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## ***First Congress on Human Rights***

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### **Keynote speech by Nils Muižnieks**

Commissioner for Human Rights of the Council of Europe

*Dear Commissioner, Excellencies,*

It is a great pleasure for me to be back in Poland and participate in this First National Congress on Human Rights. Polish human rights defenders have the reputation of being patient and strategic – but I think that today, with all these speeches, we are testing your patience and your stamina, so please bear with me.

This is my first time in this Museum, but I have been a relatively frequent visitor to Poland recently. In 2016, I came three times: first on a full country visit and twice more on follow-up visits. Over the last five and a half years I have visited all 47 member states of the Council of Europe, and I can assure you that every country has homework to do. There are shortcomings everywhere. And a number of the concerns I have raised in Poland I have raised elsewhere. But now I would like you to fasten your seatbelts, because I am going to be concrete and specific about Poland. This is a privilege of my office – I can talk about country situations, I can talk about political issues, and I can talk about human rights issues.

One problem that I have raised here is that of the government adopting problematic legislation very quickly, in a non-transparent manner, with little public consultation. This problem of process is quite serious. Ten o'clock in the evening is not the ideal time to begin to discuss important legislation affecting the independence of the judiciary, especially if you have not invited or not consulted with all the stakeholders involved. Human rights-compliant legislation requires time and thorough consultation. The international community, the Venice Commission which was mentioned before, this international body of constitutional law experts, the Office for Democratic Institutions and Human Rights (ODIHR), my own office – we cannot assist governments and help you avoid mistakes, we cannot do our jobs if we are confronted with a *fait accompli* and not allowed to participate in the process at all.

The risks of bad process have been evident here over the last couple of years, but in terms of substance the need to safeguard the independence of the judiciary remains a core concern about Poland. I have looked at judicial independence, at impartiality and efficiency of justice in a number of different member states: in Albania, in Armenia, in Azerbaijan, in Georgia, in Italy even, on the length of proceedings, in Moldova, in the Russian Federation, in Turkey, and in Ukraine. So this is not a unique issue but one that I addressed in different countries.

In Poland, though, I raised concerns about a number of different issues: about the independence and composition of the Constitutional Tribunal and the government's efforts to interfere there; about proposed changes to the National Council for the Judiciary; proposed changes to the Supreme Court. I am also concerned about the on-going public campaign presenting Poland's judiciary as fundamentally corrupt and dysfunctional. These campaigns are very, very dangerous. They undermine trust and confidence in the judiciary, and it would take a long time, many years and a lot of hard work to rebuild that trust.

As you know, just three weeks ago the European Parliament adopted a resolution laying the groundwork for triggering the Rule of Law procedure regarding Poland. This resolution raises concerns similar to mine, and I understand it met with quite a strong reaction here in Poland. But many of the issues it lists will not go away. They will continue to create problems for Poland for a number of years to come: legal problems, political and diplomatic problems, but also eventually economic problems.

Another topic I examined in my report on Poland in 2016 was women's rights and gender equality. In that report, I examined not only domestic violence and gender-based discrimination but also women's sexual and reproductive health and rights, which includes a whole series of different issues: sexuality education, access to contraception, respect for women's dignity and autonomy and maternity healthcare, and last but not least, access to safe and legal abortion care. Restrictions in this area can have a huge negative impact on women's rights – on their right to health, on their right to private life, on their bodily integrity, on their right to be free of ill-treatment, on their right to non-discrimination, and more. And I have done similar work on this sensitive issue in all of the countries with very restrictive regimes in this area: in Andorra, in Ireland, in Liechtenstein, in Malta, in Monaco, and in San Marino.

Because of the negative impact on women's rights of these restrictive laws and policies, most countries in Europe ensure access to abortion care without restrictions. In my country work, I have called on those who maintain restrictions to decriminalize abortion and ensure access to care if medical professionals can refuse care based on conscience. I just published this week an issue paper on women's sexual and reproductive health and rights – I hope it will be of use in the ongoing debates here. I know that there are two contradictory bills on access to abortion that are soon to be examined by the Polish Parliament.

In this context, my attention was drawn to the recent police searches of several women's rights NGOs, just a day after the big women's rights march. I do not think that is a coincidence. I was also told of requests by some government officials to put some of the most critical NGOs under court-ordered compulsory administration. I am very worried that such measures could have a hugely negative impact on the work and image of these NGOs. We need to expand the space for civil society, not restrict it. We need to strengthen women's rights, not roll back on standards of care and access already achieved.

While the work of NGOs is absolutely critical in a well-functioning democracy, so is that of national human rights structures. My mandate specifically tasks me to cooperate with national human rights structures and to support them in any way I can. It is usually the primary partner in a country. It is the first person I call to find out about the human rights situation. It is the first institution I tend to visit. If such institutions are under political or financial pressure, I try to help them. I try to engage with the authorities, I send letters or make statements, and I have done so in a number of different countries: in Georgia, in Moldova, in Croatia, in Serbia, and in Ukraine.

The situation of the Ombudsman in Poland was one of the issues I examined in my report last year, including its budget and the functional immunity of the office holder. I was very disheartened to hear that the Parliament refused to endorse the Ombudsman's requested budget increase to improve access for persons with disabilities and to give a small pay raise to the staff for the first time in almost ten years. More worrying had been the attacks on Adam Bodnar on the part of some politicians – that he engages in “political activity”, or has an “anti-government stance”. But I think such attacks often take place against strong and independent Ombudsmen; they go with the territory and I think you knew that when you took on the job, and I think so does every Ombudsman.

Worse than being attacked is being ignored, and I was very disappointed that only a handful of Members of Parliament from the government and from the opposition were in attendance at the presentation of the Ombudsman's last annual report. This shows the need to raise awareness among politicians about the importance of the office. Poland can be proud of Adam Bodnar and the work of his team. I have seen many, many institutions and let me tell you, this is really a model

institution. It works as a check on the government, it improves the quality of public administration, it defends citizens' rights, and it looks to the situation of the most vulnerable.

Now I want to spend a few moments talking about one of the most vulnerable groups that I have done a lot of work on, and I know there is a panel devoted to it here as well. It is persons with intellectual and psycho-social disabilities. This has been a very important topic of my work in the last five years. I have done work in almost twenty countries on the topic. These are among the most vulnerable people and they really need our attention and support.

Everywhere the key tool, the key prism through which the situation of persons with disabilities should be viewed is the United Nations Convention on the Rights of Persons with Disabilities. Poland has ratified this Convention but it would really help if it also signed and ratified the Protocol allowing individual complaints. Thirty-seven Council of Europe member states have already signed or ratified this Protocol, as have twenty-five member states of the European Union. Poland should join them.

All over Europe I have seen shortcomings in this area, even in the richest countries with the longest democratic traditions. This suggests it is not an issue of resources. It is an issue of attitude, of a mind-set. One habit of mind that we need to overcome is embarrassment, the desire to get people with disabilities out of sight, into institutions, into special schools, away from the mainstream. Somewhere, anywhere – just not alongside us. Another bad habit of mind is to view persons with disabilities as objects of charity. People who need pity. People who need things done for them. People who need people to take decisions on their behalf, regardless of their own desires. The UN Convention calls for a shift in the way we think about persons with disabilities, from being objects of charity or medical treatment to being holders of rights. This shifts the focus from looking at impairments or deficits to looking at ourselves, to looking at what the rest of the society needs to do to ensure equality and full participation of persons with disabilities.

When I examine this topic in country visits, I usually look at a whole series of issues. First of all, to what extent are persons with intellectual and psychosocial disabilities making decisions involving their own lives. This is the issue of legal capacity. The Convention on the Rights of Persons with Disabilities calls on us to shift from making decisions on behalf of people to supporting their own decision-making.

This issue is also linked to involuntary placement and involuntary coercive treatment. Most countries rely far too much on coercion in psychiatry, on tying people down, on using restraints, on sedatives. And this can also impinge on the rights of persons with disabilities to be included and live in the community – of course, with the necessary support and access to services. All over this region, all over Central and Eastern Europe in particular, we – I say we because I am Latvian – we have a long tradition of institutionalization, of putting persons into institutions. Now is the unique opportunity to use European Union money to do away with institutions. To get people living in communities, back among other people.

Another challenge in most Council of Europe member states is ensuring access to mainstream education for children with disabilities. Separate, special education is not equal education. The diplomas from such special schools are often not very valuable for accessing higher education or the job market. They deprive children with disabilities of their autonomy, their ability to develop life skills, and this puts them on the path to long-term marginalization. It also harms kids without disabilities, other kids. They do not learn that it is normal to have persons with disabilities next to them in the class or on the playground. They do not learn about living with diversity and they acquire prejudices against persons with disabilities.

The figures in Poland are not very encouraging: only 3 out of 10 pupils with disabilities attend mainstream education; only 9 per cent achieve higher education, while one-quarter of the rest of the population does; 70,000 persons with disabilities are deprived of their legal capacity, the right to

decide for themselves about their lives. That is a lot of people. In other words, it appears that there is a lot to be done in this realm and in Poland. And that is the same elsewhere in Europe, as well.

Let me conclude with a few thoughts about the situation in Europe more broadly, and where Poland fits in. During my mandate over the last five and a half years I have seen a whole series of Europe-wide crises. The first was the economic crisis, with its huge impact on human rights, on the most vulnerable, on access to justice, on racism, on conditions of detention. The scars of that crisis will be with us for a long time. I know that you did not have a deep crisis here, but in many countries this was the number one human rights issue and it remains so, for now.

The second was the crisis in and around Ukraine – a huge crisis leading to enormous amounts of suffering, displacement, the deaths of more than ten thousand people in the middle of Europe, and this crisis continues and it sparked new East-West tensions that have affected human rights in many countries.

Third was the migration policy crisis. I called it a “policy crisis” and not a migration crisis because the numbers are not that big. And what have we seen? We have seen pushbacks at land and at sea; using large-scale detention for people who need protection; we have seen a lack of solidarity and cooperation; we have seen moves to outsource our responsibilities towards migrants and refugees to third countries, first to Turkey and now to Libya, with horrific consequences for human rights.

These Europe-wide crises were accompanied by human rights backsliding in a number of countries over the last five years. And I usually mention five countries that stand out as having moved backward significantly in the last five years. First, there is Russia, Azerbaijan, Turkey, Hungary – and yes, Poland. Poland is the fifth country I often mention. Because of the erosion of judicial independence. Because of the moves undermining the independence and pluralism of public service media. Because of moves to roll back achievements in women's sexual and reproductive health and rights. Because of the lack of solidarity on refugee issues.

Poland can do better. Poland is a big, important European country. And it for many years had a large positive influence on its neighbours, critically to the East. I would love Poland to regain that role, and to have a strong positive influence for human rights in the broader region. That is not the case today.

Today we mark the thirty-year anniversary of the creation of the Ombudsman's office. That is a very long and rich tradition for this part of Europe. It shows that you have played a leading role in human rights-related reforms. You showed the whole region the way forward on trade union rights, on freedom of assembly, on freedom of association, on freedom of expression. It is important to renew our commitment to human rights, to protect the system that was created on the ashes of World War II. To renew the promise that motivated the struggle against Communist dictatorship.

I hope the next two days will foster the spirit of our renewed commitment. I thank the Ombudsman and his office for this initiative, which I think is an excellent lead-up to International Human Rights Day on Sunday.

Thank you very much for your attention.