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COMMISSAIRE AUX DROITS DE L'HOMME



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## **3<sup>RD</sup> QUARTERLY ACTIVITY REPORT 2014**

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Commissioner for Human Rights**

1 July to 30 September 2014

Presented to the Committee of Ministers  
and the Parliamentary Assembly

## **CONTENTS**

1. Overview .....	3
2. Missions and Visits .....	4
3. Reports and continuous dialogue .....	8
4. Themes .....	11
5. Other Meetings .....	14
6. Communication and Information work .....	14
7. Next three months.....	16
8. Observations and reflections .....	17

## 1. Overview

Over the quarter in review, I devoted significant attention to the human rights of one of the most vulnerable groups in any society – persons with intellectual or psychosocial disabilities. This was one of the areas of focus of a report published on Romania, as well as during country visits to Hungary and France. In these and other country contexts, I have been struck by the long distance still to be travelled to attain the standards enshrined in the Council of Europe’s Disability Strategy, as well as the UN Convention on the Rights of Persons with Disabilities (CRPD).

One of the key problems affecting persons with disabilities, especially those with intellectual or psychosocial disabilities, is their segregation from mainstream societies in “special” classes or schools, “special” institutions or care homes. Once children enter into segregated education or adolescents or adults enter into separated facilities, the likelihood that they will be able to integrate into the mainstream drops significantly. This is not only because learning, working and living in segregated environments erodes self-confidence, deprives people of life experiences and skills needed to build up autonomy. It is also because a perverse system of vested institutional and professional interests often sustains segregation.

It is one thing to spend one’s school years apart from the mainstream, in substandard education, another thing altogether to live one’s entire life in a closed institution. The human rights violations engendered by large institutions for persons with disabilities have been well documented in the case law of the European Court of Human Rights and the reports of the Council of Europe Committee for the Prevention of Torture (CPT). However, many Council of Europe countries continue to maintain large institutions; some are even refurbishing them or building new ones. Over the previous European Union (EU) financial perspective, insufficient safeguards existed and a number of countries even used structural funds to maintain such institutions, despite the fact that the EU has ratified the CRPD, which enshrines the right to live independently and be included in the community. The European Commission now seems committed to allowing use of structural funds only for inclusion.

Large institutions inevitably lead to a situation in which the convenience of service providers trumps the rights and needs of persons with disabilities. Institutions also entail a situation in which persons with disabilities interact primarily or solely with other persons with disabilities. Not only does this severely limit their life chances, it also leads others to view persons with disabilities as a group, not as individuals. It is a well-known sociological fact that segregation and the lack of meaningful contact and cooperation is a fertile breeding ground for prejudice.

Deinstitutionalisation should be a human rights priority for all member states of the Council of Europe. A first step would be to immediately stop new placements in institutions. Next is the adoption of clear action plans for phasing out institutions and replacing them with community-based services. Monitoring is essential so that progress is sustained. Unfortunately, some countries undergoing austerity measures have witnessed setbacks in deinstitutionalisation, as calls for saving resources by “concentrating” individuals in certain facilities or areas have gained sway.

The only way forward is to get not only policy-makers on board, but to convince all stakeholders of the wisdom of deinstitutionalisation. Persons with disabilities should participate in planning such measures so that legitimate concerns about the lack of adequate support services can be addressed effectively. Family members need to be reassured that their lives will not be upturned through the incomplete social inclusion of their relatives. Professionals – service providers, including mental health workers, doctors, the staff at large institutions – need to be retrained and involved in providing services and support in the community. Local politicians need to be convinced that deinstitutionalisation is not a vote loser – if it is done properly. Finally, the deep-seated fears and prejudices of the general public towards persons with disabilities need to be addressed through education and awareness-raising.

## **2. Missions and Visits**

### ***Visit to Hungary***

The Commissioner visited Hungary from 1 to 4 July. The aim of the visit was to review certain human rights issues, with a focus on media freedom, the fight against racism and discrimination, and the human rights of migrants, including asylum seekers.

During his visit the Commissioner held discussions with the Hungarian authorities, including the Minister of Justice, Mr Laszlo Trocsanyi, the Deputy Minister for Foreign Affairs and Trade, Mr Péter Sijjarto, the State Secretary for Social Affairs and Inclusion and the Deputy State Secretary for Social Inclusion at the Ministry of Human Resources, Mr Karoly Czibere and Ms Katalin Langerné Victor, the Deputy State Secretary at the Ministry of Interior, Ms Krisztina Simonné Berta, the Chairperson of the Hungarian delegation to the Parliamentary Assembly of the Council of Europe, Mr Zsolt Németh, and the Deputy Chief Prosecutor, Mr Ervin Belovics. The Commissioner also met with the Commissioner for Fundamental Rights (Ombudsman), Mr László Székely, the President of the National Authority for Data Protection and Freedom of Information, Mr Attila Péterfalvi, the President of the Equal Treatment Authority, Ms Ágnes Honecz and a member of the Media Council, Mr Andras Koltay. In addition, the Commissioner met with representatives of a number of international and non-governmental organisations.

At the end of his visit, the Commissioner expressed concern at the situation of vulnerable groups in Hungary. Roma, in particular, continue to face segregation in both housing and education in a context of continuing intolerance. The Commissioner stressed that any intimidating acts and hate speech against Roma should be vigorously condemned by officials and duly investigated by police. Any individuals who advocate for or are involved in hate crimes should be sanctioned, while racist organisations should face adequate penalties, including a ban if necessary. In this context, the Commissioner welcomed the ban imposed on the Hungarian Guard and the steps taken by the authorities to ban other racist organisations.

The Commissioner called on Hungary to be more ambitious in implementing the UN Convention on the Rights of Persons with Disabilities (CRPD). Noting that Hungary has a very high number of persons with disabilities still deprived of their legal capacity, and therefore of the right to make their own decisions, the Commissioner regretted that the Civil Code adopted in 2013 still retains provisions in contradiction with the CRPD.

Following a visit to the integrated social care home in Polgárdi, the Commissioner called for the process of de-institutionalisation of persons with disabilities to be accelerated. He stressed that EU funds can help to this end, provided that they are not used to renovate or build large institutions for disabled persons or other accommodation that does not comply with the requirements of the CRPD.

The Commissioner noted that in 2013 Hungary faced an 876% increase in applications for asylum, which has put a strain on the country's asylum system. With 26% of asylum seekers being detained, he called on the Hungarian authorities to ensure that the detention of asylum seekers is only used as a last resort, in accordance with international standards. He also urged the authorities to do more to ensure the integration of recognised refugees, who are relatively few in number.

The Commissioner also expressed concern about homophobic and transphobic political rhetoric and stressed the need to develop more vigorous awareness-raising about the human rights of LGBTI persons.

During a visit to the Isola shelter in the fourth district of Budapest, the Commissioner met with a number of homeless persons, some of whom were employed but still unable to afford decent housing. Addressing the adoption of decrees to ban sleeping in public spaces by some local governments, the Commissioner underlined that the focus should rather be on improving access to social housing.

The Commissioner also followed up on his predecessor's findings on media freedom and subsequent changes in legislation and practice. A number of legislative changes that are mainly in line with Council of Europe recommendations have been adopted, notably as regards the protection of journalistic sources and the appointment to and mandate of the media authority. Newly introduced sanctions have not been extensively used. However, the Commissioner remains concerned at reports of self-censorship and the apparent narrowing of the space in which media can operate freely and fully perform their watchdog function.

The Commissioner's report on his visit to Hungary is forthcoming. During the visit, the Commissioner also discussed a number of aspects relating to the situation of non-governmental organisations (NGOs) in Hungary, which he followed up with a separate letter to the Minister of the Prime Minister's Office shortly after the visit (see below).

### ***Mission to Kyiv, Moscow and Crimea<sup>1</sup>***

The Commissioner carried out a mission to Kyiv, Moscow and Crimea (Simferopol and Bakhchisaray) from 7 to 12 September 2014, where he carried out the first *in situ* assessment by an international institution of the human rights situation in Crimea since March 2014 and focused on a number of issues in light of his previous work with respect to Ukraine and the Russian Federation. The discussions with the Ukrainian and Russian Ombudspersons were a key part of the visit.

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<sup>1</sup> The mission of the Commissioner for Human Rights was aimed at fostering the effective enjoyment of human rights. It cannot be interpreted as recognising either the authorities that exercise de facto jurisdiction or any altered status of the territory in question.

In Kyiv, the Commissioner had meetings with the Minister of Foreign Affairs, Mr Pavlo Klimkin; the Deputy Minister of Justice, Ms Inna Yemelianova;<sup>2</sup> the Parliamentary Commissioner for Human Rights (Ombudsperson), Ms Valeria Lutkovska, and representatives of civil society organisations, including those representing the interests of persons displaced from Crimea. The issues discussed included the situation of displaced persons in Ukraine; judicial and police reforms; the need to ensure accountability for serious human rights violations which have been taking place in recent months; combating impunity as part of the reconciliation process; and systematic work for implementing human rights at the national level.

In Moscow, the Commissioner had meetings with Mr Alexander Konovalov, Minister of Justice; Mr Aleksey Meshkov, Deputy Minister of Foreign Affairs; Ms Ella Pamfilova, Commissioner for Human Rights of the Russian Federation (Ombudsperson); Mr Leonid Slutsky, member of the State Duma and Vice-Chairperson of the delegation of the Russian Federation to the Parliamentary Assembly of the Council of Europe; and various civil society organisations. The issues discussed included the situation of human rights defenders in light of the implementation of the legislation on “foreign agents”; on-going reforms in the penitentiary and judicial systems; and certain aspects related to the implementation of the decisions of the European Court of Human Rights. With the Commissioner for Human Rights, the discussion was focused on possible ways and potential areas for co-operation in the future.

In Crimea, the Commissioner had meetings with the key decision-makers in the region; representatives of the Mejlis of Crimean Tatars; the local ombudsperson; local non-governmental organisations, lawyers working on certain cases related to human rights violations, journalists, and religious leaders. The issues discussed included accountability for serious human rights violations, including efforts to combat impunity; status of “self-defence” forces; national and other minorities; nationality-related issues; and the situation of human rights defenders. Issues relating to Crimea were also addressed during the Commissioner’s meetings with the Ombudspersons and civil society representatives in Kyiv and Moscow.

Following the mission, the Commissioner held an exchange of views with the Committee of Ministers. He also made an intervention before the Parliamentary Assembly during the current affairs debate on the crisis in Ukraine, where he presented his observations on the situation of internally displaced persons (IDPs) in Ukraine and his preliminary observations on human rights issues in Crimea.

The report on this mission was published on 27 October.

### ***Visit to France***

The Commissioner carried out a visit to Marseille and Paris from 22 to 26 September, focusing on certain issues pertaining to racism and intolerance, and the human rights of immigrants and asylum seekers, of Travellers, of migrant Roma and of persons with disabilities.

During his visit the Commissioner held discussions with the French authorities, including the Minister of Justice, Ms Christiane Taubira, the Minister of State for Persons with

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<sup>2</sup> Ms Yemelianova has since resigned from the function of Deputy Minister of Justice.

Disabilities and the Fight against Exclusion, Ms Ségolène Neuville, the Minister of State for European Affairs, Mr Harlem Désir, the Director of the private office of the Minister of Interior, Mr Thierry Lataste, the Interministerial Delegate for the Fight against Racism and Anti-Semitism, Mr Régis Guyot, the Interministerial Delegate for Accommodation and Access to Housing, Mr Alain Régnier, and the Prefect for Equal Opportunities of the Bouches du Rhône, Ms Marie Lajus. In addition, the Commissioner met with the Defender of Rights, Mr Jacques Toubon, the General Controller of Places of Deprivation of Liberty, Ms Adeline Hazan, and the President of the National Consultative Commission on Human Rights, Ms Christine Lazerges, along with members of the Commission.

The Commissioner also met with academics, representatives of the Muslim and the Jewish communities and a number of non-governmental organisations. He carried out visits to a Roma camp and a migrants' detention centre in Marseille, to a neighbourhood in the North of Paris, where he met with homeless asylum seekers and unaccompanied migrant minors, and to the child psychiatry department of the Necker Hospital, Paris.

At the end of his visit the Commissioner issued a press release in which he expressed concern at the increase in intolerance in France, which is reflected in an upsurge of racist, anti-Semitic, anti-Muslim and homophobic rhetoric and acts. He stressed that the solid legal framework which makes it possible to sanction hate speech and violence needs to be complemented by more preventive and awareness-raising measures, particularly targeting users of the Internet, where hate speech has become more prevalent.

As regards asylum seekers, the Commissioner was worried about the situation of many asylum seekers and unaccompanied migrant minors who do not have access to adequate reception facilities and find themselves homeless on the streets or in emergency accommodation centres which are not suited to their situation. The Commissioner also regretted France's low participation in the UNHCR programme for the resettlement of Syrian refugees. He called on the authorities to allow the rapid entry of the 500 people they had undertaken to receive, and to accept more Syrian refugees.

The Commissioner further noted that migrant Roma in France are particularly frequent victims of intolerance, although they are a relatively small group and their numbers seem to have been stable (less than 20 000) for many years. He urged the authorities to put an end to forced evictions from informal settlements where no lasting housing solution is proposed.

Commissioner Muižnieks also expressed concern about the situation of Travellers, who continue to face major difficulties because of the insufficient number of encampment areas, despite the existence, since 1990, of a law providing for their establishment. He encouraged the authorities to ensure that municipalities observed their obligations in this respect and to continue the reforms intended to eradicate discriminatory measures, such as those relating to the Travellers' circulation booklets and home municipalities.

Lastly, the Commissioner looked at the situation of persons with disabilities. He was pleased to note that public policies give priority to autonomy and social inclusion. However, he regretted that the implementation of these policies is still lagging behind and that persons with disabilities continue to experience a great deal of discrimination. The Commissioner stressed that children with disabilities, like all children, must fully and

effectively enjoy the right to education and urged the authorities to take all necessary measures to ensure that all children with disabilities can go to school and to continue the efforts undertaken to promote their enrolment in mainstream schools. He also encouraged the authorities to give full effect to the 2005 law on disability, emphasising that major progress still had to be made to guarantee the access of people with disabilities to public places. The Commissioner also regretted that at least 6 000 French people with disabilities are still placed in facilities in Belgium. He called on the authorities to step up their efforts to provide all people with disabilities adequate support adapted to their situation.

The Commissioner's report following this visit is forthcoming.

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

#### ***Report on Romania***

On 8 July, the Commissioner published a report following his visit to Romania from 31 March to 4 April. The report focuses on the human rights of persons with disabilities, of children, and of Roma.

The Commissioner was concerned about the large number of institutions for persons with disabilities, the reports of the ill-treatment faced by adults and children with disabilities in institutions, and their lack of access to justice. The Commissioner called on the Romanian authorities to draw up a plan for replacing institutions with community-based services, to ensure the effective access of persons with disabilities to legal proceedings, and to set up an efficient national mechanism for the prevention of torture to safeguard the protection of the human rights of persons deprived of their liberty.

Measures should also be taken to eliminate barriers to independent living faced by persons with disabilities, including difficulties in accessing the labour market. In addition, the authorities should fully align domestic legislation with the UN Convention on the Rights of Persons with Disabilities so as to ensure that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life. In the field of education, the Commissioner called on the authorities to promote inclusive education, to establish targets for the transfer of children with disabilities from special to mainstream education, and to ensure the accessibility of all education institutions to persons with disabilities.

The situation of some 80 000 children left behind by parents working abroad, and that of at least 6 000 street children is a further source of concern. The Commissioner urged the authorities to increase their efforts to prevent child abandonment and the phenomenon of children living on the streets. Measures are also needed to ensure the reintegration of abandoned children in their families or in alternative settings, in the best interests of the child.

Another issue of particular concern is the situation of children living in institutions, where they lack adequate care. The authorities must show commitment to the deinstitutionalisation of child protection services and continue to develop the alternative protection measures already in place.

While the abolition of the penalty of imprisonment for minors is a positive development, the Commissioner was concerned by the continued presence of children in prisons or in prison-like conditions, with no adequate access to education. The Romanian authorities were urged to adapt their practice to the new legislation and ensure that children are no longer held in prisons or other similar settings.

The Commissioner welcomed the re-establishing of the National Authority for the Protection of the Rights of the Child and Adoption, and urged the Romanian government to allocate adequate resources to ensure its effective functioning.

The Commissioner also welcomed the measures taken by the authorities to enhance the social inclusion of Roma, including the registration in 2013 of almost 5 000 Roma children and the issuing of identification documents to more than 30 000 adults. However, despite progress in the inclusion of Roma children and youth in the education system, many Roma remain without any formal education and the reported drop-out rate of Roma pupils, 36%, is still too high and requires stronger action, including making better use of Roma mediators.

Increased efforts need to be made by the authorities to fight widespread anti-Gypsyism, which includes hate speech, recurring inter-ethnic conflicts and violence against Roma. Despite the high incidence of these problems, the Romanian authorities appear to underestimate them. The authorities should pay particular attention to the recording of hate speech and hate crime and ensure that law enforcement officials and legal professionals are adequately trained to be able to recognise and effectively investigate and sanction crimes committed with a racist motive. The authorities should also take measures to ensure that all allegations of ill-treatment, including those with an alleged racist motive, committed by law enforcement officers are promptly and effectively investigated and that adequate, dissuasive penalties are imposed on those committing such acts. The establishment of a fully independent complaints mechanism covering the action of all law enforcement authorities, in line with Council of Europe standards, would be a useful step in this regard.

Lastly, the authorities were called on to allocate sufficient funding for the implementation of the strategy for Roma inclusion for the period 2012-2020, to strengthen its implementation mechanism at central level, and to ensure the accountability of local authorities in implementing the strategy.

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

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

On 17 July, 2014 the Commissioner published a letter addressed to the Prime Minister of Ukraine, Mr Arseniy Yatsenyuk, concerning the situation of internally displaced persons.

In his letter, the Commissioner underscored the need to ensure a coordinated response at central level to challenges faced by displaced persons. Most notably, he urged the authorities to establish a centralised registration system and to establish a centralised state entity in charge of the overall coordination of the humanitarian response to the IDP situation. The Commissioner encouraged the authorities to address the legislative gaps in the regulation of the situation of IDPs and to ensure their protection in line with

European and international standards. Finally, he urged the government to develop a strategy to provide durable solutions with regard to accommodation and opportunities for livelihood for those displaced persons who may not be in a position to return to their original place of residence in the coming months. After the letter was sent to the Prime Minister, the Commissioner had an opportunity to discuss all the above-mentioned issues with the Deputy Prime Minister of Ukraine, Mr Volodymyr Groisman, when the latter was visiting Strasbourg.

The letter is available on the Commissioner's website.

### ***Letter to the Hungarian Prime Minister's Office***

Following his visit to Hungary (see above), on 24 July, the Commissioner published a letter he wrote to the Minister of the Prime Minister's Office, Mr János Lázár, to express concern over the situation of NGOs in Hungary. He referred in particular to the stigmatising rhetoric used in Hungary against NGOs active in the field of promoting human rights and democratic values, with politicians questioning the legitimacy of their work. The Commissioner deplored a series of allegations by government officials whereby the Norwegian Civil Fund (the so-called NGO Fund) was used to support political activities in Hungary. As a consequence, a number of audits concerning NGOs, all of which were beneficiaries of the NGO Fund, had been carried out by the Hungarian Government Control Office. The Commissioner urged the Hungarian authorities to ensure an enabling environment for NGOs and underlined that imposing additional administrative requirements on a selected number of NGOs, solely based on their supposed or actual activity, is inadmissible. A further cause for concern relates to the legal basis for these audits, which was called into question by several interlocutors of the Commissioner. The Commissioner called on the Hungarian authorities to consider suspending all on-going audits until the legal basis for such audits has been clarified.

The Commissioner's letter and the reply of Mr Lázár (in Hungarian and English) are available on the Commissioner's website.

### ***Statement on Azerbaijan***

On 7 August, the Commissioner published a statement to express concern over the situation of human rights defenders in Azerbaijan. It was prompted by the arrest of Rasul Jafarov and the travel ban imposed on Emin Huseynov, which the Commissioner said provided yet another illustration of how human rights defenders in Azerbaijan were systematically threatened with an instrumental use of criminal suits. These cases happened shortly after the arrest of Leyla Yunus and her husband, and followed a long list of arrests of activists who are now silenced in detention. The Commissioner stressed that, by stifling dissent, Azerbaijan is failing to comply with its international obligations which require safeguarding freedom of expression, assembly and association. He called on the authorities to reverse the situation and, as a first step, to free all those detained because of the views they expressed. The Commissioner indicated that he would continue to raise these concerns with the authorities of Azerbaijan as part of the follow up to his report and observations on the human rights situation in the country, published respectively in August 2013 and April 2014.

## 4. Themes

### ***Missing persons in Europe***

On 28 August, the Commissioner published a Human Rights Comment entitled *Missing persons in Europe: the truth is yet to be told*. The comment addressed the issue of tens of thousands of persons who remain missing in Europe, decades after the demise of dictatorships and the end of armed conflicts. The Commissioner stressed that 30 August, the International Day of the Victims of Enforced Disappearance, is an appropriate day not only to reflect on these cases, but to renew states' commitment to overcoming the remaining obstacles in establishing the fate of missing persons. He underlined that families of missing persons enjoy a right to the truth and need to be provided with effective access to social and economic rights, as well as long-term psychological and psychosocial assistance.

States have a positive obligation to carry out effective investigations and to provide information to families about the fate of persons missing as a result of the use of force, including armed conflicts. The Commissioner underlined that while considerable progress has been made in resolving cases of missing persons in Cyprus and in the region of the former Yugoslavia, this has not yet been the case in Armenia, Azerbaijan, Georgia and the Russian Federation. Lack of political will, limited national capacity in this context, lack of qualified forensic experts in the countries concerned, and the lack of co-operation between former rival parties are among the major reasons for the slow progress in establishing the fate of missing persons in Europe. Moreover, human rights defenders and lawyers working on enforced disappearance issues are often the targets of threats, intimidation and reprisals. The Commissioner also observed the patterns of impunity in particular with the use of amnesty laws to preclude investigation into crimes of enforced disappearances. Drawing upon the 2013 [resolution](#) of the Parliamentary Assembly of the Council of Europe pertaining to this issue, the Commissioner highlighted five priorities that have to be tackled by member states and *de facto* authorities in Europe, in order for this issue to be effectively resolved.

### ***Safeguarding human rights in the fight against terrorism***

In an opinion editorial published on 31 July by New Europe, the Commissioner underscored the importance of safeguarding human rights in the fight against terrorism. He stressed that anti-terror policies and actions must become more human-rights compliant, and that – in the interests of increasing their credibility among the public and weakening support for anti-democratic causes - governments should show as much resolve in safeguarding human rights as in fighting terrorism.

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

On 24 September, a representative of the Office attended the inaugural meeting of the co-operation platform between the Council of Europe, the EU Fundamental Rights Agency (FRA), the European Network of Equality Bodies (Equinet) and the European Network of National Human Rights Institutions (ENNHRI) in the field of asylum and immigration. The meeting was organised by the above-mentioned institutions in Vienna and was one of the follow-up activities to the conference “Strengthening fundamental rights protection together in a changing human rights landscape”, addressed by the

Commissioner in the same city on 7 October 2013. The meeting set the scene for substantive discussions between participants on selected topics (the monitoring of forced return; conditions of detention and alternatives to detention; unaccompanied migrant minors; and discrimination against migrants), and facilitated exchanges concerning the working methods of the platform.

On 27 September, the Commissioner spoke at the Association of European Migration Institutions conference "Migrants and refugees - then and now" held in Riga. He outlined the main human rights challenges facing migrants and refugees in Europe today, and then focused on the Syrian refugee crisis, the situation of irregular migrants and Roma migration. The Commissioner reiterated the need for a more rational Europe-wide migration policy that is human rights compliant.

In an opinion editorial published on 30 September by *New Europe*, the Commissioner recommended that European migration policy be made more humane and human rights compliant. He underscored that it will not be able to prevent migrants from coming to Europe, despite the dangers faced during their journey, and however hard the EU tries to dissuade them from doing so. He therefore called for a different approach, where the focus is not solely on security concerns but also on human rights.

### ***Gender equality***

On 10 July, the Commissioner published a Human Rights Comment, *Protect women's rights during the crisis*, in which he stressed that women and men entered the economic crisis on an already unequal footing, and the crisis has exacerbated these inequalities and endangered the progress already made. An increasing feminisation of poverty, including lone mothers and elderly women has been noted and homelessness has become more visible among young women. Women in poverty are also more likely to work in low-paid, precarious and informal jobs and face the risk of exploitation and trafficking in human beings. Regrettably, austerity measures adopted in many European countries, including cuts in public sector jobs and salaries and in the welfare system, have had a disproportionately negative impact on the enjoyment of social and economic rights by women. Women's rights are also jeopardised by financial cuts made to programmes and infrastructures promoting gender equality. Governments should respond to the economic crisis in a gender-sensitive manner. They should guarantee women's equal access to the rights to decent living conditions, work, healthcare and education and ensure that all women can enjoy social protection minima guaranteeing the minimum core levels of economic and social rights at all times. States should ratify and duly implement key internationally agreed standards on women's rights and combat discrimination on the grounds of sex in all fields of life. There is also a clear need for systematic assessments of the impact of the economic crisis and austerity measures on gender equality. Finally, States must ensure the active participation of women in recovery policies.

On 29 July, the Commissioner published a Human Rights Comment *Fighting violence against women must become a top priority*, in which he welcomed the entry into force on 1 August of the Istanbul Convention, a landmark treaty of the Council of Europe dedicated to preventing and combating violence against women and domestic violence. Violence against women remains one of the most widespread human rights violations which take place every day in Europe. The Istanbul Convention addresses all forms of violence against women either in the context of domestic violence or through stalking,

sexual harassment, sexual violence and rape, forced marriage, female genital mutilation and forced abortion and sterilisation. The response of European states to violence against women remains often inadequate. They not only often fail to protect women against violence; they also fall short of their obligations to duly investigate cases of gender-based violence, to offer effective remedies and to adopt adequate measures to prevent further violence. The Istanbul Convention offers a holistic set of measures to take action where it is needed as it is victim-centred and contains a comprehensive array of practical tools to help improve the response of all relevant actors. It clearly states that Parties have an obligation to prevent violence, protect victims and punish the perpetrators. All measures taken need to form part of a set of integrated policies. The Convention also establishes a specific monitoring mechanism in order to ensure the effective implementation of its provisions by the Parties. The Commissioner calls on member states of the Council of Europe which have not yet done so to sign and ratify the Convention and expresses the hope that other countries and the EU will do the same.

### **Statelessness**

On 15 September 2014, the Commissioner took part in the First Global Forum on Statelessness, convened in The Hague by UNHCR and the University of Tilburg. He started his keynote address by providing an overview of Council of Europe conventions and work to deal with the persisting problem of statelessness and by reviewing progress achieved in recent years in some member states. Underlining the need to act with determination and in close co-operation with all the actors concerned, he stressed in particular the role that national human rights institutions can play in order to eradicate statelessness. The Commissioner then highlighted some of the remaining obstacles in the fight against statelessness, including persisting racism and hostility against entire population groups, leading to their exclusion; cumbersome and protracted administrative and legal procedures for persons attempting to acquire or confirm their nationality; insufficient measures to raise awareness of the parents of children at risk of statelessness; and persisting gaps in legislation resulting in children being born stateless. He also raised concerns about the high risk of statelessness among children of refugees, in particular those fleeing the conflict in Syria. The Commissioner concluded by stressing that the automatic granting of citizenship at birth to children who would otherwise be stateless is probably the best tool to eradicate statelessness at birth and prevent its transmission from generation to generation. He reiterated his commitment to pay specific attention to human rights violations resulting from statelessness in future work.

### **Right to health**

On 7 August the Commissioner published a Human Rights Comment entitled *Maintain universal access to health care*, in which he exposed the detrimental effects of austerity measures and the economic crisis on universal access to health care. The text referred to the measurable impact of cuts in health services and of difficult economic and social conditions on the health of the population in many countries. The Commissioner stressed that the right to health was guaranteed by international and European human rights instruments and that everyone's access to health care without discrimination was essential to this right. Many vulnerable groups, such as children, Roma and asylum-seekers have faced specific barriers in their access to health care.

The Commissioner highlighted the need to carry out reforms to make health services more effective as a response to rapid demographic changes and technological developments. It was also important to address wasteful practices and corruption in health care. However, the Commissioner underlined that such reforms should not simply amount to cost-cutting exercises but should always aim to deliver quality care to the entire population without excessive user charges. Governments have a duty to maintain health and social protection minima which are available to everybody at all times.

### ***National Human Rights Structures***

On 18 July, the Office participated in an international workshop in Minsk on the establishment and functioning of national human rights institutions (NHRIs), organised by the Council of Europe in partnership with the Belarusian Ministry of Foreign Affairs and the UN. The purpose of the workshop was to provide examples of NHRI establishment and functioning, as well as to discuss partnership with state bodies and civil society organisations. The representative of the Office discussed the principles of independence, effectiveness and accessibility of NHRIs, and emphasised the importance of interaction with civil society, particularly human rights NGOs.

On 18 and 19 September, the Office participated in a European Regional Conference of the International Ombudsman Institute, hosted by the Estonian Chancellor of Justice in Tallinn. The Conference discussed the multiple roles of today's ombudspersons in democratic societies. The representative of the Office addressed the meeting on behalf of the Commissioner, highlighting the ombudsperson's functions in bridging human rights, the rule of law and democracy. The ombudsperson's general role in promoting human rights and the proactive right to carry out *ex officio* investigations are particularly significant from this perspective.

## **5. Other Meetings**

### ***Meeting with Astrid Thors, OSCE High Commissioner on National Minorities***

In the margins of the First Global Forum on Statelessness in The Hague (see above), the Commissioner met with High Commissioner Thors on 15 September. The discussion focused on the situation of national minorities in Crimea.

## **6. Communication and Information work**

The press coverage of the Commissioner's activity in the third quarter focused mainly on women's rights, the situation in Ukraine and the report on Romania.

The Human Rights Comment on violence against women was among the most covered of the Commissioner's activities. The article was fully published as an op-ed by New Europe and quoted by 20 Minutes, 24 Heures, Agenzia Redattore Sociale, B92, BETA, Business Standard, Expat.com, French China, Global Post, Xinhua News Agency, Hoy, KNA, La tribune de Genève, L'Occidentale, NDTV, Ouest France, Pan European Networks, RFE, RPOne, RTV, SIR, Swiss Info, TgCom24, Business week, Journal Gazette, and New Zealand Herald. ANSA and Giornale del Popolo also covered the Human Rights Comment on women's rights in times of economic crisis.

The Commissioner's concerns about the situation in Ukraine were reported by Reuters, Caracol Radio, EFE, Euronews, Radio Chine Internationale, Radio Europa Libera, The Ukrainian Week, Ukrainian News, Xinhua Net, ITAR-TASS, 1 plus 1, Interfax, RIA, Boursorama, ITAR-TASS, Reuters, TSN, Golos Ameriki, Ethnos, Kommersant, UNPO, Radio Free Europe, The Moscow Times, Vesti, and Today's Zaman.

The report on Romania was covered by Actmedia, Challenges, RFE, Gandul info, Le Figaro, Newsbeast.gr, Observatorio Balcani e Caucaso, Radio Romania Actualitati, Reuters, Revista 22, Romania Libera, Romania TV, SIR, and Ziare. The tweet on the Câmpeanu judgment was mentioned by the British PA.

The visit to Hungary was covered with an interview with Reuters (republished by Euronews), while the letter to the Hungarian Minister of the Prime Minister's Office, regarding concerns about the stigmatising rhetoric used in Hungary against non-governmental organisations active in the field of promoting human rights and democratic values, was quoted by AFP, ANSA, European Liberties Platform, Hirado, MagyarHirlap, and Magyar Nemzet.

New Europe published an op-ed on the need for Europe to change its approach to migration. Le Monde published an interview at the end of the visit to France, which was also mentioned by other media, including Reuters.

The Commissioner's position on the situation of human rights activists in Azerbaijan was covered by Panorama, Azadliq Radio, RFE, Hurriyet Daily News, Armenews, and Zerkalo, while the Human Rights Comment on missing persons was mentioned by El mundo, European Liberties Platform, Cyprus News Agency, and Shanghai daily

The comment on the Serbia Pride Parade was covered by ANSA, ANSAmed, Gay Echo, Yagg-Têtu, Blic, Danas, InSerbia.

The Commissioner's comments and report on the human rights situation in Greece continued to receive coverage (AVGI, Ekathimerini, To Vima, Gay Star News, Yagg-Têtu, The Guardian, SETimes, Turkish Weekly, El Diario). The media also covered the comments that the Commissioner made on 1 August on the filing of the case concerning the drowning last January of 11 migrant children and women near Farmakonisi during an operation of the Greek coast guard, as well as the subsequent conversation he had on 21 August with the Minister of Shipping, Maritime Affairs and the Aegean, Mr Miltiadis Varvitsiotis. In particular, the media reported the Commissioner's recommendation that the Greek authorities review if possible the proceedings that resulted in the filing of the above case, his serious concern about the widely reported, numerous cases of collective expulsions of migrants, including asylum seekers, and the need to end impunity for serious human rights violations suffered by migrants.

Further coverage concerned the general human rights situation in Europe (IR, The Baltic Course), a meeting with the Prosecutor General of Armenia (Aysor), the special inquiry of the Ombudsman of Ireland into the taking of children from two Roma families (the Irish Times), Turkey (Today's Zaman, Cihan), eviction of Roma in Albania (Shqiptarja), the situation of Roma in the Balkans (Süddeutsche Zeitung), statelessness in Europe (The Guardian), human rights in Latvia (Delfi), and access to health care (French China.org, Shanghai Daily).

The number of followers on Twitter reached 7630 at the end of September (6.5% increase since the end of last quarter). The Facebook page continued increasing the number of visitors too, with 1707 likes (a 14% increase since the end of last quarter). More than 13 977 unique visitors surfed the Commissioner's website.

## **7. Next three months**

### October

- |          |  |
|----------|--|
| 06-10/10 | Visit to Armenia   |
| 19-20/10 | Lecture at Bilgi University and additional meetings (Istanbul)   |
| 21-22/10 | 2 <sup>nd</sup> International Symposium on Ombudsman Institutions hosted by the Chief Ombudsman of the Republic of Turkey and official meetings (Ankara) |
| 22-24/10 | Visit to Azerbaijan  |

### November

- |          |  |
|----------|--|
| 03/11    | Seminar and Inter-regional Dialogue on the protection of journalists in the European Court of Human Rights jointly organised by the Council of Europe, UNESCO, the Centre for Freedom of the Media, University of Sheffield and European Lawyer's Union (Strasbourg) |
| 04/11    | World Forum for Democracy (Strasbourg)   |
| 05-06/11 | Workshop "The future of dealing with the past in Northern Ireland", Transitional Justice Institute in the University of Ulster, and meetings with Northern Ireland authorities (Belfast)   |
| 10-11/11 | FRA Fundamental Rights Conference 2014 "Fundamental Rights and Migration to the EU" (Rome)   |

### December

- |          |  |
|----------|--|
| 01-05/12 | Visit to Ukraine   |
| 01/12    | Stakeholder meeting on "Systematic Work for Promoting and Protecting Human Rights in Ukraine: Developing a National Human Rights Action Plan" (Kyiv) |

## 8. Observations and reflections

When I was growing up, I was taught that there are two kinds of knowledge – theoretical “book smarts” and more practical “street smarts”. Before starting my mandate as Commissioner for Human Rights, I had a lot of “book smarts” about migration. After two-and-a-half-years in office, I feel I have accumulated a certain amount of “street smarts” about immigrants, asylum-seekers and refugees. Indeed, previously, I was not aware that there are tens of thousands of migrants all over Europe – squatting in abandoned buildings in Rome or The Hague, living on the streets in Paris or Istanbul, surviving in the parks of Athens or in tents or huts in Serbian forests.

These are all desperate people, most of whom would like to file an asylum claim or reach relatives in another corner of Europe. However, since there are so few legal venues for family reunification, receiving a temporary work permit or international protection, they are compelled to choose dangerous, irregular channels. With the proceeds from selling their last possessions, they pay smugglers to get them through dangerous mountain passes or onto rickety, overcrowded boats. They make desperate attempts to cross barbed-wire fences or scale newly built walls. Many die on the way – in the North African or Middle Eastern deserts or in the Mediterranean Sea.

Those who make it close to European land or sea borders are often pushed back, in contravention of the principle of *non-refoulement* and the prohibition of collective expulsion of aliens. These are individuals who are often already severely traumatised after suffering torture or witnessing atrocities in their home countries. Others are traumatised on the way to Europe – by venal smugglers, brutal border guards, by hunger, cold, illness or life in the rough endured for months, if not years.

If they are apprehended, more often than not, they cannot be deported to their country of origin. So they are held in detention centres for several weeks or months, then released, only to be detained again when stopped by police or border guards. Europe has a whole network of well-funded migrant detention centres, a number of them run by private security firms. These are among the most desperate places in Europe, as conditions are often worse than in prisons, with few meaningful activities for inmates. The only rationale under human rights law to detain a migrant is with a view to deport the person to his or her country of origin. This can usually be ascertained after a few weeks at most. Research suggests that the probability of deportation drops sharply after this period. However, under EU law, the maximum period of time for detention is 18 months. So why do so many countries detain migrants for lengthy periods, spending millions of taxpayers’ money, ignoring alternatives to detention that are much more humane and cost-effective?

Decision-makers often suggest that this will “send a message” to other potential migrants and deter new arrivals. While violating human rights to “send a message” is unacceptable for a Council of Europe member state in principle, the belief that such “messages” actually work lacks any basis in fact. People fleeing persecution, deadly conflict or failed states will do anything to make a new life - if not for themselves, at least for their children. Countries that systematically detain migrants have continued to see new inflows, regardless of the length or conditions of detention. Despite the huge risks involved in seeking to arrive in Europe regularly, tens of thousands try every year. Why?

Because the possibility of death or ill treatment, detention or living in the streets of a European capital still looks better than life in their country of origin.

Who are the immigrants, asylum-seekers and refugees arriving in Europe? In Turkey, which has received the largest inflow of any Council of Europe member state, they are mostly families from war-torn Syria and, more recently, Iraq. In most other countries I have visited, I have generally seen young men from Afghanistan, Iraq and sub-Saharan Africa. Why young men? The journey is long and brutal and women and children would not make it. If the young man makes it, he might be able to settle and help support the rest of the family back home. These young men usually travel in small groups for safety and companionship. They generally do not drink or smoke (for both cultural and financial reasons), they try not to fall afoul of the law (except for migration law) and try against all odds to keep their clothes clean.

Public opinion in most European countries has become distinctly unwelcoming to new arrivals and politicians have pandered to old fears and insecurities. This is despite the fact that Europe is among the richest regions in the world and the figures for arrivals of refugees are small compared to many other regions of the world. While European countries have a sovereign right to control their borders, they are bound by the European Convention on Human Rights and the UN Refugee Convention and must examine each asylum claim on an individual basis. If more legal venues for arriving in Europe were available, we would not see so many tragedies in the Mediterranean Sea. If countries had effective immigrant and refugee integration policies, public opinion would be more favourably disposed towards new arrivals. Europe deserves a more rational, human rights oriented approach to immigration and asylum – one that treats new arrivals as individuals who have suffered much, but can make a real contribution.