



COMMISSIONER FOR HUMAN RIGHTS  
COMMISSAIRE AUX DROITS DE L'HOMME



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# 1<sup>ST</sup> QUARTERLY ACTIVITY REPORT 2012

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**by Thomas Hammarberg  
Commissioner for Human Rights**

1 January to 30 March 2012

Presented to the Committee of Ministers  
and the Parliamentary Assembly

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## 1. Introduction

This document contains a report on activities carried out by the Commissioner for Human Rights, Mr Thomas Hammarberg, between 1 January and 30 March 2012, date of the end of his six year mandate.

## 2. Missions and Visits

### *Mission to the Republic of Moldova*

On 17 January, the Commissioner for Human Rights carried out his first ever visit to the Transnistrian region of the Republic of Moldova. The purpose was to discuss pressing issues affecting the protection of the rights of the people living in the region with the de facto authorities, including the new leader Mr Yevgeny Shevchuk, and representatives of the human rights structures. On the eve of this visit, the Commissioner also had meetings with the civil society organisations operating there.

The Commissioner was informed by his interlocutors in Tiraspol about several important measures they intend to implement with regard to the functioning of the local court system, the police and the penitentiary institutions. These measures will include, inter alia, granting in the course of 2012 of an amnesty to prisoners serving sentences for less severe crimes; introducing lighter punishment for crimes which pose no threat to the life or health of the victims; a wider use of alternatives to imprisonment; and a more resolute fight against corruption.

The de facto officials underlined the need to improve the conditions in prisons and requested international assistance to prevent the epidemics of tuberculosis and HIV from spreading among the prison population. They also pledged their commitment to reviewing and changing the rules and regulations governing the media landscape, with an ultimate goal of establishing a public broadcasting service in the region.

The Commissioner also highlighted the importance of developing a genuine dialogue with the non-governmental organisations, stressing the positive role they play in protecting and promoting the rights of the most vulnerable groups in the society. He encouraged his interlocutors to improve the framework regulating the work of the local public associations.

Issues discussed also included the functioning of the Latin-script schools in the region. The Commissioner urged the de facto authorities to remove all the impediments preventing the normal functioning of these educational institutions.

Finally, the Commissioner recalled that the relevant standards and recommendations made by international human rights protection mechanisms may provide useful guidance when designing and implementing the reform strategies. The resumption of co-operation with the Council of Europe Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) – in particular, by allowing it to carry out its visits in full compliance with its mandate – will constitute an important step in this direction.

### ***Visit to Iceland***

The Commissioner visited Iceland on 8-9 February focusing on certain human rights issues, namely non-discrimination and reform of equal treatment legislation, the functioning and independence of the judiciary and the prosecution service, social and economic rights and human rights provisions in the proposal for a new Constitution.

At the end of his visit, the Commissioner recommended that Iceland adopt comprehensive equal treatment legislation and set up an effective and independent national equality body to promote its implementation. He stressed that the current non-discrimination provisions in Icelandic law do not protect all vulnerable groups of people to the same extent. People with disabilities, older persons, members of ethnic and religious minorities and transgender persons would benefit from stronger guarantees against discrimination.

Violence against women remains an enduring problem in Iceland. For the Commissioner, the police, the prosecution service and the courts all have a central role to play in enforcing the current legislation against gender-based violence and bringing perpetrators to justice. After visiting the women's shelter and the centre for victims of sexual violence in Reykjavik, the Commissioner noted the steady progress achieved in providing support services to victims of violence.

The financial crisis in Iceland has resulted in rising levels of unemployment, reductions in the pension system and serious difficulties in servicing individual housing and other loans. In addition, budget cuts following the recession have had an impact on the welfare system, especially health care, social services and education, which affects the enjoyment of social and economic rights. Rising youth unemployment, school drop-outs and the worsening outlook of immigrant families are major concerns. The Commissioner recommended focused measures to prevent poverty among vulnerable groups and welcomed the establishment of the "Welfare watch", a monitoring process with broad participation set up to protect the interests of categories such as persons with disabilities, single-parent families, older persons and immigrants.

The Commissioner also called on Iceland to ratify the UN Convention on the Rights of Persons with Disabilities, which it has already signed. He reiterated that children with disabilities and mental health problems are a particularly vulnerable group – specific services meant for them should not be subjected to budgetary savings.

There are signs of xenophobia in Iceland. Xenophobic and Islamophobic discourse can be found on the internet and other media. Immigrants, who currently number about 7 percent of the population, find it difficult to integrate into Icelandic society and are disproportionately represented among the unemployed. The Commissioner stated that xenophobia should be addressed through awareness-raising measures in education and the media, and existing legislation against hate speech must be applied effectively.

The Commissioner welcomed the significant progress made by Iceland in improving the independence of the judiciary. The reform of the appointments procedure has strengthened the powers and composition of the committee evaluating candidates for judges' positions. However, the resources made available to the prosecution service do not match the considerable increase in the case load, and this could delay judicial proceedings in the future.

### ***Visit to Andorra***

The Commissioner visited Andorra on 16-17 February. At the end of his visit, the Commissioner recommended that the authorities continue to give priority to extending assistance to victims of domestic violence and to allow longer stays in the shelter. He stressed that measures to better protect such persons, who are predominantly women, should be adopted, including a wider use of restraining orders to oblige offenders to leave the house, the adoption of a specific law addressing gender-based violence, awareness-raising to dismantle cultural stereotypes and measures to address the reluctance of those subject to violence to report the problem. Commissioner Hammarberg also called for an explicit prohibition of corporal punishment of children.

In relation to discrimination issues, the Commissioner called upon the Andorran government to ease the requirements to apply for Andorran citizenship. In this connection he recommended the ratification by Andorra of the European Convention on Nationality.

Discrimination against persons with disabilities in employment, education, access to health care, or in the provision of other state services is prohibited. However, non-governmental organisations have pointed out that there is a gap between what is written in the law and the situation in reality. The Commissioner stressed that this gap must be bridged. He underlined that there is a need to increase awareness about the rights of persons with disabilities and to remove all barriers, physical and cultural, which impede persons with disabilities from living in dignity.

Some of the officials met by the Commissioner stressed the need to conduct an evaluation to ensure the proper implementation and effectiveness of social assistance programmes. This is all the more important in periods of economic crisis. As concerns monitoring of human rights standards by independent national bodies, the Commissioner considered it necessary to reinforce the national system in order to ensure that the country has a national mechanism for the prevention of torture.

Finally, in view of the Chairmanship of the Council of Europe Committee of Ministers that Andorra will take up next November, the Commissioner recommended the ratification of several treaties, including the Council of Europe conventions on Preventing and Combating Violence against Women and Domestic Violence and on the Protection of Children against Sexual Exploitation and Sexual Abuse, as well as the UN Convention on the Rights of Persons with Disabilities.

### ***Visit to Switzerland***

The Commissioner visited Switzerland from 20 to 23 February. The visit clarified how the Swiss federal political system works for the enhancement of human rights protection. However, the Commissioner noted that there are some areas where further vigorous and concerted efforts are necessary in order for Switzerland to fully meet European and international standards.

In spite of being an inherently pluralistic society, intolerance and racism are dangerously on the rise in Switzerland, as shown by the frequency of anti-migrant public manifestations by some major political forces. The Commissioner underlined that certain popular initiatives, such as those concerning the ban of minarets and the automatic

expulsion of migrants having committed a certain crime would target and stigmatise migrant communities. They raise serious issues of compatibility with human rights standards, notably those of the European Convention on Human Rights. At the same time, the positive efforts undertaken or envisaged in the field of migrants' integration, such as the establishment of the Advisory Council of Foreigners in the city of Zurich, demonstrate a clear determination to tackle these challenges.

The Commissioner noted that there are still gaps in Swiss legislation when it comes to the protection of vulnerable social groups from discrimination. There is a clear need for a new, comprehensive anti-discrimination law, coupled with an independent and effective mechanism of supervision, redress and prevention of human rights violations. The Commissioner stressed that the naturalisation of persons of immigrant origin is of crucial importance for their full integration and requires the authorities' particular attention. Arbitrariness in such decisions should be avoided.

Commissioner Hammarberg recognised the merits of the broad consultation processes in Switzerland preceding accession to European and international human rights treaties. He urged the authorities to give particular priority to the accession to the European Social Charter, signed already in 1976, and to the UN Convention on the Rights of Persons with Disabilities, two treaties that set human rights standards to which Switzerland is already largely adhering in practice.

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

The Commissioner visited Liechtenstein on 24 February. He was informed about the ongoing discussion on a reform to broaden the coverage of the existing national human rights protection structures. He recommended the institution of an Ombudsman office with a broad mandate which would address the rights of children, women, persons with disabilities, and the elderly, as well as refugees and other foreigners. The Commissioner also recommended the introduction of comprehensive anti-discrimination legislation. A part-time Ombudsman for Children and Young People has already been in place for two years. Pending the reform of the overall human rights system, this office should be properly resourced so as to be able to fulfil its important functions for children's rights protection.

Violence against women remains a problem in the Liechtenstein society. The Commissioner recommended prompt ratification and implementation of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence. Persons with disabilities lack sufficient employment possibilities, in spite of several constructive measures, such as subsidies for making adjustments to the workplace to improve accessibility and for paying a part of the salary of disabled employees. Further measures should be explored to promote the integration of people with disabilities into the job market in both the public and private sectors.

Liechtenstein has a well-developed system of assisting elderly people in care institutions as well as in their homes. A concern expressed to the Commissioner related to the growing number of persons who would prefer to continue their working life after having reached the retirement age – a situation calling for more flexibility in employment regulations.

Following Liechtenstein's accession to EU regulations on asylum, including the Dublin II Regulation, the number of asylum applications to be assessed on their merits will be reduced to a minimum. However, it must be borne in mind that the possibility to send back asylum seekers to the country of first entry within the EU or Schengen area cannot be automatic as there is a need to ensure that no one will be returned to a country where they may be at risk of persecution or torture. In addition, having regard to the declining numbers of asylum cases, the Commissioner called upon the authorities to consider accepting more refugees who are recognised by UNHCR as having protection needs.

### ***Visit to Luxembourg***

The Commissioner visited Luxembourg on 7-8 March. He noted that in 2011, almost 2200 persons applied for asylum in Luxembourg, compared with just over 500 in 2009. Persons from the Western Balkans, particularly Roma, account for much of this difference. Following difficulties in ensuring adequate accommodation for the newcomers, the authorities have now improved the material conditions of the reception facilities. The Commissioner stressed that further steps could be taken including to improve the respect of the privacy of families and access to psychological support, especially for vulnerable persons.

Noting the current plans to reduce the monthly cash allowance for asylum seekers, the Commissioner called on the authorities to avoid a regression of living conditions and continue to ensure decent standards. Furthermore, the Commissioner expressed his hope that the extremely difficult situation that many Roma experience in their countries of origin, notably as a result of pervasive discrimination, will be taken into account when their applications are considered.

The Commissioner visited the newly built detention centre for irregular migrants, which opened in the Summer of 2011. The material conditions in this institution are good. However, in some cases persons have been detained although there were no realistic prospects for their removal. The Commissioner stated that in such cases, there is no justification for depriving people of their liberty.

Another problem which the Commissioner identified was that irregular migrants who had served a sentence in prison were moved to this detention centre and only then were formal procedures for removal initiated. Such formalities could have been initiated at an earlier stage, thereby avoiding unnecessary periods of detention.

As for juvenile justice, the construction of a dedicated facility for the detention of minors, which had been pending for a long time, has now started; a security unit at Dreibern socio-educational centre should open at the beginning of 2013. The Commissioner noted that the ongoing reform of the penitentiary administration introduces the principle that no minor is to be put in an adult prison unless they are over 16 and have committed a serious offence. In this connection, the Commissioner recalled that the UN Convention on the Rights of the Child provides that the detention of a child shall be used only as a measure of last resort and for the shortest appropriate period of time.

The Commissioner also recommended that Luxembourg ratify the Framework Convention for the Protection of National Minorities and the Revised Social Charter and that it accept the procedure allowing organisations to submit collective complaints under

the Charter. Finally, the Commissioner considered that a strengthening of the powers of the Centre for Equal Treatment would be desirable.

### ***Mission to Croatia***

In the framework of the launch of his Issue Paper on “Post-war justice and durable peace in the former Yugoslavia”, the Commissioner went to Zagreb on 20 March 2012, where he met with the President of Croatia, Mr Ivo Josipović. The Commissioner expressed his support for the Croatian President’s efforts to end impunity in the Balkans. He welcomed President Josipović’s request to the Constitutional Court of Croatia for a review of the constitutionality of the law adopted by the Croatian Parliament in October 2011 proclaiming null and void all acts relating to the 1991-1995 war in which Croatian nationals are suspected, indicted or sentenced for war crimes. During his stay in Zagreb, the Commissioner also held meetings with the Speaker of the Croatian Parliament, Mr Boris Šprem; with the chairman of the Committee on Human and national Minority Rights in the Croatian Parliament, Mr Furio Radin; with the Deputy Prime Minister for European Affairs, Mr Neven Mimica; and with the Deputy Minister for Foreign Affairs, Mr Joško Klisović.

During this mission, Commissioner Hammarberg was accompanied by the Commissioner Elect, Mr Nils Muižnieks.

### ***Mission to Slovenia***

The Commissioner went to Ljubljana on 21-22 March, where he met with the President of Slovenia, Mr Danilo Türk and a number of civil society representatives. During his stay in Ljubljana, the Commissioner also held meetings with the Minister for Foreign Affairs, Mr Karl Erjavec and the Minister of Justice and Public Administration, Dr Senko Pličanič, as well as with the State Secretary of the Ministry of Interior, Mr Robert Marolt. The Commissioner’s discussions with his interlocutors focused mainly in the human rights situation of Roma and on the issue of the “erased”.

During this mission, Commissioner Hammarberg was accompanied by the Commissioner Elect, Mr Nils Muižnieks.

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

### ***Report on Turkey***

On 10 January, the Commissioner published a report following his visit to Turkey from 10-14 October 2011. The report covers the impact of the administration of justice on the protection of human rights in Turkey.

The Commissioner underlined that despite serious reforms undertaken and the progress achieved by Turkey in tackling some of the major obstacles in recent years, its law and practice is still not in line with the case-law of the European Court of Human Rights. One of the major factors hampering progress lies in the established attitudes and practices followed by judges and prosecutors at different levels giving precedence to the protection of the state over the protection of human rights. The Commissioner also

encouraged the authorities to look at the role of prosecutors and the functioning of the judicial police, as well as at the quality of indictments.

The Commissioner welcomed important progress made in combating impunity for serious human rights violations, in particular in connection with torture and ill-treatment, but considered that problems remain, some of which have been demonstrated in the investigations into the murder of the writer and journalist Hrant Dink. The need to obtain prior administrative authorisation for investigating cases not relating to torture, short prescription periods, and lack of statistics concerning the fight against impunity are the main factors of concern. The Commissioner was also concerned about disproportionately lenient sentences handed down in certain cases, for example those involving violence against LGBT persons.

The Commissioner urged the authorities to improve the standing of victims in criminal investigations and proceedings. He encouraged the establishment of an effective police complaints mechanism and the mandatory recording of all interrogations. He further expressed his concern about the way certain offences relating to terrorism and membership of a criminal organisation are defined in Turkish legislation, leaving room for a very wide interpretation by courts.

The Commissioner stressed the importance of guaranteeing a fair trial by ensuring adversarial proceedings and equality of arms at all stages of the criminal procedure. He pointed to a number of shortcomings in this respect, including rules concerning the suspects' access to evidence against them, as well as practical problems limiting the capacity of the defence to cross-examine and summon witnesses and experts. He also voiced concerns about the use of secret witnesses and suggested a more effective judicial scrutiny when authorising 'protective measures', such as wire-tapping.

The Commissioner encouraged the authorities to review the need for assize courts with special powers, owing to the severe restrictions to the rights of defence before these courts, by derogation from normal procedural guarantees.

The report is available on the Commissioner's website, together with the comments of the Turkish authorities.

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

On 11 January, the Commissioner published a letter addressed to the Prime Minister of Republic of Moldova, Mr Vladimir Filat. The letter followed up on discussions the Commissioner had during his visit to the Republic of Moldova from 19-22 October 2011.

The Commissioner stressed that addressing the remaining human rights consequences of the violent events of April 2009 is a pressing need for Republic of Moldova. He noted with concern the unjustifiable leniency from which those responsible for acts of violence against protesters have benefitted.

Referring to the 2010 judgment *Pădureț v Moldova* of the European Court of Human Rights, the Commissioner recommended that decisive action be taken to adopt and enforce a policy of "zero-tolerance" as concerns ill-treatment by the police. He further stressed that the independence and competence of the judiciary should be ensured and that the right to liberty, security and to a fair trial be guaranteed.

The Commissioner also called for a strengthening of the independence and effectiveness of the National Preventive Mechanism established under the Optional Protocol to the UN Convention Against Torture, which should be entitled to have unlimited access to all places of detention.

The Commissioner spotlighted the issue of discrimination in the Republic of Moldova. As regards persons with disabilities, he recommended improving their access to education, employment, communication and information. He urged a thorough overhaul of the current legal framework with a view to establishing on a firm basis the presumption of legal capacity for adult persons with mental health or intellectual disabilities. At the same time, he encouraged further steps towards the deinstitutionalisation of children with disabilities.

The Commissioner stressed that Roma in Republic of Moldova continue to face discrimination and exclusion in various fields including employment, education, housing and healthcare. He underlined that anti-Roma rhetoric should be condemned and political leaders and other opinion makers should lead by example in promoting principles of non-discrimination, tolerance and respect for people from different backgrounds. The Commissioner encouraged the authorities to increase human rights awareness among the population, professionals and state officials in order to eradicate all forms of discrimination.

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

### ***Letter to the Minister of Foreign Affairs of Hungary***

On 12 January, the Commissioner published a letter addressed to Mr János Martonyi, the Hungarian Minister for Foreign Affairs about the new Law on the Right to Freedom of Conscience and Religion, which deprives a great number of religious denominations of their church status.

The Commissioner stressed that the non-recognised religious communities are denied rights and privileges which they previously enjoyed in Hungary and now face severe legal and procedural obstacles when trying to regain church status.

The letter followed previous concerns expressed by the Commissioner about the adoption of a set of laws, introduced by the Hungarian authorities between June and December 2010, affecting media freedom and pluralism. In an Opinion published in February 2011, Commissioner Hammarberg drew attention to the wide range of problematic provisions in Hungary's media legislation, including content prescriptions; the imposition of sanctions on the media; the establishment of a politically unbalanced regulatory machinery with disproportionate powers and lack of full judicial supervision; threats to the independence of public-service broadcast media; and erosion of the protection of journalists' sources. Despite amendments to the laws adopted in March 2011, the Commissioner notes with regret that these concerns remain.

The Commissioner also expressed his deep concern about decisions taken to limit the powers of the Constitutional Court and reduce the independence of the Ombudsmen offices and stressed that every democracy needs a system of checks and balances and institutions which provide effective control on executive powers.

Furthermore, the Commissioner has noted steps taken in Hungary which might undermine the independence of the judiciary. As a consequence of the lowering of the retirement age for judges, more than 200 new judges will now have to be appointed. This measure has been accompanied by a change in the procedure for such appointments, which now rests on the decision of a single politically appointed individual. Moreover, the Commissioner considered it unfortunate that, as a consequence of the new law on the judiciary, the mandate of the President of the Supreme Court has been terminated before the end of the regular term.

The Commissioner therefore called upon the Hungarian authorities to take resolute measures to uphold the independence of the judiciary, as well as to fully respect the freedoms of expression and religion, which are among the pillars of a democratic society.

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

### ***Report and letter on Ukraine***

On 23 February, the Commissioner published a report and a letter following his visit to Ukraine from 16-19 November 2011. The report covers administration of justice and protection of human rights in the justice system in Ukraine. The Commissioner recommended simplifying the overall organisation of the judiciary and clarifying fully the respective roles and jurisdiction of different levels in the court system, in particular at the cassation level. Concrete measures are also needed to increase the transparency of the judicial system and make it more open to public scrutiny.

The judiciary is still vulnerable to external interference, including of a political nature. The Commissioner stressed that decisive action is needed on several fronts to remove the factors which render judges vulnerable and weaken their independence. The authorities should carefully look into any allegations of improper political or other influence or interference in the work of judicial institutions and ensure effective remedies.

The Commissioner called upon the Ukrainian authorities to establish fair procedures and criteria related to the appointment and dismissal of judges, as well as the application of disciplinary measures. He also recommended changes in the composition of the High Council of Justice, which presently does not correspond to international standards, and the provision of quality on-going training for judges, including on the case law of the European Court of Human Rights.

The imbalance between the defence and the prosecution remains an issue of serious concern. The Commissioner underlined that it is important to ensure that the new Criminal Procedure Code will re-balance the system by providing for increased defence rights. Vigorous efforts are needed to ensure that fair trial guarantees as well as the principle of equality of arms are respected.

The Commissioner is also concerned by cases of abusive prosecutions, harassment, and other forms of pressure on lawyers, which impair defence rights and prevent lawyers from effectively serving the cause of justice.

He further stressed that the ongoing reform of the criminal justice system represents a unique opportunity to address a number of structural problems, including excessively lengthy judicial proceedings, non-enforcement of domestic judicial rulings and the abusive use of remand in custody.

Finally, the Commissioner recommended stronger efforts to end impunity for ill-treatment by law enforcement officials. The authorities should take urgent measures to prevent cases of ill-treatment by police officers and ensure their accountability for any criminal acts. He stressed that democratic oversight of the law-enforcement and security structures should be strengthened, including by ensuring individuals' access to a fully independent complaint mechanism.

Together with the report, the Commissioner made also public a letter addressed to the Prime Minister of the Autonomous Republic of Crimea, Anatolii Mohyliov, in which he recommended concrete measures to better protect the rights of ethnic groups living in the Republic, in particular as concerns the preservation of language diversity and equal opportunities in accessing employment, decent housing and social protection.

The report is available on the Commissioner's website, together with the comments of the Ukrainian authorities. The letter is also available on the website.

### ***Letter to the Minister of Foreign Affairs of Bulgaria***

On 22 February, the Commissioner published his observations addressed to the government of Bulgaria. The Commissioner stressed that in spite of some progress, the situation of children living in some institutions remains seriously substandard. The plans to phase out the system of institutional care of children should be pursued as a matter of priority. The Commissioner expressed the hope that the new education law currently being prepared will ensure access to quality education also to those children with moderate, severe and profound intellectual disabilities living in "Homes for Mentally Disabled Children". He stressed also that the discussion on a draft Child Protection Act is an opportunity to ensure a rights-based policy for the protection of all children in the country.

Roma in Bulgaria remain socially excluded and marginalised, with limited access to adequate housing, education and healthcare. The Commissioner underlined that the new 2012-2020 National Strategy for Roma Integration should be given full implementation, including by achieving short-term goals, such as the improvement of housing and health conditions of many Roma living in settlements without a regular water supply, electricity, gas and heating.

The Commissioner is also concerned that many Roma families continue to live in substandard conditions or are homeless as a result of forced evictions. Forced evictions should be avoided, and the Commissioner also recalled that when this is not possible, international standards require the provision of adequate alternative accommodation, legal remedies, compensation and protection from homelessness.

The Commissioner further stressed the need to ensure that racist attacks against members of Roma communities are effectively investigated. He reiterated his recommendation to establish an independent police complaints mechanism for the impartial investigation of alleged police misconduct.

Finally, as regards the outstanding issues relating to the past practice of forced assimilation of Bulgarian citizens of Turkish origin, the Commissioner welcomed the declaration adopted by the Bulgarian Parliament on 11 January 2012 condemning the assimilation process against the Muslim minority. The Commissioner recommended that a just solution for the victims of this practice be found, including on the issue of the pension rights of those ethnic Turks who had to leave for Turkey and whose premiums paid and time spent in Bulgaria are still not being accounted for.

The letter is available on the Commissioner's website along with the reply from the Bulgarian authorities.

### ***Letter to Secretary of State for Communities and Local Government in the United Kingdom***

On 29 February, the Commissioner published a letter addressed to the Rt Hon Eric Pickles, Secretary of State for Communities and Local Government. The Commissioner stressed that shortcomings have been highlighted, in particular by the European Court of Human Rights and the European Committee of Social Rights, in the field of guaranteeing the right to adequate housing for Gypsies and Travellers in the UK<sup>1</sup>.

The Commissioner regretted the dismantling of the system which required local authorities to carry out assessments concerning the accommodation needs of Gypsies and Travellers and to present a strategy to meet these needs. In addition, Gypsies and Travellers face difficulties in obtaining planning permission, which push them towards unauthorised encampment. This is the case for approximately one quarter of the 60-70,000 Gypsies and Travellers living in caravans in the United Kingdom as a whole.

The events of October 2011 at Dale Farm in Basildon, Essex, where over eighty Traveller families, including children, elderly people and persons with health problems, were evicted from the site where they had lived for many years, illustrate the Commissioner's concerns. Many of the approximately 400 Travellers who have been evicted, or who left shortly before the eviction took place, have returned to the area. They have either moved to the authorised part of the site or parked their trailers and caravans along the roads leading up to Dale Farm. As a result, they are currently exposed to health and safety hazards. Basildon Council has indicated that there is a possibility of further action to remove these persons from the area, without offering culturally acceptable housing alternatives. The Commissioner stressed that the rights to adequate housing of Travellers in Basildon have already been violated once. The authorities should ensure that no further violations take place, and work responsibly towards a solution that is acceptable for all.

Finally, the Commissioner called on the Secretary of State to deploy all efforts to raise awareness among local authorities about the UK obligation to respect the right to adequate housing for all, including Gypsies and Travellers, and to adopt concerted and sustainable solutions, respectful of cultural diversity.

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<sup>1</sup> This terminology refers to a heterogeneous group of persons in the United Kingdom who associate themselves with a Gypsy and/or Traveller identity, including Romany Gypsies and Irish Travellers.

The letter is available on the Commissioner's website together with the Secretary of State's reply.

***Letter to Secretary of State for Justice of the United Kingdom***

On 15 March, the Commissioner published a letter addressed to the UK Lord Chancellor and Secretary of State for Justice, Kenneth Clarke.

The Commissioner noted that despite some progress, the system of juvenile justice in the United Kingdom remains excessively punitive. The state's response to juvenile crime should focus more on rehabilitation. He stressed that the relative ease with which children are put in custody raises questions as to the compatibility of this approach with the European Convention on Human Rights and the UN Convention on the Rights of the Child.

This approach is counter-productive. Youngsters who are imprisoned tend to re-offend upon release; the re-offending rates remaining above 70% in the United Kingdom. Arrest, detention and imprisonment are in principle possible for minors above the minimum age of criminal responsibility, but should only be used as a measure of last resort and for the shortest period possible. Alternatives to imprisonment should be sought in order to improve the response to juvenile crime and violence. The Commissioner referred to some promising developments mentioned in the Lord Chancellor's reply to his letter and encouraged the authorities to continue their efforts to improve this situation.

The very low age at which children could be subject to criminal procedures remains a serious concern. The Commissioner recommended that the Government considerably increase the age of criminal responsibility to bring it to a minimum of 15 years, which is the average level in the rest of Europe.

Children accused of breaching Anti-Social Behaviour Orders are still dealt with in criminal courts. The Commissioner underlined that children should not be imprisoned as a result of breaching a civil order. The authorities should adopt alternative approaches. He hoped that the ongoing consultation process, referred to in the reply of the Lord Chancellor, will resolve this problem by ensuring that the breach of a civil order no longer leads to a criminal sanction.

The Commissioner was also concerned by the fact that the separation of juveniles from adult offenders is not always ensured in Northern Ireland. The recommendation of the Criminal Justice Inspection for Northern Ireland to move all children from Hydebank Wood Young Offenders Centre by April 2012 should be implemented. The Commissioner stressed that this is all the more necessary in the light of reports indicating that the mental health and educational needs of children are not met in that institution.

Children in Northern Ireland are also disproportionately targeted by stop and search operations by the police. Minors have been searched 2 500 times in the second half of 2011 alone. This trend risks weakening the trust between law enforcement bodies and citizens, including children. A review of this policy is therefore necessary.

Lastly, the Commissioner called for stronger protection of the privacy of young suspects, preventing cases of vilification of children in the press and avoiding the disclosure of criminal records, which have potentially grave consequences on a young person's opportunities in life.

The letter is available on the Commissioner's website together with the Secretary of State's reply.

***Letter to the Federal Councillor, Head of the Federal Department of Foreign Affairs of Switzerland***

On 28 March, the Commissioner published a letter addressed to Federal Councillor Didier Burkhalter, Head of the Swiss Federal Department of Foreign Affairs.

The Commissioner noted that manifestations of racism and xenophobia appear to be on the rise in Switzerland. Disturbing political campaigns with aggressive, insulting slogans against foreigners are tendencies of great concern. He stressed that while recognising the value and importance of an open political debate, it has to be made clear that freedom of expression is not absolute: hate speech violating the rights of others is unacceptable. The Swiss criminal law needs to be overhauled in order to put an end to impunity for xenophobic and racist public discourse.

The Commissioner added that to fully meet European and international human rights standards, Switzerland needs to strengthen its anti-discrimination legislation. A comprehensive law against discrimination would help overcome the persisting deficiencies, not only when it comes to the rights of non-nationals but also for the protection and promotion of gender equality, the rights of disabled persons and of lesbian, gay, bisexual and transgender persons.

The Commissioner also voiced concerns about a recent decision to limit migrants' right to family unity and about further proposals to make such family reunification in Switzerland even more difficult. The principle of respect for the family life of migrants, as reflected in the European Convention on Human Rights and the Court's case law, has for decades been part of the Swiss integration policies. It would be unfortunate if this positive tradition now were overturned, noted the Commissioner.

On the other hand, he welcomed the intention by the authorities to shorten the unduly lengthy asylum procedures, and introduce a comprehensive system of legal aid in order to safeguard fairness in asylum procedures. At the same time, the authorities were urged to make sure that no asylum seekers are transferred to Greece by virtue of the 'Dublin Regulation', in compliance with the European Court of Human Rights' case law that has made clear that asylum seeking and protection in Greece is currently impossible.

Lastly, the Commissioner underlined the need for independent and effective mechanisms of supervision, redress and prevention of human rights violations at all levels of the federal system. He stressed that Switzerland's human rights protection system would greatly benefit from the establishment of Ombudspersons in all cantons, complemented by a Federal Ombudsperson with a coordinative function and a long awaited National Human Rights Institution, adding that good practices to be drawn upon, such as the city ombudspersons of Zurich and Basel, already exist.

The letter is available on the Commissioner's website, together with the Federal Councillor's reply.

## **4. Themes**

### **Launch of the Turkish version of the Commissioner's book "Human rights in Europe"**

The Commissioner travelled to Istanbul from 18-19 January to launch the Turkish-language version of his collection of Viewpoints, or articles, "Human rights in Europe: no grounds for complacency" (*Avrupa'da İnsan Hakları*). Presenting the book, he referred to the main human rights challenges currently facing Europe, some of which also constitute important challenges in Turkey. The Commissioner referred to xenophobia and discrimination against many groups, including Roma, ethnic and religious minorities, migrants, LGBT persons and persons with disabilities. He described shortcomings in guaranteeing the rights of children and equality between women and men and highlighted the importance of protecting social and economic rights, particularly in times of economic crisis. He further referred to the need to ensure independent and effective justice systems and to promote media freedom and freedom of expression.

The Commissioner also participated in the commemorative event on the 5<sup>th</sup> anniversary of the murder of Hrant Dink, the editor-in-chief of the newspaper *Agos*. The presence of the Commissioner in Turkey also provided the opportunity for an extensive series of interviews. They touched upon a number of human rights issues which the Commissioner had previously highlighted in two reports he published following his visits to Turkey in 2011. These issues included the administration of justice and the need to strengthen the independence and impartiality of the judiciary. The interviews also covered freedom of expression extensively, including the need to protect journalists and prevent impunity of those responsible for attacks against them, issues which were highly in focus in public debate in Turkey at the time of the Commissioner's visit as a result of the judgment on the murder of Hrant Dink delivered by a Turkish court only a few days earlier.

### **Rights of persons with disabilities**

The Commissioner published two issue papers on the rights of persons with disabilities. The first deals with the right to legal capacity for persons with intellectual and psychosocial disabilities; the second with the right to live independently and to be included in the community. These issue papers contribute to efforts towards implementation of the UN Convention on the Rights of Persons with Disabilities (UNCRPD), which protects these rights respectively in its Articles 12 and 19.

The Issue Paper entitled "*Who Gets to Decide?*", published on 20 February, emphasises that legal capacity is the precondition to taking control over one's life as it enables us to make decisions in key areas such as our health, finance, voting and where and with whom we live. Without it, we are non-persons in the eyes of the law. However, this is precisely the situation of hundreds of thousands Europeans with intellectual and/or psychosocial disabilities, who are currently put under guardianship regimes.

The Issue Paper underlines the importance of the UNCRPD – and particularly its Article 12 on equal recognition before the law – in responding to this situation. This Article provides a paradigm shift in policies towards persons with disabilities and signals a deeper understanding of equality. The assumption of legal capacity, which all adults of majority age should enjoy, has to be extended to persons with disabilities. This approach redirects our focus away from personal deficiencies towards putting into place support that enables individuals to make decisions for themselves and expand their capacities to do so.

The bulk of European legal capacity systems are out-dated and in urgent need of law reform. The Issue Paper describes the challenges faced by Council of Europe member states in this field, including: the flaws of current guardianship systems and procedures; the automatic loss of human rights of those placed under guardianship regimes; and the need to develop support alternatives giving persons with disabilities equal opportunities to shape their life paths. It outlines the applicable international human rights framework, including the relevant case-law of the European Court of Human Rights and concludes with examples of good practice to show the way forward.

The Commissioner's Recommendations include: the ratification by member states of the UNCRPD and its Optional Protocol; a review of legislation in force on legal capacity; the ending of 'voluntary' placements of persons in closed wards and social care homes against the person's will but with the consent of guardians or legal representatives; and the active involvement of persons with intellectual and psychosocial disabilities and the organisations representing them in the process of reforming legislation on legal capacity and developing supported decision-making alternatives.

On 13 March, the Commissioner published the second Issue Paper, which deals with the right of people with disabilities to live independently and to be included in the community. This right, taken for granted for the majority of the population, has long been denied to persons with disabilities who have instead been segregated in institutions or in settings which isolate them from the rest of the community. It is a right which is still routinely violated throughout Europe, when people with disabilities do not receive the support that they need for full inclusion in their communities.

The Issue Paper underlines the close links between the right to live in the community and other fundamental rights, such as the rights to personal liberty, to freedom from torture and ill-treatment or to private and family life. The paper also shows the close link between the right to live in the community and the right to legal capacity, which is necessary for individuals to exercise their choice as to where and with whom to live. This is the reason for which the Commissioner decided to publish these two issue papers in quick succession.

The right to live independently and to be included in the community has been defined as a distinct right in Article 19 of the UNCRPD, and the issue paper recalls the evolution of the approach to the rights of people with disabilities which was behind this Article, as well as other international, and notably Council of Europe, standards.

Article 19 sets out three key elements for the respect of this right, namely: choice for the individual; individualised supports that promote inclusion and prevent isolation; and making services for the general public accessible to people with disabilities. Based on these elements, the issue paper describes the ways in which the right to live

independently and to be included in the community can be violated, from the most egregious (placement in institutions) to the more insidious forms (e.g., congregate settings which, while physically in the community, severely restrict the choices of the individual), as well as isolation due to inaccessibility of facilities such as schools, health care and transportation and lack of community-based support schemes.

The Issue Paper also underlines the importance of monitoring for the implementation of this right, and suggests a number of indicators and guidance questions which could contribute to efforts in this area.

Similarly to the Issue Paper on legal capacity, the Issue Paper on the right to live independently and to be included in the community is accompanied by a series of recommendations from the Commissioner, including: resolute action for complete deinstitutionalisation and transition to community based services; definition of a statutory and enforceable individual entitlement to a level of support below which one's dignity and ability to be included in the community would be compromised; measures to maximise the level of choice and control of persons with disabilities over their own lives; ensuring accessibility and inclusiveness of general community services; independent national mechanisms to monitor the implementation of this right with the full participation of persons with disabilities and their representative organisations.

### **Human rights of Roma**

The Commissioner published on 27 February a report on "Human rights of Roma and Travellers in Europe".

The report is the first comprehensive overview of the human rights situation of Roma and Travellers in all 47 member states of the Council of Europe. It focuses on specific themes, such as anti-Gypsyism; racially motivated violence; conduct of law enforcement and judicial authorities; forced sterilisations, removal of children from the care of their biological parents; economic and social rights; statelessness, and freedom of movement. The report also highlights the importance of increasing the participation of Roma and Travellers in public life and decision-making processes.

A number of concrete steps to be taken by governments are mentioned in the report, including providing targeted training to the police to prevent misconduct; desegregating schools and improving the quality of education received by Roma and Traveller children. The Commissioner also recommends that truth commissions be created – ideally as a Europe-wide undertaking – to establish the historical facts concerning the atrocities committed against the Roma people.

The Commissioner hopes the report will encourage a constructive discussion about policies towards Roma and Travellers in Europe, focusing on what must be done in order to put an end to the discrimination and marginalisation they suffer and to foster their social inclusion.

### **Post-war justice and durable peace in the former Yugoslavia**

On 19 March, the Commissioner published his Issue Paper on "Post-war justice and durable peace in the former Yugoslavia". The paper was presented publically at a launch event which took place in Sarajevo and was attended by around a hundred participants.

The Issue Paper deals with the process of post-war justice and the efforts aiming to establish durable peace in the region of the former Yugoslavia, following the armed conflicts in the 1990s characterised by “ethnic cleansing” and atrocities unseen in Europe since the Second World War. The paper focuses on four major components of post-war justice: the necessary measures for the elimination of impunity; provision of adequate and effective reparation to war victims; the need to establish and recognise the truth concerning the gross human rights violations and serious violations of international humanitarian law that occurred in the region; and the guarantees of non-repetition through necessary institutional reforms.

The Issue Paper provides an overview of the work of the International Criminal Tribunal for the former Yugoslavia (ICTY) whose groundbreaking work has focused on the prosecution and trial of the most senior leaders involved in war-related crimes. It highlights the ICTY’s subsidiary role and the need to establish and enhance efficient national judicial systems to enable them to work effectively towards the elimination of impunity in the region, a persistent problem despite the fact that most of the countries of the former Yugoslavia have reformed their judicial systems and established specialised war-crime courts.

Despite the efforts made to date there are still about 438 000 refugees and other displaced persons, including many stateless Roma, due to the wars in the 1990s. Durable solutions for these persons are necessary. Recent regional efforts to address forced migration and statelessness, with the support of the United Nations High Commissioner for Refugees (UNHCR), provide a basis for hope. Another specific group of post-war period victims are the approximately 25 000 “erased” in Slovenia. Efforts made so far by the government to tackle the issue have not met with much success and more human rights centred efforts are needed. In addition, the estimated 20 000 women who have suffered sexual violence during the wars in the region require particular attention from states and measures aimed at reparation, including rehabilitation.

Establishing and recognising the truth is one of the most important components of the transitional justice process. More efforts are necessary to counter the ignorance and denial of gross human rights violations, which is still prevalent in public and political discourse in the region. The Issue Paper addresses the truth-finding initiatives through various Truth and Reconciliation Commissions and Commissions for Missing Persons, as well as the catalytic role played by civil society, media and culture. Efforts in this area have been seriously hampered to date by persistent ethnic polarisation and divisions among politicians and populations, a situation which has been compounded by weak media activity on the matter.

In order to ensure genuine post-war justice and durable peace in the region, the states concerned must carry out institutional reforms, starting with their systems of justice on which the rule of law is based. The reinforcement of the independence and effectiveness of the existing national human rights institutions (human rights commissions, ombudsmen and comparable institutions) is also necessary. Lastly, education is noted as a vital sector that should be overhauled by the states in the region, drawing upon the expertise of the Council of Europe, in order to promote pluralism and combat persisting ethnic polarisation and discrimination.

The Issue Paper ends with concluding remarks and contains a number of concrete recommendations.

## **5. Other Meetings**

### **Speech to the European Court of Human Rights for the opening of judicial year (Strasbourg)**

On 27 January, the Commissioner made a keynote address at the Solemn Hearing of the European Court of Human Rights to mark the opening of the judicial year. The speech is appended to this report.

### **OSCE Permanent Council meeting (Vienna)**

On 2 February, the Commissioner addressed the Permanent Council of the OSCE in Vienna. Commissioner Hammarberg said that the priorities of the Council of Europe and the OSCE, especially in the human dimension, are similar, despite the differences in the two organisations' mandates. He mentioned the importance of taking good account of human rights aspects of addressing protracted conflicts in Europe and said that the Council of Europe stands ready to co-operate with the OSCE on this.

In his speech the Commissioner expressed concerns about the impact of the current economic crisis on human rights in Europe. He stressed that austerity budgets are undermining social rights and putting at greater risk vulnerable groups of people. Intolerance and xenophobia find fertile ground in this situation and a more serious discussion is needed for a preventive strategy which should include the role of the media and the education system.

Commissioner Hammarberg stressed that more attention needs to be paid to addressing human rights violations in the struggle against terrorism. He also emphasised the need to promote the right to peaceful assembly, as well as ensuring respect for national minorities.

Finally, he stressed that freedom and diversity of media are crucial for the development of a well-functioning democracy and observed that while the trend in participating states towards the de-criminalisation of libel is encouraging, other problems in this field, such as lack of media pluralism, still persist.

### **Seminar on human rights of LGBT persons (Helsinki)**

On 16 February, the Commissioner's Office addressed a seminar on the human rights of lesbian, gay, bisexual, transgender and intersex persons (LGBTI) in Helsinki, Finland. The seminar, organised by the Finnish Ministry for Foreign Affairs, was attended by officials from different ministries, government agencies and national human rights structures as well as researchers and civil society representatives. The representative of the Commissioner's Office presented the Commissioner's Recommendations issued in the Report "Discrimination on grounds of sexual orientation and gender identity in Europe" and discussed the implementation of European and international human rights standards in protecting LGBTI persons from discrimination.

### **Hearing on legal capacity legislation (Dublin)**

On 29 February, the Commissioner's Office participated in a hearing on legal capacity legislation in Dublin, organised by the Joint Committee on Justice, Defence and Equality of the Irish Parliament, Oireachtas. The representative of the Commissioner's Office presented the Commissioner's recommendations laid out in the Issue Paper "Who gets to decide? Right to legal capacity for persons with intellectual and psychosocial disabilities". The Joint Committee will prepare a report to the Irish Government on the reform of the Irish legislation on legal capacity in the context of the planned Irish ratification of the UN Convention on the Rights of Persons with Disabilities. An opinion editorial on the subject by the Commissioner was published by the Irish Times on 1 March. The Commissioner urged the Irish Government to recognise and develop supported decision-making alternatives for those persons with intellectual and psychosocial disabilities who want assistance in making choices or communicating them to others.

### **Amnesty Chair Lecture (Ghent)**

On 9 March, the Commissioner delivered the Amnesty Chair Lecture at the University of Ghent, Belgium. His speech focused on the need for a renewed commitment to human rights enforcement in Europe and is available on the Commissioner's website.

### **Conference on combating discrimination on grounds of sexual orientation (Strasbourg)**

On 27 March, the Commissioner addressed the Conference "*Combating discrimination on the grounds of sexual orientation or gender identity across Europe: Sharing knowledge and moving forward*" which was organised by the UK Chairmanship of the Committee of Ministers in Strasbourg. The Commissioner stressed the universality of human rights and the fact that lesbian, gay, bisexual and transgender (LGBT) persons were entitled to fully enjoy all human rights. He noted with concern recent attempts to curtail the freedom of expression of LGBT persons through legislative measures sanctioning people accused of "promoting homosexuality". The Commissioner also highlighted the particularly vulnerable situation of transgender persons and the hurdles they encountered in the official recognition of their gender identity.

## **6. Human Rights Defenders**

On 18 March 2012, the Office of the Commissioner organised a "Round-Table on post-war justice and durable peace in the former Yugoslavia". The round-table took place in Sarajevo on the eve of the launch by the Commissioner of his issue paper on the same subject. Participants were human rights defenders from Bosnia and Herzegovina, Croatia, Kosovo\*, Montenegro, Serbia, Slovenia and "the former Yugoslav Republic of Macedonia".

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\* Throughout this text, all reference to Kosovo, whether to the territory, institutions or population shall be understood in full compliance with United Nations Security Council Resolution 1244 (1999) and without prejudice to the status of Kosovo.

The round-table provided the opportunity to discuss the main points raised in the Issue Paper. It also allowed for a better understanding of the on-going initiatives carried out by the human rights defenders in the field of post-war justice. Civil society, including human rights organisations and defenders, play an essential role in this respect, as they have been gathering information, revealing evidence, co-operating with national and international institutions, organising educational campaigns and discussion, giving support to victims, and promoting accountability and reconciliation.

A report on the Round-Table will be issued in due course.

## **7. Communication and Information work**

The activities which received the most extensive media coverage were the publication of the report on Turkey, the release of the report on human rights of the Roma in Europe and the country visits.

The report on Turkey received high quality and large media coverage. Both national and international media have been reporting on it also after the very day of the publication as well as in conjunction with the Commissioner's presence at the commemoration of Hrant Dink's murder in Istanbul and the presentation of the Viewpoint book in Turkish (The Economist, New York Times, The Financial Times, BBC, The Wall Street Journal, Le Monde, CNN, Today's Zaman, Neue Zürcher Zeitung, Hürriyet, ANSA The Guardian, NTV, Voice of America, Bianet, Sabah, Milliyet, Cumhuriyet, Hürriyet Daily News, Europa Press, Pan Armenian Net, The Journal of Turkish Weekly, GuncelEkonomi). Coverage of the report's findings continued in February (Deutsche Welle, Today's Zaman Voice of America, Reuters).

Roma rights was a highly covered topic, in particular in connection with the release of the human rights of Roma in Europe and the letter addressed to the UK Secretary of State for Communities and Local Government on the situation on the situation of Gypsies and Travellers (Express, Kormany, Daily Mail, Kristeligt Dagblad, The Huffington Post, Morning Star, Press TV, Swedish Radio, The Independent, Swedish Television, Trouw, Agence Europe, Actu24, ANP, Romea, Spits, Elsevier, Immigrazioneoggi, Dagelijksestandaard, Telegraaf, The Parliament, EUObserver, Die Tageszeitung-EPD, České noviny, Romano Vod'! Radio Prague, The Irish Examiner, Dagen, Xinhua, AFP, Swedish Radio, Europaportalen, SIR New Europe, Correio da Manha, L'Alsace). An opinion editorial on the Gypsies and Travellers in the UK was published on The Independent. Il Corriere della Sera published an article on the Roma in Italy mentioning the Commissioner's work. European Voice published an opinion editorial on the need to recognised past atrocities committed against the Roma. LIFEPR and EPD referred to the prize Commissioner Hammarberg would receive in Berlin and Mundi Romani praised his work and engagement to defend the human rights of the Roma.

The letter to the Minister of Foreign Affairs of Hungary and its press release also received large coverage, in particular from news agencies with an international reach (DPA, AFP, EFE, BBC, ANSA, Die Zeit online, Focus online, Luxemburger Wort, Times of Malta, La Gaceta, Salzburger Nachrichten, Le Vif, Il Sole 24 Ore, ASCA, MTI, Deutsche Welle, InfoRádió, Oman Observer).

The visit to the Republic of Moldova was also extensively covered mainly by national media (Infotag, TV7, Radio Chisinau, Moldpres, Prime, Timpul, Olvia press, SIR, RFE, Adevarul).

The visit to Andorra was largely covered by the national press and TV, triggering also a debate on the Commissioner's recommendations which went on after the visit (El Periodic, Diari d'Andorra, EFE, Andorra Television, Bondia, ANA). The same goes for the visit to Liechtenstein, which was well covered nationally (Vaterland, Volksblatt, SIR).

Extensive coverage was also given to the visit to Switzerland and the letter addressed to the Swiss authorities recommending enhancing efforts against discrimination. The main national media covered it (Der Bund Schweizer Fernsehen, La Tribune de Genève, Ticinonews online, Aargauer Zeitung, SDA/ATS, Basler Zeitung, Tagesanzeiger, Berner Zeitung, Le Temps, Le Matin, Swissinfo, Ticinolive, Albinfo.ch, RTS, Tageswoche, The Local, SR DRS, Neue Zürcher Zeitung, L'Express, L'Impartial, IDN, RSI).

The annual report and the address to the Permanent Council of the OSCE also attracted wide media attention, focusing mainly on the increase of racism in Europe (A1 plus, SVT, AFP, Agenzia Parlamentare, Life PR, Tele Sur, RFE, SDA/ATS, France TV info, ANP Infonet, Agencia Cubana de Noticias, The Financial, Charter 97, AGENPARL, Armenpress).

The Commissioner's position concerning the enforcement of the ruling on Abu Qatada was published in an interview with The Guardian, later mentioned by the Daily Mail. A presentation of the Commissioner's work, also in respect of the UK, was published by the website justice.org.

Some Spanish media also covered the publication of the issue paper and human rights comment on the rights of persons with disabilities (El Periodico de Catalunya-El Periodico Mediterraneo-El Periodico de Aragon-El Periódico Córdoba, EFE, Europa Press, Cronica Social). An opinion editorial on this topic was published on The Irish Time.

To Vima published an interview with the Commissioner on the situation of migrants in Greece, which was also referred to by the AFP.

The report on Ukraine was covered by ITAR-TASS, Ukrainian News Agency, Kyiv Post-Interfax, UKRINFORM. An exclusive interview was published by Kommersant.

AFP, Al Jazeera, Reuters, BIRN, STA, HINA, Emg, Voice of Serbia, Tanjug, Gulf Times featured news and interviews about the need to tackle war legacy in the Balkans. BIRN also published an op-ed by the Commissioner on this issue.

Further coverage concerned the reform of the Court and the Commissioner's comments on the speech of the UK Prime Minister before PACE (The Guardian), Russia (The Moscow Times), Azerbaijan (Pan Armenia Net), Georgia (The Georgian Times), Tymoshenko's detention (Ukrainian News), sterilisation requirements for transgender persons in Sweden (PinkNews), the letter to the authorities of Bulgaria (BTA, Novinite), detention conditions in France (CNN), media freedom (EFE, CPJ Press Freedom News), counter-terrorism in Bosnia (Europa Press), the general human rights situation in Europe

(Swedish TV and The National), migration (The National), conscientious objection (Bianet, Neue Zürcher Zeitung), racism (L'Expression), trafficking in human beings (Estonia Public Broadcasting and Eesti Päevaleht), LGBT (Yagg and JydskeVestkysten), the need to disclose the truth on the CIA detention centres (ASCA and EFE).

A thematic webpage on post-war justice and durable peace in the region of the former Yugoslavia was published on 16 February.

The following Human Rights Comments have been published during the period concerned:

Government leaders distort justice when they interfere in individual court cases (20 March)

Persons with disabilities have a right to be included in the community – and others must respect this principle (13 March)

Persons with intellectual and psycho-social disabilities must not be deprived of their individual rights (20 February)

The right to conscientious objection to military service should be guaranteed in all parts of Europe (2 February)

Discriminatory policies towards elderly people must stop (19 January)

## Appendix

CommDH/Speech(2012)1  
English only

### ***The Court of Human Rights versus the “court of public opinion”***

Remarks by Thomas Hammarberg,  
Council of Europe Commissioner for Human Rights

**Solemn Hearing of the European Court of Human Rights**  
Strasbourg, 27 January 2012

President Bratza,  
Members of the Court,  
Excellencies,  
Ladies and Gentlemen,

Thank you for inviting me to this event today, marking the opening of the Court’s judicial year.

The last time I had the honour to speak in this very room was during a hearing before the Grand Chamber on the case of *M.S.S. v. Belgium and Greece*. That was in fact my first oral intervention here.

On that case the Court delivered a judgment a few months later which had wide-ranging consequences for the protection of the human rights of asylum seekers in Europe: it recognised that the living conditions asylum seekers had to endure in Greece amounted to degrading treatment.

In response several member states then suspended returns of asylum seekers to Greece. The findings of the Court also prompted more calls within the European Union for a rethink of the ‘Dublin Regulation’ itself.

#### *The significance of the Court*

I have now served as Commissioner for Human Rights for almost six years. I have travelled all over the European continent. I have visited police stations, courts, penitentiary institutions, refugee camps, Roma settlements, shelters for battered women and care institutions for both disabled children and adults.

At the same time I have had discussions with active civil society groups, ombudsmen, equality commissions, prosecutors, judges and other representatives of the judicial system as well as with local politicians, parliamentarians and, of course, Government leaders, ministers and other governmental representatives.

Based on these experiences I can testify to the enormous importance of this Court.

- One. The Court is certainly important for *individual victims* who are given an opportunity to obtain justice when this is denied at home. This is also a relief for the families of the actual victims, who are in many cases victimised themselves.

- Two. The fact that such Court decisions *oblige national authorities themselves to take concrete action to remedy the violations committed against individual victims* is crucial. An example is set when a mistake is corrected by the same authorities which previously failed.

- Three. There is, moreover, an essential preventive dimension in the way the system works. Court decisions remind governments about the *need for changes to laws and procedures* to avoid future violations of the European Convention. I can testify that this dimension is in fact taken seriously by decision makers in most member states.

- Four. The *interpretative authority (res interpretata)* of the Court's judgments is also important. National legislators and courts must take into account the Convention as interpreted by your Court – even in judgments concerning violations that have occurred in other countries. In all European states, law, policy and practice are now heavily influenced by the Court's decisions.

- Five. There is one more dimension to highlight, which is somewhat difficult to define but no less important. The fact that an individual can appeal to an international court when he or she feels let down by the domestic justice system and that governments will have to listen to the response of this body – on the case itself and on the system at the origin of the case – has a broader psychological effect. In short, it gives *hope* to quite a number of people – not only to those who file complaints or want to do so, but to many others as well.

The mere existence of such an international court - principled, impartial and fair in its procedures and rulings - is an encouragement for people working for human rights throughout the continent. I have noticed that this Court is an inspiration for people and courts outside Europe as well. Indeed, its judgments are looked upon by superior courts all over the world.

#### *Essential features of the European system*

I hope these aspects of the system will not be forgotten in the ongoing discussion about the need to reform the Court. In spite of my enthusiasm I do agree that changes are needed - in order for the Court to be able to cope with its workload and for it to play its role as the supreme interpreter of the European Convention in a truly competent manner.

However, everything that I have learned has made me believe that there are some features of the system which definitely must be protected through the reform process. One is the possibility of individual petition. Another is the principle of collective guarantee. A third one is the notion of the Convention as a "living instrument", allowing the Court to make dynamic interpretations of the rights set forth in the Convention.

The right of *individual petition* – giving an individual the right to seek justice, as a last resort, at supranational level – should in my opinion remain a key characteristic of the European human rights protection system.

There is deep concern among human rights organisations that this right will be undermined by the reform process. Even the less dramatic proposals such as introducing a fee or requiring communications via a professional attorney have met their opposition. This is understandable, as the individuals most in need of protection may lack economic resources or access to lawyers.

The dilemma is of course how to combine the principle of individual petition with an effective "filtering" mechanism which would make it possible for the Court to focus on the key problems - and with limited delays. This is clearly one of the major issues for the reform process and I notice that positive steps are already being taken by the Court itself to square this circle.

Another essential feature of the system which should be protected is the inter-state dimension. The Convention is built on the notion of a *collective guarantee*. This could be described as a

reciprocal agreement between the state parties based on the understanding that they - and their people - all have an interest in the protection of human rights, including in other states, and an interest in safeguarding the rights of individuals throughout Europe.

I am convinced that this idea that we all benefit when human rights are respected all over the continent has become even more important with time. Less than ever are the nation states isolated from their neighbours – I do not need to mention the obvious link between human rights and peace; or the relationship between human rights and migration; or the simple fact that each and every state nowadays has citizens in other countries.

The principle of collective guarantee is also reflected in the peer approach to the monitoring of the execution of Court decisions - by the member states together in the Committee of Ministers. The possibility in the Convention for inter-state complaints is another reflection. However, most important in my view is the very spirit: that we are in this together.

A consequence of this attitude is that all member states should be concerned when the Convention is violated in another country and, also, that every member state should accept that they themselves may be subject to the Court's procedures. No government is given immunity and member states are not divided into categories; they must all, as a matter of principle, be treated equally, according to the same standards. Those with better systems at home will have fewer problems in Strasbourg.

I mentioned the notion of the Convention as a "living instrument" and argued that this approach should also be protected. The fact that the Court has established a practice of *dynamic interpretations* is indeed crucial for its relevance.

After all, our societies have developed enormously in the past six decades. One example is the revolutionary changes caused by new information technologies. In other areas too, totally new human rights issues have emerged since the Convention was first drafted - problems which were unknown at the time.

The Court has of course received complaints through the years on human rights violations which are not specifically mentioned in the Convention and its response has been to apply the principles of the Convention to these new situations. Any other approach would have limited the usefulness of the Convention and the Court's procedures.

It should, however, be admitted that this is a difficult task and a genuine challenge to the wisdom of the judges. This is particularly the case when it comes to the development of attitudes in society which may, to complicate the matter further, also differ considerably between member states. Of course, the possibility of having additional protocols drafted, adopted and ratified does exist but would not meaningfully address this problem in all its depth.

However, I do consider that the Court on the whole has handled this challenge in a proper manner. Criticisms about "judicial activism" or arbitrariness have really not been fair. The approach has been serious. The judges have not introduced just personal ideas; they explore whether there is a consensus on such cases in the superior courts in the member states; they analyse decisions of other international jurisdictions; and they take into account, when relevant, treaty developments in the UN.

#### *Rulings of particular interest and relevance*

The image and reputation of the Court is of course primarily influenced by its actual rulings on controversial issues – and media reactions to these decisions. The British newspaper *The Guardian* carried the other day an editorial with the headline: "European court of human rights: Judgment day". Yes, the article did describe two Court decisions, but the word "judgment" referred to something else.

The editorial started with these words: “In the dock at the court of public opinion was Europe’s human rights framework”. It turned out that the paper in this particular case felt that the Court had in fact passed the test. It even wrote that the judges showed themselves to have been hard-headed, principled and pragmatic.

Not every institution manages to be praised in the media for being, at the same time, both principled and pragmatic...

The “court of public opinion” is indeed a challenge – and primarily for responsible politicians in member states. It may be tempting to exploit populist media reactions against inopportune, though principled Court decisions, but I think that those who know better should instead seek to clarify the role of the Court and the legal issues at stake.

The Court itself should not be forced to enter into discussions on this level.

Let me refer to some decisions of the Court which may have been controversial but have had a particular significance for the promotion of justice on our continent. I already mentioned the landmark decision on the ‘Dublin Regulation’. There have been other key decisions preventing the deportation of people to countries where they are at risk of torture or other ill-treatment.

Decisions on cases of *discrimination against Roma people* have been particularly helpful in my own efforts to promote the rights of individuals within this heavily abused and disadvantaged minority. One example is the Court’s positions on the rights of Roma children to enjoy education without discrimination.

The fact is that Roma children in a number of countries are disproportionately represented in schools for children with intellectual disabilities. They can also be sent to mainstream schools which are Roma-only, or to Roma-only classes in mixed schools. In all cases, the tendency is that they receive sub-standard education.

The Court has addressed these aspects in three important judgments: against Greece, for non enrolment; against Croatia, for separate classes; and against the Czech Republic, for routinely putting Roma children in schools for people with intellectual disabilities. The standards these decisions have set are binding on all states; they should all make sure that their practices are in line with these judgments.

The judgment in the case of *A. v. the United Kingdom* was in my view another landmark decision. It was the first ruling on parental corporal punishment and one of the relatively few cases brought before the Court by a child applicant. The judgment required the state to provide children, as vulnerable individuals, with adequate protection, including effective deterrence, against degrading punishment. The conclusion in this case was that repeated, forceful hitting of a child was in breach of Article 3 of the Convention.

During the last two decades the Court has also taken steady steps to address problems related to homophobia and transphobia. A major result is that homosexuality is now decriminalised across Europe and there is a new awareness of the situation of transgender people.

Article 14 of the Convention has rightly been interpreted to cover discrimination on grounds of *sexual orientation and gender identity*. The Court has acknowledged that the right to respect for family life under Article 8 of the Convention also covers same-sex couples. This opens up new perspectives for the recognition of the human rights enjoyed by members of LGBT families, including children.

Another area in which particularly crucial decisions have been made is the human rights of *persons with disabilities*. The Court has made the point that persons with mental health problems

or intellectual disabilities tend to be vulnerable and have in many cases suffered considerable discrimination throughout their lives. In view of the long-standing prejudices against them, it is particularly important to avoid further social exclusion.

In 2010 the Court examined the banning in Hungary of such individuals from taking part in general elections. The Court found such a blanket, automatic ban to be inadmissible. An indiscriminate removal of voting rights based solely on a mental disability requiring partial guardianship was found not compatible with the European Convention and the fundamental democratic principle of universal suffrage.

The blanket denial of *voting rights for prisoners* is another important issue which the Court has dealt with - and thereby provoked a judgment by the “court of public opinion”, or at least by the tabloid press in one particular member state.

In fact, the Court has given a wide margin of appreciation to member states on this issue: it has left to them to determine which categories of prisoners, if any, could be deprived of the right to vote and how to apply the agreed criteria for such decisions. I am aware that a case on this issue is still pending before the Grand Chamber.

It is very useful that this issue has come up for Europe-wide discussion. The matter itself is of great principal importance and practices vary widely between the member states.

My own opinion is that if the deprivation of voting rights is to be introduced as a punishment there should be a logical connection between the offence and this particular sanction. Furthermore, such decisions should be individual, for the duration of the imprisonment only and be based on a judicial procedure.

The principle of universal suffrage is, after all, a cornerstone of democracy; there should be extremely strong reasons for depriving anyone of the right to vote. This right symbolises belonging to the human community. We are no longer excommunicating from our societies people who are “unwanted”.

This is also a question of purpose. It can hardly be argued that disenfranchising prisoners would deter crime or facilitate the reintegration of convicts after release into a normal, law-abiding life in society.

In fact, a large number of member states do indeed allow imprisoned citizens to vote and I have noticed that there is no public pressure in those countries to change this policy.

#### *Non-implementation of judgments – and the consequences*

Of course, some judgments are not welcomed by the governments concerned. This is obviously one reason why Court decisions are implemented slowly or not at all. Non-execution is indeed a major problem in the current system.

Though the majority of member states do comply with the Court’s decisions, there are some which are strikingly slow to abide by their obligation to execute the judgments. Some important Court decisions have remained unimplemented after several years despite guidance given by the Committee of Ministers.

This is unacceptable. It is another injustice against the individual whose rights had been endorsed by the Court. It undermines the credibility of the protection system as such.

It is also one of the roots of a very concrete problem for the Court itself: it tends to cause so-called ‘repetitive applications’ – new applications coming in on issues which have already been

the subject of Court decisions and therefore should have been resolved by the respondent member states.

These 'repetitive applications' contribute to the overloading of the Court, which in turn creates the risk of delayed decisions in general. This is a situation which produces a number of negative chain-effects.

I am sad to report that I have met people who have declared that they have decided not to bring their urgent case to the Court because they felt they could not wait so long for a judgment. This is particularly problematic in cases where the potential applicant fears harassment after having filed his or her complaint.

I have in fact received information about threats against applicants because of their complaints to Strasbourg. This is intolerable. As the Court has stated, applicants or potential applicants should be able to communicate with it freely, without being subjected to any form of pressure from the authorities to withdraw or modify their complaints.

*Violations should be remedied at home*

The Court is overloaded. As you know, more than 60,000 new applications were filed last year and the number of pending cases is now over 150,000.

It must be stressed that the problem is not that people complain, but that many of them have reasons to do so.

In more than 80 per cent of the judgments delivered since 1959, the Court has found at least one violation of the Convention by the respondent state. The main reason why the Court is overloaded is that people have found that justice could not be obtained at home.

The obvious answer is that much more must be done to protect human rights at home, at the domestic level.

The European system was never intended to act as a long-term substitute for national mechanisms – quite the reverse. Each individual should be able to seek and receive justice at home, in line with the principle of subsidiarity. Recourse to an international court should be seen for what it is – essentially a failure to provide proper national remedies.

The problem is that the judicial processes in European countries are far from perfect. In fact, many of the complaints to the Strasbourg Court relate to excessively slow proceedings and to the failure of member states to enforce domestic court decisions. In several European countries, court decisions are often enforced only partly, after long delays, or sometimes not at all. Flawed execution of final court decisions must be seen as a failure to uphold the rule of law.

Domestic courts themselves are not functioning as they should in a great number of states, and former communist countries in particular have been slow to develop a truly independent and competent judiciary. Corruption and political interference are undermining public trust in the system.

In several European countries there is a widespread belief that the judiciary is corrupt and that the courts tend to favour people with money and contacts. Though this perception may sometimes be exaggerated, it should be taken seriously. No system of justice is effective if it is not trusted by the population.

While there has also been some progress, I have observed that the independence of judges is still not fully protected in some of the countries I have visited. Political and economic pressures still appear to influence the courts in some cases. Ministers and other leading politicians do not

always respect the independence of the judiciary and instead signal to prosecutors or judges on what is expected of them.

In other words, more needs to be done in order to implement the Convention through the national courts. After all, the Convention is part of the law of the land in all member states. This is expressed in different manners, an interesting model being the Human Rights Act in the United Kingdom.

On a positive note, let me also mention the significant impact of the various national human rights structures such as parliamentary ombudsmen, equality bodies, data protection commissioners, children's ombudsmen, police complaints commissions and other similar mechanisms. When they are allowed to act truly independently, they have the potential to improve the human rights situation considerably.

Building a human rights culture also requires governments to introduce policies which encourage freedom and pluralism of the media and the emergence of active civil society groups.

For me the problems of the Court are primarily symptoms of a deeper crisis: human rights principles are still not taken sufficiently seriously in our member states. This, in turn, underlines the essential linkage between the Court and other parts of the Council of Europe.

*What future for the Court?*

However, this is not an excuse to slow down the reform process of the Court itself.

In fact, this process is ongoing and the Court is self-reforming. As President Bratza pointed out, it has adopted a prioritisation policy to concentrate resources on the cases which will have the most impact on securing the goals of the Convention. The adoption of Protocol 14 has made it possible to decide on admissibility through a single judge procedure and this has already helped to speed up the process.

It is also important to avoid that the outside pressure to reform turns into a numbers game. The focus must be on quality rather than on quantity. Well reasoned judgments on key issues are the particular strength of this Court. High quality interpretations of the Convention should be the highest priority.

My emphasis on the need for reforms at national level means that the further development of contacts and dialogues with the national courts is essential and will certainly have positive chain effects – including on the workload.

Improved information on the Court and its proceedings is essential and the new guide and video on admissibility are welcome developments. Such information should be a preoccupation for the whole of the Council of Europe – including its field offices – but of course also for the domestic structures in member states. With time this may well reduce the number of ill-founded applications. But more importantly, it will contribute to the building of a more solid human rights culture in our Europe.

What about the judgment of the “court of public opinion”?

We should not be nervous. That “court” has other “judges” than the tabloid press – and these “judges” rule in favour of our Court.

In fact, they regard it as invaluable; they want it to have sufficient resources and they are ready to provide constructive advice for its future work.

Thank you.