 January, the Commissioner submitted written observations to the Court on the case of *Khadija Ismayilova v. Azerbaijan* (application No. 30778/15). The case relates to the institution of criminal proceedings against the applicant, a prominent journalist and human rights defender, and her remand in custody, as well as to the alleged use of these restrictions as a means to silence the applicant as an investigative journalist and civil society activist. In his submission, the Commissioner underscores the structural deficiencies in the area of freedom of expression in Azerbaijan, including judicial harassment of those expressing critical opinions and a pattern of retaliatory measures against those who co-operate with international organisations to expose human rights violations in the country. The Commissioner stated that the case of Khadija Ismayilova, whom he had met several times in Strasbourg and Baku, was emblematic of the reprisals that journalists, bloggers and human rights defenders

faced in Azerbaijan because of their work. These persons were often selectively targeted with criminal prosecutions on charges that defy credibility, a problem which both affected the human rights of the persons concerned and obstructed the functioning of international human rights mechanisms.

On 14 March, the Commissioner submitted written observations to the Court on the case of the abduction and murder of Natalia Estemirova, a prominent human rights defender from the Russian Federation who worked in the North Caucasus (*Svetlana Khusainovna Estemirova v. the Russian Federation*, application No. 42705/11). The Commissioner's intervention focused on three main issues: the safety of human rights defenders operating in the North Caucasus; the stigmatisation of their work by local authorities and the consequences of the hostile environment for the protection of human rights in the region. The Commissioner pointed out that the prevalent climate of impunity for serious human rights violations has directly affected the safety of human rights defenders working in the region, and the murder of Natalia Estemirova should be viewed as a part of a broader pattern of intimidation. He also stressed that the local authorities in the North Caucasus and, particularly, in the Chechen Republic, have frequently stigmatised human rights defenders and impeded their work, contrary to the state's obligation to ensure a safe and enabling environment for human rights defenders. The Commissioner considered that substantive changes in these areas were not likely to be achieved without multiple measures of a general character, including the adoption of a specific legal framework, a comprehensive public policy and a national action plan in order to install a fully functional rapid response mechanism to protect human rights defenders.

On 22 November, the Commissioner submitted written observations to the Court on the case of *Khalid Bagirov v. Azerbaijan* (application No. 28198/15). This case relates to the disbarment of the applicant, an Azerbaijani lawyer who had been actively involved in the defence of human rights, from the Azerbaijani Bar Association. In his submission, the Commissioner considered that the applicant's case provided an important illustration of the shortcomings existing in the area of both freedom of expression and the functioning of the judiciary in Azerbaijan. Stressing the important role lawyers play in serving the cause of justice, the Commissioner also expressed concern at reports of harassment and other forms of pressure on lawyers in a number of Council of Europe member states, including Azerbaijan. He stated that the hindrances imposed on the applicant were closely linked to his involvement in the protection of human rights as a lawyer. In conclusion, the Commissioner stressed that the disbarment of the applicant should be seen in the context of a more general pattern of repression in Azerbaijan against those expressing dissent or criticism of the authorities, including human rights defenders, their lawyers, journalists, bloggers and other activists. In the case of defence lawyers, disbarment or the threat of disbarment may in particular be used as a tool for punishing lawyers who take on sensitive cases, therefore constituting retaliation for activities which should be perfectly legal in a well-functioning democracy. Lastly, the Commissioner stressed that reprisals against the civil society partners of his Office make it increasingly difficult to work on human rights issues in Azerbaijan.

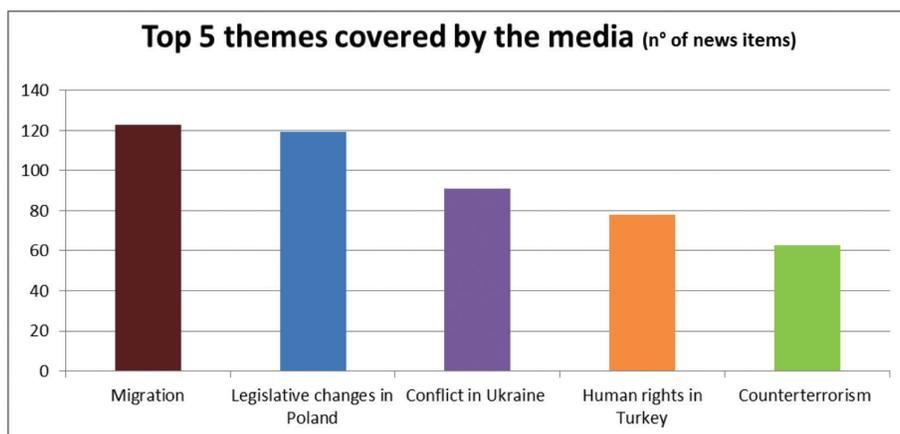


## Chapter 7

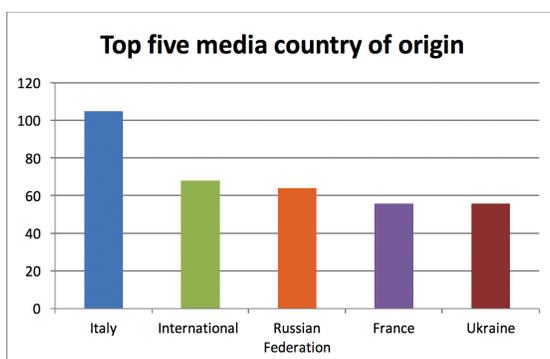
# Communication and information work

The year 2016 was characterised by a high degree of media exposure, with a clear increase in social media interaction. Over 800 news pieces were published by media outlets in 52 countries. This was the result of intensive communication work comprising almost 90 interviews given by the Commissioner, 12 opinion editorials placed in 9 leading national and international media outlets, 36 press releases, 11 Human Rights Comments, 2 Issue Papers and 14 statements. Moreover, 175 tweets contributed to generating further media attention and social media interaction.

The main themes covered by the media concerned the Commissioner's work on migration; legislative changes in Poland; conflict-related issues in Ukraine; human rights in Turkey; and counter-terrorism.



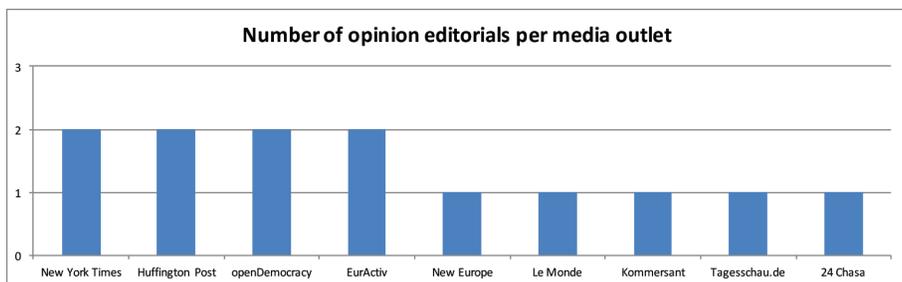
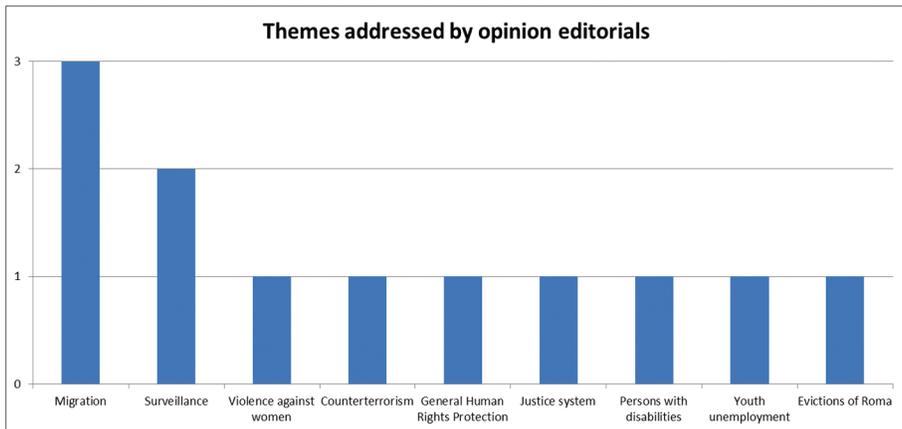
The main national media of many member states covered the Commissioner's activities, which were also featured repeatedly on leading media with an international outreach.



## Opinion editorials

The 12 opinion editorials were:

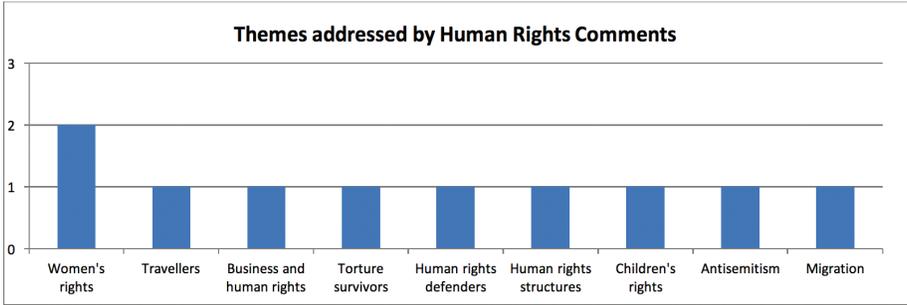
- ▶ Violence against women (*New Europe*, January)
- ▶ Luttons contre le terrorisme dans le respect du droit (*Le Monde*, 3 February)
- ▶ Reforms to UK Human Rights Laws Must Not Weaken Protection (*Huffington Post UK*, 3 February)
- ▶ Human rights in Europe should not buckle under mass surveillance (*openDemocracy*, 12 February)
- ▶ As long as the judicial system of the Russian Federation does not become more independent, doubts about its effectiveness remain (*Kommersant*, 26 February)
- ▶ Stop your backsliding, Europe (*International New York Times*, 14 March)
- ▶ Diese Pläne sind schlicht illegal (*Tagesschau.de*, 16 March)
- ▶ Safeguards needed for EU-Turkey migration deal (*Huffington Post, EurActiv*, 22 March)
- ▶ Addressing youth unemployment through human rights (*EurActiv*, 13 May)
- ▶ Roma evictions: Europe's silent scandal (*openDemocracy*, 29 June)
- ▶ Steps forward in protecting persons with disabilities in Bulgaria (*24 Chasa*, 6 July)
- ▶ Hungary's Duty to Refugees (*The New York Times*, 28 September)



## Human Rights Comments

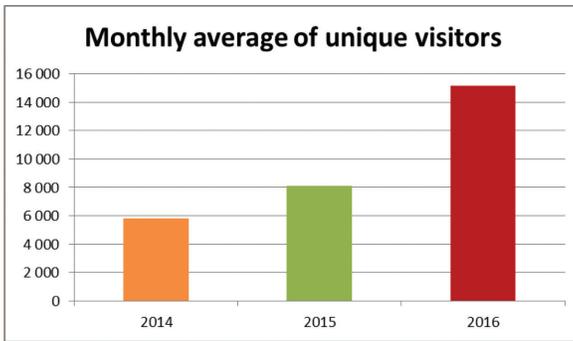
Eleven Human Rights Comments were published in 2016:

- ▶ Travellers – Time to counter deep-rooted hostility (4 February)
- ▶ Human rights of refugee and migrant women and girls need to be better protected (7 March)
- ▶ Business enterprises begin to recognise their human rights responsibilities (4 April)
- ▶ Torture survivors have the right to redress and rehabilitation (7 June)
- ▶ Protect women’s sexual and reproductive health and rights (21 July)
- ▶ Non-implementation of the Court’s judgments: our shared responsibility (23 August)
- ▶ Human rights defenders’ work is vital for redress to victims of enforced disappearance (29 August)
- ▶ No violence against children is acceptable, all violence is preventable (20 September)
- ▶ Why remembering the Holocaust is a human rights imperative (18 October)
- ▶ Migrants in limbo in Europe have the right to live in dignity (15 November)
- ▶ National human rights structures: protecting human rights while countering terrorism (6 December)

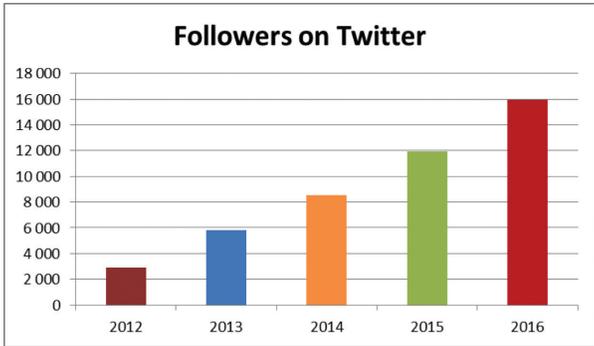


## Website and social media

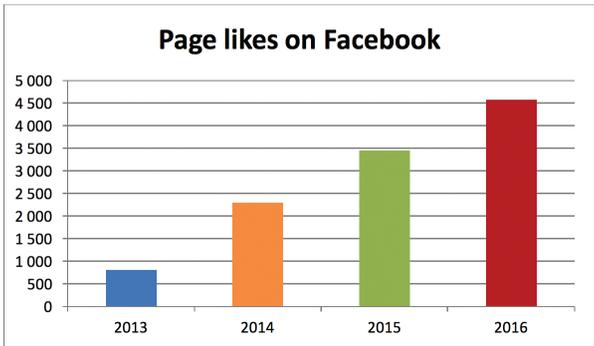
The number of visits on the Commissioner's website continued to increase, almost doubling the traffic of 2015, with a monthly average of unique visitors exceeding 15 000.



The presence and interaction on social media continued to be strengthened: + 175 tweets were published and there were over 4 000 new followers (+17% over the number of new followers in 2015).



On Facebook the Commissioner published 107 posts and received 1 123 page likes (+32.4% compared to 2015).





## Chapter 8

# Staff and budget

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In 2016, the total number of permanent posts in the Commissioner's Office amounted to 23 posts (15 A-grade posts and 8 B-grade posts) and three fixed-term positions. The Office employed seven temporary staff. The ordinary overall budget appropriations were €3 345 300.

In 2016, the Commissioner benefited from a total amount of €23 834 in voluntary contributions from the Government of Ireland. The Commissioner expresses his sincere gratitude for the voluntary contribution given by this member state.

The budget of the Commissioner for Human Rights covers the basic structure necessary for the implementation of the mandatory activities, which should be assured by permanent means from the ordinary budget of the Council of Europe.

The Office of the Commissioner for Human Rights has been granted for the biennium 2016-2017 two additional A-grade human rights adviser posts and we would like to thank the Committee of Ministers for responding positively to the need for additional resources expressed by Commissioner Muižnieks and the previous Commissioners.



# Appendix

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## LIST OF OFFICE ACTIVITIES IN 2016

### Visits and reports

In 2016 the following country visits, missions and contact visits were carried out:

▶ 17 to 23 January	United Kingdom
▶ 8 to 12 February	Poland
▶ 21 to 25 March	Ukraine
▶ 6 to 14 April	Turkey
▶ 25 to 29 April	Croatia
▶ 9 to 11 May	Andorra
▶ 8 to 10 June	Iceland
▶ 15 to 16 June	Poland (Warsaw)
▶ 4 to 8 July	Greece
▶ 5 to 9 September	Latvia
▶ 26 to 30 September	Turkey (Ankara)
▶ 21 to 25 November	Ireland
▶ 28 to 29 November	France (Paris)
▶ 5 to 9 December	Lithuania

In 2016, the following country reports and letters were published:

#### Albania

- ▶ Letter from the Council of Europe Commissioner for Human Rights to Eglantina Gjermeni, Minister for Urban Development of Albania, concerning evictions of Roma (dated 26 January and published on 16 February with reference CommDH(2016)8).

#### Belgium

- ▶ Report by the Council of Europe Commissioner for Human Rights following his visit to Belgium from 14 to 18 September 2015. Issues reviewed: human rights of migrants and asylum seekers, persons with disabilities and Roma and Travellers (published on 28 January with reference CommDH(2016)1).
- ▶ Letter from the Council of Europe Commissioner for Human Rights to Theo Francken, Secretary of State for Migration and Asylum of Belgium, concerning the detention of migrant children (dated 12 December and published on 19 December with reference CommDH(2016)43).

## **Bulgaria**

- ▶ Letter from the Council of Europe Commissioner for Human Rights to Boyko Borissov, Prime Minister of Bulgaria, concerning evictions of Roma (dated 26 January and published on 16 February with reference CommDH(2016)9).

## **Croatia**

- ▶ Report by the Council of Europe Commissioner for Human Rights following his visit to Croatia from 25 to 29 April. Issues reviewed: human rights of migrants and asylum seekers, persons with disabilities and Roma and Travellers (published on 5 October with reference CommDH(2016)31).

## **Cyprus**

- ▶ Report by the Council of Europe Commissioner for Human Rights following his visit to Cyprus from 7 to 11 December 2015. Issues reviewed: the protection of the human rights of immigrants and asylum seekers, and the impact of the economic crisis on the enjoyment of human rights, in particular by women, children and older persons (published on 31 March with reference CommDH(2016)16).
- ▶ Letter from the Council of Europe Commissioner for Human Rights to Costas Clerides, Attorney General of Cyprus, on the protection of the human rights of unaccompanied migrant children (dated 26 October and published on 10 November with reference CommDH(2016)38).

## **Czech Republic**

- ▶ Letter from the Council of Europe Commissioner for Human Rights to Bohuslav Sobotka, Prime Minister of the Czech Republic, concerning the human rights of Roma and persons with disabilities (dated 7 October and published on 4 November with reference CommDH(2016)36).

## **Denmark**

- ▶ Letter from the Council of Europe Commissioner for Human Rights to Inger Støjberg, Minister for Immigration, Integration and Housing of Denmark, concerning changes to Denmark's legislation on asylum and immigration (dated 12 January and published on 15 January with reference CommDH(2016)4).

## **France**

- ▶ Letter from the Council of Europe Commissioner for Human Rights to Bernard Cazeneuve, Minister of the Interior of France, concerning evictions of Roma (dated 26 January and published on 16 February with reference CommDH(2016)10).

## **Georgia**

- ▶ Observations on the human rights situation in Georgia: an update on justice reforms, tolerance and non-discrimination, based on the Commissioner's visit to Georgia from 9 to 13 November 2015 which assessed the implementation of the recommendations set out in his 2014 report (published on 12 January with reference CommDH(2016)2).

## **Greece**

- ▶ Letter from the Council of Europe Commissioner for Human Rights to Nikolaos Toskas, Alternate Minister of Interior and Administrative Reconstruction of Greece and Nikolaos Paraskevopoulos, Minister of Justice of Greece, concerning the bill on a complaint mechanism covering law

enforcement and detention facility agents (dated 25 July and published on 19 August with reference CommDH(2016)29).

- ▶ Letter from the Council of Europe Commissioner for Human Rights to Andreas Xanthos, Minister of Health of Greece, and to Theano Fotiou, Alternate Minister of Social Solidarity of Greece, concerning the human rights of persons with intellectual and psychosocial disabilities and their deinstitutionalisation (dated 17 August and published on 12 September with reference CommDH(2016)33).

### **Hungary**

- ▶ Letter from the Council of Europe Commissioner for Human Rights to Zoltán Balog, Minister of Human Capacities of Hungary, concerning evictions of Roma (dated 26 January and published on 16 February with reference CommDH(2016)12).

### **Italy**

- ▶ Letter from the Council of Europe Commissioner for Human Rights to Matteo Renzi, President of the Council of Ministers of the Italian Republic, concerning evictions of Roma (dated 26 January and published on 16 February with reference CommDH(2016)11).

### **Latvia**

- ▶ Report by the Council of Europe Commissioner for Human Rights following his visit to Latvia from 5 to 9 September. Issues reviewed: women's rights and gender equality; human rights of children and LGBTI persons (published on 13 December reference CommDH(2016)41).

### **Netherlands**

- ▶ Letter from the Council of Europe Commissioner for Human Rights to Ronald Plasterk, Minister of the Interior and Kingdom Relations, and Ard van der Steur, Minister of Security and Justice of the Netherlands, on counter-terrorism bill (dated 2 November and published on 29 November with reference CommDH(2016)40).

### **Poland**

- ▶ Report by the Council of Europe Commissioner for Human Rights following his visit to Poland, from 9 to 12 February. Issues reviewed: the legal and institutional framework for the protection and promotion of human rights; administration of justice; media freedom; and women's rights and gender equality (published on 15 June with reference CommDH(2016)23).

### **Romania**

- ▶ Letter from the Council of Europe Commissioner for Human Rights to Dacian Cioloş, Prime Minister of Romania, concerning the human rights of Roma (dated 23 June and published on 23 August with reference CommDH(2016)30).

### **San Marino**

- ▶ Letter from the Council of Europe Commissioner for Human Rights to Iro Belluzzi, Minister for Labour, Co-operation and Information of the Republic of San Marino, concerning the Code of Conduct for Media Operators (dated 25 August and published on 9 September with reference CommDH(2016)32).

## **Serbia**

- ▶ Letter from the Council of Europe Commissioner for Human Rights to Zorana Mihajlović, Deputy Prime Minister of Serbia, concerning evictions of Roma (dated 26 January and published on 16 February with reference CommDH(2016)14).
- ▶ Letter from the Council of Europe Commissioner for Human Rights to Aleksandar Vulin, Minister for Labour, Employment, Veterans and Social Affairs of Serbia, concerning the issue of reparations to victims of wartime crimes (dated 12 September and published on 23 September with reference CommDH(2016)34).

## **Spain**

- ▶ Letter from the Council of Europe Commissioner for Human Rights to Jorge Fernández Díaz, Minister of the Interior of Spain, concerning the human rights of immigrants and asylum seekers (dated 1 July and published on 12 July with reference CommDH(2016)26).

## **Sweden**

- ▶ Letter from the Council of Europe Commissioner for Human Rights to Alice Bah Kuhnke, Minister for Culture and Democracy of Sweden, concerning evictions of Roma (dated 26 January and published on 16 February with reference CommDH(2016)13).

## **Turkey**

- ▶ Memorandum on the human rights implications of the measures taken under the state of emergency in Turkey by the Council of Europe Commissioner for Human Rights (published on 7 October with reference CommDH(2016)35).
- ▶ Memorandum on the human rights implications of anti-terrorism operations in south-eastern Turkey by the Council of Europe Commissioner for Human Rights (published on 2 December with reference CommDH(2016)39).

## **Ukraine**

- ▶ Report by the Council of Europe Commissioner for Human Rights following his visit to Ukraine from 21 to 25 March. Issues reviewed: human rights violations relating to the conflict in the east of the country, as well as taking stock of issues raised in the Commissioner's previous report on his visit in July 2015 (published on 11 July with reference CommDH(2016)27).

## **United Kingdom**

- ▶ Memorandum on the human rights of asylum seekers and immigrants in the United Kingdom by the Council of Europe Commissioner for Human Rights following his visit to the United Kingdom from 17 to 23 January (published on 22 March with reference CommDH(2016)17).
- ▶ Memorandum on surveillance and oversight mechanisms in the United Kingdom by the Council of Europe Commissioner for Human Rights following his visit to the United Kingdom from 17 to 23 January (published on 17 May with reference CommDH(2016)20).

## Issue Papers, Opinions and other publications

The Commissioner publishes a variety of documents on human rights themes. Their aim is to raise awareness and to give advice to member states on the protection of human rights.

- ▶ Issue Paper *Missing persons and victims of enforced disappearance in Europe*, March 2016.
- ▶ Issue Paper *Time for Europe to get migrant integration right*, May 2016.

## Third Party Interventions before the European Court of Human Rights

The Commissioner fosters the effective observance of human rights by assisting member states in the implementation of Council of Europe human rights instruments, in particular the European Convention on Human Rights. The Commissioner submitted written observations concerning the following Court cases:

- ▶ Third Party Intervention by the Council of Europe Commissioner for Human Rights: applications Nos. 44825/15 and 44944/15, *S.O. v. Austria* and *A.A. v. Austria* (submitted on 17 December 2015 and published on 13 January 2016 with reference CommDH(2016)3);
- ▶ Third Party Intervention by the Council of Europe Commissioner for Human Rights: application No. 30778/15, *Khadija Ismayilova v. Azerbaijan* (submitted on 16 January and published on 21 January 2016 with reference CommDH(2016)6);
- ▶ Third Party Intervention by the Council of Europe Commissioner for Human Rights: application No. 42705/11, *Svetlana Khusainovna Estemirova v. the Russian Federation* (submitted on 14 March and published on 18 March 2016 with reference CommDH(2016)18);
- ▶ Third Party Intervention by the Council of Europe Commissioner for Human Rights: application No. 28198/15, *Bagirov v. Azerbaijan* (submitted on 22 November and published on 28 November 2016 with reference CommDH(2016)42).

## Events organised by the Office

With the aim of promoting awareness of human rights and exploring specific concerns, the Commissioner organises workshops and conferences on topical questions. The Commissioner and his Office also contribute to debates on human rights through their participation in major conferences.

In 2016, the Commissioner's office organised or co-organised the following events:

- ▶ 6th Strategic meeting of mechanisms and programmes for the protection of human rights defenders "Inter-mechanisms Process" (Strasbourg, 25-26 February).
- ▶ Brainstorming meeting on "Protecting human rights while countering terrorism: the role of national human rights institutions", co-organised with the European Network of National Human Rights Institutions (Paris, 20 May).
- ▶ Round table on missing persons and victims of enforced disappearance in Europe (Strasbourg, 30 June-1 July).

## Events in which the Commissioner or his Office took part

The Commissioner or his Office participated in the following major events during 2016:

- ▶ 6th Swiss Asylum Symposium "On the path to integration: from protection to participation" (Bern, 21 January).

- ▶ Exchange of views with PACE Equality Committee (Strasbourg, 28 January).
- ▶ Award ceremony hosted by *Club de la presse Strasbourg* for the 2016 Club Prize (Strasbourg, 14 January).
- ▶ Solemn hearing for the opening of the judicial year of the European Court of Human Rights (Strasbourg, 29 January).
- ▶ Netherlands EU Presidency seminar "EU Fundamental Values, Immigration and Integration: A Shared Responsibility" (Strasbourg, 2 February).
- ▶ Exchange of views with ALDE Members of the Committee on Foreign Affairs and of the Subcommittee on Human Rights of the European Parliament (Strasbourg, 3 February).
- ▶ Council of Europe-FRA Equinet ENNHRI Platform on rights of migrants and asylum seekers (Vienna, 22 February).
- ▶ Exchange of views with the Advisory Committee on the Framework Convention for the Protection of National Minorities (Strasbourg, 23 February).
- ▶ Exchange of good practices on legal gender recognition: Reinforcing authorities' capacity to implement the standards of CM/Rec(2010)5 regarding the legal gender recognition of transgender persons, organised by the Council of Europe Sexual Orientation and Gender Identity Unit and the Office of the French *Défenseur des droits* (Paris, 24 February).
- ▶ EEAS training on the Council of Europe "Human Rights, Democracy, Rule of Law. Council of Europe – A key partner" (Brussels, 3 March).
- ▶ Video message for the Mozaika 10th year anniversary conference "Where do we go from here? The Future is ours - the next 10 years in LGBT rights" (Riga, 5 March).
- ▶ Council of Europe/UNHCR/ODIHR/OHCHR expert meeting on joint strategy on combating racism (Geneva, 7 March).
- ▶ Exchange of views with the European Committee for the Prevention of Torture (Strasbourg, 10 March).
- ▶ Video message for the conference on "LGBT Issues and the European integration of Ukraine" (Kyiv, 15 March).
- ▶ 29th General meeting of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights - ICC29 (Geneva, 23 March).
- ▶ Council of Europe Strategy for the Rights of the Child 2016-2021, High-Level Inaugural Conference (Sofia, 5 April).
- ▶ Video message for the European Roma and Travellers Forum conference "Forgotten Voices" on the Roma Holocaust (Bucharest, 6 April).
- ▶ Nordic-Baltic 8 Meeting (Riga, 15 April).
- ▶ Joint hearing of the PACE Political Affairs Committee and Legal Affairs and Human Rights Committee on the conflict in eastern Ukraine (Strasbourg, 19 April).
- ▶ Meeting with UK Parliament's Joint Committee on Human Rights and Justice Committee (Strasbourg, 20 April).
- ▶ Video message for the Human Rights Consortium conference on the development of human rights action plans in regions of the United Kingdom (Belfast, 21 April).
- ▶ Video message for the 4th European IDAHO Forum (Copenhagen, 10 May).
- ▶ Joint statement by UN Committee on the Rights of the Child, a group of UN human rights experts, the Inter-American Commission on Human Rights, the African Commission on Human and Peoples' Rights, and the Council of Europe Commissioner for Human Rights against pathologisation of LGBT adults and children (12 May).
- ▶ High-Level Meeting "Internal Displacement in Ukraine: Moving Forward" (Strasbourg, 24 May).
- ▶ 5ème édition des Journées des réseaux institutionnels de La Francophonie (Paris, 31 May-1 June).

- ▶ OSCE ODIHR event on forced and coercive sterilisation of Roma women (Prague, 1 June).
- ▶ 6th European Transgender Council (Bologna, 3 June).
- ▶ Conference of INGOs seminar “Only a matter for politicians? Civil society, money and political activities” (Strasbourg, 6 June).
- ▶ Seminar “Promoting compliance with international human rights norms in situations of unresolved conflicts: Possibilities for transnational advocacy in the South Caucasus and beyond” (The Hague, 13-14 June).
- ▶ Video message for Baltic Pride 2016 human rights conference (Vilnius, 17 June).
- ▶ Side event on “Human rights of Crimean Tatars in Crimea”, organised by the Permanent Mission of Ukraine to the UN (Geneva, 17 June).
- ▶ FRA Fundamental Rights Forum “Rights, respect, reality: the Europe of values in today’s world” (Vienna, 22 June).
- ▶ Council of Europe Conference “Protection of human rights in Montenegro: Use of domestic remedies, judicial and non-judicial mechanisms by legal professionals” (Podgorica, 28 June).
- ▶ Exchange of views with European Commission against Racism and Intolerance (Strasbourg, 29 June).
- ▶ EU/Council of Europe “HELP in the 28” Programme seminar for legal professionals on “Fight against racism, xenophobia, homophobia and transphobia” (Barcelona, 25-26 July).
- ▶ International Centre for Counter-Terrorism Advanced Summer Programme on Countering Terrorism (The Hague, 29 August-2 September).
- ▶ CEPS Task Force 2nd Meeting (Brussels, 6 September).
- ▶ European Society of International Law, 12th Annual Conference (Riga, 9 September).
- ▶ Conference of His Holiness the Dalai Lama during his visit to the Council of Europe (Strasbourg, 15 September).
- ▶ OSCE Human Dimension Implementation Meeting 2016 (Warsaw, 19 September).
- ▶ Eastern Partnership Civil Society Forum conference “On the frontline: human rights situation in the EaP countries” (Chisinau, 19-20 September).
- ▶ 2nd Congress of Persons with Disabilities (Warsaw, 20 September).
- ▶ OSCE HDIM Side Event “Addressing the deteriorating situation of civil society actors and human rights defenders in Europe” (Warsaw, 21 September).
- ▶ ENOC 20th Anniversary conference (Vilnius, 20 September).
- ▶ Congress Expert Group on Human Rights at the Local Level (Paris, 21 September).
- ▶ Amnesty International France round table on the situation and working environment for civil society actors and human rights defenders (Paris, 7 October).
- ▶ Exchange of views with PACE Committee on Political Affairs and Democracy on Turkey (Strasbourg, 10 October).
- ▶ Advisory Committee on the Framework Convention for the Protection of National Minorities Launching conference of the Fourth Thematic Commentary on the Scope of Application “The Framework Convention: a key tool to managing diversity through minority rights” (Strasbourg, 11 October).
- ▶ 108th Plenary Session of the Venice Commission (Venice, 14 October).
- ▶ European and Mediterranean Major Hazards Agreement EUR-OPA Conference on “Migrants, asylum seekers and refugees in the context of major risks prevention and management” organised in co-operation with the Council of Europe North-South Centre and INGO Conference (Lisbon, 14 October).
- ▶ Conference marking the 20th Anniversary of the Human Rights Ombudsman of Bosnia and Herzegovina “Equal in Diversity” (Sarajevo, 18 October).

- ▶ OSCE Conference on Tolerance and Diversity (Berlin, 20 October).
- ▶ Video message to second session of the Open-ended Intergovernmental Working Group (OEIWG) on Transnational Corporations and Other Business Enterprises with Respect to Human Rights (Geneva, 24 October).
- ▶ ENNHRI's General Assembly Seminar (Zagreb, 27 October).
- ▶ Conference on Children's Rights in the Migration Crisis and in the Digital Environment (Tallinn, 4 November).
- ▶ Exchange of views with European Parliament Foreign Affairs Committee on Turkey (Brussels, 8 November).
- ▶ OSCE ODIHR expert consultation "Information and Dialogue Days on Human Rights in Ukraine" (Kyiv, 8–10 November).
- ▶ World Jewish Congress meeting of Jewish Diplomatic Corps (Strasbourg, 14 November).
- ▶ Exchange of views with Gender Equality Commission (Strasbourg, 17 November).
- ▶ European Governmental LGBTI Focal Point Network Roundtable (Strasbourg, 17 November).
- ▶ Video message on the occasion of the European Day against sexual exploitation and sexual abuse of children (Strasbourg, 18 November).
- ▶ Video message for European Network on Statelessness campaign for the eradication of child statelessness (Strasbourg, 22 November).
- ▶ Round table "Ireland and the Council of Europe Today" co-organised by the Centre for Criminal Justice and Human Rights, University College Cork, and the Irish Council for Civil Liberties, with the support of the Irish Department of Foreign Affairs and Trade (Dublin, 25 November).
- ▶ "Surveillance, oversight, and human rights in counter-terrorism" 4th Seminar of the Queen Mary Reflection Group on Terrorism and Human Rights (Paris, 28 November).
- ▶ OSCE ODIHR expert meeting on strengthening and maintaining independence of NHRIs in the OSCE region (Warsaw, 28-29 November).
- ▶ 7th Inter-mechanisms meeting on the protection of human rights defenders (Brussels, 30 November).
- ▶ Congress Expert Group on Human Rights at the Local Level (Paris, 30 November).
- ▶ European Implementation Network event on better implementation of European Court of Human Rights judgments (Strasbourg, 2 December).
- ▶ CEPS Task force final meeting and bilaterals with EU DG Home (Brussels, 6-7 December).
- ▶ "The role of police in combating discrimination", training session by Council of Europe SOGI team and the Directorate for Criminal Affairs for police of the Council of Europe member states (Strasbourg, 6-7 December).
- ▶ High-Level Seminar on "Freedom of expression: Role and powers of national human rights institutions and other national mechanisms," organised by the Council of Europe and ENNHRI (Strasbourg, 15 December).



The Commissioner for Human Rights is an independent and impartial non-judicial institution established in 1999 by the Council of Europe to promote awareness of and respect for human rights in the member states.

The activities of this institution focus on three major, closely related areas:

- ▶ country visits and dialogue with national authorities and civil society,
- ▶ thematic studies and advice on systematic human rights work, and
- ▶ awareness-raising activities.

The current Commissioner, Nils Muižnieks, took up his functions in April 2012. He succeeded Thomas Hammarberg (2006-2012) and Álvaro Gil-Robles (1999-2006).



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The Council of Europe is the continent's leading human rights organisation. It comprises 47 member states, 28 of which are members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.



COMMISSIONER  
FOR HUMAN RIGHTS

COMMISSAIRE AUX  
DROITS DE L'HOMME

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE