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REPORT

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COMMISSIONER FOR HUMAN RIGHTS OF THE
COUNCIL OF EUROPE

**FOLLOWING HIS MISSION IN KYIV, MOSCOW
AND CRIMEA**

FROM 7 TO 12 SEPTEMBER 2014

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INTRODUCTION

1. Commissioner Nils Muižnieks and his delegation carried out a mission to Kyiv, Moscow and Crimea¹ from 7 to 12 September 2014.² The present report represents an overview of the issues which have been discussed during his mission.
2. The Commissioner would like to thank the authorities of Ukraine and the Russian Federation for their co-operation and efforts to ensure that his mission was carried out in full compliance with his mandate. In particular, he would like to express his gratitude to the Permanent Representations of both countries to the Council of Europe, as well as the respective Ministries of Foreign Affairs for facilitating this mission. The Commissioner would also like to thank the Council of Europe Offices in Kyiv and Moscow for their valuable help and assistance provided in the course of this mission. More generally, the Commissioner would like to thank all of his interlocutors for their valuable contributions and willingness to share their views on human rights issues.

1 KYIV (7-8 SEPTEMBER 2014)

3. In Kyiv, the Commissioner had meetings with the Minister of Foreign Affairs, Mr Pavlo Klimkin; the Deputy Minister of Justice, Ms Inna Yemelianova;³ the Parliamentary Commissioner for Human Rights (Ombudsperson), Ms Valeria Lutkovska, as well as representatives of civil society organisations, including those representing the interests of persons displaced from Crimea.
4. Issues discussed included the situation of displaced persons in Ukraine;⁴ judicial and police reforms; the need to ensure accountability for serious human rights violations, in particular those which have occurred since December 2013, as well as the importance of combating impunity as part of the reconciliation process.
5. The Commissioner welcomed the ceasefire agreement signed in Minsk on 5 September 2014 as an important step towards improving the humanitarian situation in the east of Ukraine. However, he expressed concern to his official interlocutors about the provision related to the adoption of an amnesty law. He received assurances that the relevant legislation will be compliant with international human rights standards, which require that those responsible for serious human rights violations be brought to justice.
6. The Commissioner also had an in-depth discussion with various interlocutors as to the best ways of ensuring a more systematic approach towards working on human rights issues in

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

² The Commissioner was accompanied by Ms Isil Gachet, Director of his Office, Ms Bojana Urumova, Deputy to the Director, and two Advisers, Ms Olena Petsun (Kyiv and Moscow only) and Mr Vahagn Muradyan.

³ Ms Yemelianova has since resigned from the function of Deputy Minister of Justice.

⁴ According to figures provided by UNHCR, the number of displaced persons in Ukraine as of 16 October 2014 was 417 246, including 398 467 from the east and 18 779 from Crimea. See also in this regard the [letter](#) the Commissioner sent to the Prime Minister of Ukraine, Mr Arseniy Yatsenyuk, on 27 June 2014 (published 17 July 2014), in which the Commissioner outlined his main concerns regarding displaced persons in the country and made recommendations aimed at improving their situation.

Ukraine. To this end, he encouraged his interlocutors to consider the development of a national human rights action plan in order to better address the most pertinent issues.

2 MOSCOW (9 SEPTEMBER 2014)

7. In Moscow, the Commissioner had meetings with Mr Alexander Konovalov, Minister of Justice; Mr Aleksey Meshkov, Deputy Minister of Foreign Affairs; Ms Ella Pamfilova, Commissioner for Human Rights of the Russian Federation (Ombudsperson); Mr Leonid Slutsky, member of the State Duma and Vice-Chairperson of the delegation of the Russian Federation to the Parliamentary Assembly of the Council of Europe; and various civil society organisations. The Commissioner also met a delegation of Amnesty International, headed by its Secretary General, Mr Salil Shetty.
8. The issues the Commissioner discussed in Moscow included the situation of human rights defenders in the light of the implementation of the legislation on non-commercial organisations (“Law on foreign agents”); on-going reforms in the penitentiary and judicial systems; as well as certain aspects of the implementation of the judgments of the European Court of Human Rights. With the Commissioner for Human Rights, the discussion was focused on possible ways and potential areas for co-operation in the future.
9. The Commissioner noted with concern the increasingly challenging environment in which human rights defenders carry out their work in the Russian Federation. The recently-adopted amendments introducing changes to the legislation on non-commercial organisations pertaining to registration as a “foreign agent”⁵ did not address the main concerns of the Commissioner, as expressed in his [Opinion](#) on the legislation of the Russian Federation on non-commercial organisations in light of Council of Europe standards. The Commissioner expressed his readiness to continue discussions with the authorities on this and other relevant issues.

3 CRIMEA (10-11 SEPTEMBER 2014)

10. In Simferopol, the Commissioner had a joint meeting with Mr Oleg Belaventsev, representative of the President of the Russian Federation in the region, Mr Sergei Aksionov, the current leader of the region, Mr Vladimir Konstantinov, speaker of the local legislative body, Ms Natalya Poklonskaya, in charge of the prosecutorial authorities, as well as Mr Iskander Bilialov and Mr Remzi Ilyasov, members of the Mejlis of Crimean Tatars. He also had an exchange of views with the local Ombudsperson, Ms Lyudmila Lubina. Furthermore, he held discussions in Simferopol and Bakhchisaray with representatives of the Mejlis of Crimean Tatars, including Mr Akhtem Chiygoz, Deputy Chairman of the Mejlis, and met several representatives of civil society, lawyers, journalists, and religious leaders.
11. Issues raised by the Commissioner in his discussions in Simferopol and Bakhchisaray covered the following: accountability for serious human rights violations, including efforts to combat

⁵ On 23 May 2014, the State Duma adopted new amendments to the legislation in question allowing the Ministry of Justice to register non-commercial organisations in the Registry of the non-commercial organisations performing functions of a foreign agent without their consent (previous legislation provided that the organisations concerned should themselves apply to be registered if they correspond to the criteria specified in the law). On 28 May 2014 the Council of Federation endorsed those amendments, and on 4 June 2014 they were signed into law by the President of the Russian Federation. As of 17 October 2014, 15 organisations were listed in the above-mentioned Registry (<http://unro.minjust.ru/NKOForeignAgent.aspx>).

impunity; status of “self-defence” forces; conditions of detention and the possible transfer for humanitarian reasons of persons who are currently imprisoned in the region (both sentenced and remand); national and other minorities; nationality-related issues; and the situation of human rights defenders. Issues relating to Crimea were also addressed during the Commissioner’s meetings with the Ombudspersons and civil society representatives in Kyiv and Moscow.

3.1 HUMAN RIGHTS SITUATION IN CRIMEA

3.1.1 ACCOUNTABILITY FOR SERIOUS HUMAN RIGHTS VIOLATIONS

12. The Commissioner for Human Rights received reports from international organisations and human rights groups about cases of deaths and disappearances under suspicious circumstances which occurred after February 2014 in Crimea.⁶ During his stay in Simferopol, the Commissioner had an opportunity to discuss those matters with lawyers and civil society representatives and subsequently raised five specific cases (two deaths and three cases of missing persons) at his meeting with the local leadership.⁷
13. One of the above-mentioned cases involves Reshat Ametov, who was reportedly last seen at a protest on the main square in Simferopol on 3 March 2014. He was allegedly then led away by three men in military-style jackets, and footage of the incident was shown on the Crimean Tatar television channel ATR. His body - reportedly bearing signs of ill-treatment - was found on 16 March 2014 at a locality 67 km east of Simferopol, in the village of Zemlyanichne (Bilohirsk district).⁸ The circumstances of Mr Ametov’s disappearance and death have not been clarified to date. The local prosecutorial authorities informed the Commissioner that the investigation was still ongoing and that 300 expert examinations had been carried out. The Commissioner considers that all relevant video recordings purportedly showing Mr Ametov being taken from the site of the 3 March protest should be subject to an expert analysis. Further, steps should be taken to identify the three men shown in those videos, and to question them.
14. Another case concerned a 16-year old student, Mark Ivanyuk, who died under unclear circumstances on the highway Chernomorskoe-Olenevka on 21 April 2014. While the leadership in the region released information that the death was due to a hit-and-run car

⁶ OSCE/HCNM and OSCE/ODIHR, Ukraine, Human Rights Assessment Mission: Report on the Human Rights and Minority Rights Situation, March-April 2014, <http://www.osce.org/odihr/118476?download=true>, UN OHCHR Reports on Human Rights Situation in Ukraine, <http://www.ohchr.org/en/countries/ENACARegion/Pages/UAIndex.aspx>, Reports by the Crimean Field Mission on Human Rights, <http://crimeahr.org/ru/standpoint>. The Crimean Human Rights Field Mission is a joint initiative of several human rights organisations from Ukraine and the Russian Federation.

⁷ A case not raised by the Commissioner during his stay in Simferopol, but which has been referenced in reports by OHCHR and the Crimean Field Mission, is that of Vasyl Chernysh, a resident of Sevastopol and Avtomaidan activist who went missing on 15 March 2014. See Office of the United Nations High Commissioner for Human Rights, Report on the human rights situation in Ukraine, 16 September 2014, §178, http://www.ohchr.org/Documents/Countries/UA/OHCHR_sixth_report_on_Ukraine.pdf, as well as *Krymskaya polevaya missia po pravam cheloveka, Kratky obzor situatsii po Krymu*, June 2014, page 5, and July-August 2014, page 6 (http://crimeahr.org/sites/default/files/crimea_field_mission_report_june_2014.pdf and http://crimeahr.org/sites/default/files/otchet_krymskoy_polevoy_missii_-_iyul-avgust_2014.pdf).

⁸ Cf. in this regard Human Rights Watch (18 March 2014) *Crimea: Disappeared Man Found Killed*, www.hrw.org/news/2014/03/18/crimea-disappeared-man-found-killed.

accident,⁹ certain media reported that the person's mother had alleged police involvement in his death.¹⁰ When the Commissioner raised the case, Ms Poklonskaya indicated that the local prosecutorial authorities were not aware of it.

15. The Commissioner also enquired about the cases of three local civil society activists, Leonid Korzh, Timur Shaimardanov, and Seiran Zinedinov, who went missing at the end of May 2014 (respectively, since 22, 26, and 30 May). Mr Shaimardanov and Mr Zinedinov are included in the publicised list of missing persons.¹¹ According to information provided by the prosecutorial authorities in a letter dated 31 July 2014 addressed to the Crimean Human Rights Field Mission, criminal proceedings have been opened in connection with the disappearances of Mr Shaimardanov and Mr Zinedinov, while the disappearance of Mr Korzh has not been confirmed and additional verifications in this regard have been ordered.¹² After the mission, the Commissioner became aware of reports about the abduction by uniformed men of Islyam Dzhapparov and Dzhevdet Islyamov on 27 September 2014 near the Simferopol – Feodosia highway.¹³ The men were placed in a minibus and taken in an unknown direction, and criminal proceedings have been opened in relation to their abduction.¹⁴
16. A contact group on missing persons had its first meeting on 14 October 2014 with the leader of the region, Mr Aksionov, and investigative authorities. The contact group includes victim representatives and its coordinator, Mr Mammot Mambetov, is a Crimean activist. According to a press release issued by the contact group following the aforementioned meeting, the representative of the investigating authorities, Mr Bogdan Frantsishko, had indicated that criminal proceedings into the premeditated murders of Mr Shaimardanov and M Zinedinov had been initiated. Further, criminal proceedings had been initiated into the abduction of Mr Dzhapparov and Mr Islyamov.¹⁵
17. During his meeting with the regional decision-makers, the Commissioner highlighted the need to ensure prompt, effective and adequate investigations into all cases of serious human rights violations, while emphasising that those cases which fall under Articles 2 and 3 of the European Convention on Human Rights should be treated as a priority. All investigations should be conducted in compliance with the principles established in the case-law of the European Court of Human Rights. One of the most important of these elements is independence: it is a very basic principle that those involved in the operational conduct of an investigation should be independent from those who may be implicated. Furthermore, investigations must be thorough and all reasonable steps must be taken to secure evidence concerning the incidents in question, including identifying and interviewing the alleged suspects and eyewitnesses, and victims (in cases of possible Article 3 violations), seizing

⁹ Cf. in this regard <http://82.mvd.ru/news/item/2167514/>.

¹⁰ <http://www.segodnya.ua/politics/society/mat-pogibshego-v-krymu-16-letnego-parnya-moego-syna-ubili-iz-za-ukrainskogo-yazyka-516091.html>

¹¹ See <http://82.mvd.ru/citizens/Rozisk/rubric/1/?page=1>, last accessed 9 October 2014.

¹² See http://crimeahr.org/sites/default/files/otchet_krymskoy_polevoy_missii_-_iyul-avgust_2014.pdf (Appendix I).

¹³ Human Rights Watch, (7 October 2014) *Crimea: Enforced Disappearances, Crimean Tatars, Other Pro-Ukraine Figures Among the Missing*, <http://www.hrw.org/news/2014/10/07/crimea-enforced-disappearances>

¹⁴ "Po faktu propazhi dvukh chelovek v Belogorske organizovano ugovnoe rassledovanie", 29 September 2014, <http://rkproc.ru/news/po-faktu-propazhi-dvuh-chelovek-v-belogorske-organizovano-ugolovnoe-rassledovanie>. See also "V Krymu vozbuzhdeno ugovnoe delo po faktu pokhishchenia dvukh zhitelei goroda Belogorska", 30 September 2014, <http://crim.sledcom.ru/news/detail.php?news=10544>.

¹⁵ Press reliz Kontaktnoy grupy po poisku pokhishchennykh lyudey v Respublike Krym, 14 October 2014.

instruments or weapons which may have been used in perpetrating the violation, and gathering forensic evidence, including through medical expertise and autopsy where applicable. The investigation must be comprehensive and seek to shed light on all significant events and circumstances related to the case. The investigation must also be conducted in a prompt and reasonably expeditious manner, without unjustifiable delays. In addition, there should be sufficient public scrutiny of the investigation, and in all cases, the victim or the victim's survivor(s) must be involved in the procedure to the extent necessary to safeguard their interest.

18. A person's disappearance is a grave violation of human rights. The deleterious effects of such a tragedy are far-reaching. Disappearances have a profound effect on the whole of society, starting with the individual's close family and friends, all of whom suffer from not knowing and from a sense that their plight is being ignored. This lack of knowledge can cast those concerned in a state of perpetual distress, depriving them of the possibility to lead a normal life.¹⁶ Therefore, the truth should be established and the relatives of the victims must receive a satisfactory and convincing explanation about the fate of their loved ones.
19. The Commissioner noted with concern that at least some of the above-mentioned cases involved activists who – according to various reports – have openly expressed critical views of the events unfolding in the region after February 2014.¹⁷ It is also worrisome that there have been allegations of implication of members of the “self-defence” forces in these violations (cf. the section on “Self-Defence forces”). There is an urgent need to carry out effective investigation into all allegations about abuses by the police and other auxiliary forces that have been operating in the region since February 2014.

3.2 SITUATION OF MINORITIES

20. The situation of ethnic minorities was the main topic of the previous Commissioner's visit to the region which took place in November 2011, and a follow-up letter to the Prime Minister of the Autonomous Republic of Crimea, Mr Anatolii Mohyliov.¹⁸ Within the framework of the current mission the Commissioner paid particular attention to the situation of the Crimean Tatar community and ethnic Ukrainians residing on the peninsula.
21. The Commissioner received reports about a number of searches - carried out by armed and masked members of the security forces - in Muslim religious institutions, as well as businesses and private homes belonging to members of the Crimean Tatar community. The purpose of those actions was to search for prohibited items, including weapons and “extremist literature”. By the time of the Commissioner's visit, such searches had been carried out in 8 out of 10

¹⁶The European Court of Human Rights has frequently found violations of Article 3 of the European Convention on Human Rights in respect of families of disappeared persons, due to the emotional distress and suffering they experience as a result of their relative's disappearance.

¹⁷ See Office of the United Nations High Commissioner for Human Rights, Report on the human rights situation in Ukraine, 15 June 2014, §288, <http://www.ohchr.org/Documents/Countries/UA/HRMMUReport15June2014.pdf>, *Krymskaya polevaya missia po pravam cheloveka, Kratky obzor situatsii po Krymu* (June 2014), p.5 http://crimeahr.org/sites/default/files/crimea_field_mission_report_june_2014.pdf.

¹⁸ Letter from the Council of Europe Commissioner for Human Rights to Mr Anatolii Mohyliov, Prime Minister of the Autonomous Republic of Crimea, [https://wcd.coe.int/ViewDoc.jsp?Ref=CommDH\(2012\)11&Language=lanEnglish&Ver=original&Site=COE&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864](https://wcd.coe.int/ViewDoc.jsp?Ref=CommDH(2012)11&Language=lanEnglish&Ver=original&Site=COE&BackColorInternet=DBDCF2&BackColorIntranet=FDC864&BackColorLogged=FDC864)

religious schools (madrasas) belonging to the Spiritual Directorate of the Muslims of Crimea (*Dukhovnoe Upravlenie Musulman Kryma*). There were also reports that “informative talks” had been carried out with scores of persons in order to check whether they adhered to “undesirable” or “non-traditional” forms of Islam. The perception among various representatives of the Crimean Tatar community was that the above-mentioned actions were intrusive and performed with an intent to intimidate them. Moreover, Mr Mustafa Dzhemilev, one of the key leaders of the Crimean Tatar community and former Chairman of the Mejlis,¹⁹ and Refat Chubarov, the current Chairman of the Mejlis have respectively been barred since 22 April and 5 July 2014 from entering the territory of Crimea.

22. During his meeting with the regional leadership on 11 September 2014, the Commissioner expressed the opinion that the above-mentioned searches and checks were disproportionate and excessive, and that care should be taken to avoid any further actions which selectively target members of the Crimean Tatar community in the name of fighting extremism. In response, the authorities indicated that they would engage with representatives of the Crimean Tatar community with a view to resolving the problem. However, on 18 September 2014, after the Commissioner’s return from the mission, he was informed that the building of the Crimean Tatar Mejlis in Simferopol - which he had visited - was seized by security forces and that the employees of the organisations located in the building were evicted, reportedly on the basis of a court order.
23. The local leaders also informed the Commissioner about certain steps they have been taking with regard to promoting the economic and social rights of the Crimean Tatar community, aimed at resolving some of their long-standing issues of concern. They specifically referred to initiatives such as a “land amnesty” and efforts to address housing problems. In addition, they maintained that the status of the Crimean Tatar language and the possibility to observe religious holidays were better protected.
24. The Commissioner also looked into the situation of ethnic Ukrainians residing on the peninsula. In the wake of the events of February-March this year, some of them decided to leave the region because they no longer felt secure, while others preferred to refrain from openly stating and/or manifesting their views.
25. The Commissioner took note of the allegations about attempts to gain control over churches owned by the Ukrainian Orthodox Church of the Kyiv Patriarchate and apply pressure upon priests serving in the Crimean diocese. One such incident was reported on 1 June 2014 when uniformed men, said to be Cossacks and members of the “self-defence” forces, entered a local church in the village of Perevalne proclaiming that they were seizing it with the intention of transferring it to the authority of the Moscow Patriarchate.²⁰ According to the local head of the Ukrainian Orthodox Church of the Kyiv Patriarchate, archbishop Kliment, six out of fifteen churches belonging to that religious denomination were no longer under the control of the Kyiv Patriarchate. The Commissioner raised the matter with the local leaders and urged them to enter into a dialogue with the representative of that church with a view to resolving the foregoing issues. The Commissioner’s interlocutors promised to organise such a meeting.

¹⁹ On 20 August 2014, the President of Ukraine, Mr Petro Poroshenko, signed a decree whereby Mr Dzhemilev was appointed as Commissioner of the President on the Affairs of Crimean Tatars.

²⁰ Office of the United Nations High Commissioner for Human Rights, Report on the human rights situation in Ukraine, 15 June 2014, §315, <http://www.ohchr.org/Documents/Countries/UA/HRMMUReport15June2014.pdf>

26. The Commissioner is of the opinion that multiculturalism is a unique feature and asset of this territory and should be nurtured and preserved, including through the media, as well as in schools and public institutions.²¹ Despite the changing legal framework, the three languages - Russian, Crimean Tatar and Ukrainian – continue to be used as languages of communication. However, the Commissioner received reports that the use of Ukrainian language in the schools has been diminishing. Apparently, the only Ukrainian-language gymnasium in Simferopol has been transformed into a school where in some classes education will continue to be provided in Ukrainian, while in other classes Russian will become the language of instruction. Whether this was done on the basis of the requests received from the parents of the schoolchildren has been a matter of some dispute. Moreover, whether parents can make language choices free of pressure has also been questioned.²²
27. The Commissioner encouraged his interlocutors to do their utmost to nurture the linguistic diversity of this region and to provide the necessary means for all young persons to have access to quality education in different languages. The use of the bilingual and multilingual methodologies in the educational processes should be encouraged.
28. It is essential to create a sense of security for the Crimean Tatars, ethnic Ukrainians and everyone else who has been rendered more vulnerable by the changed circumstances in the region. It is important to continuously and consistently send an unambiguous message of “*zero tolerance*” of violence and any kind of discriminatory practices, as well as to pay special attention to the need to protect human rights and uphold the rule of law in any circumstances. Minorities should enjoy secure conditions enabling them to practice their religion in public or private, receive education in their languages and openly manifest their views without fear and intimidation. It is of paramount importance to refrain from any further measures which may worsen their situation. Failure to do so may lead to new cases of displacement from the region.

3.3 MEDIA SITUATION

29. The Commissioner has received reports that certain of the Internet media resources and other media outlets which did not support the turn of events in the region since February have either relocated or closed down. Some media outlets and journalists have reportedly come under pressure due to the changing institutional and legal framework which has resulted in the application of more restrictive rules related to media work.
30. The Commissioner received information about two main “waves” of attacks against journalists: in March 2014, around the time of the “referendum”,²³ and in 15-19 May 2014, around the commemoration day of the 1944 deportation of Crimean Tatars (18 May). One case involved a

²¹Cf. also the letter from the Council of Europe Commissioner for Human Rights to Mr Anatolii Mohyliov, Prime Minister of the Autonomous Republic of Crimea, <https://wcd.coe.int/com.instranet.InstraServlet?Index=no&command=com.instranet.CmdBlobGet&InstranetImage=2175019&SecMode=1&DocId=1859320&Usage=2>

²² Crimean Field Mission on Human Rights Brief Review of the Situation in Crimea, July-August 2014, p. 30 http://crimeahr.org/sites/default/files/otchet_krymskoy_polevoy_missii_-_iyul-avgust_2014.pdf

²³ At their 1196th meeting on 2-3 April 2014, the CoE Committee of Ministers adopted a decision, whereby “[t]he Deputies [...] stressed that the illegal referendum held in the Autonomous Republic of Crimea and the city of Sevastopol on 16 March 2014 and the subsequent illegal annexation by the Russian Federation cannot form the basis for any alteration of the status of the Autonomous Republic of Crimean and the city of Sevastopol [...]”

local journalist, Osman Pashaev, who was detained and physically assaulted by members of “self-defence” forces on 18 May 2014 in Simferopol and subsequently left Crimea.²⁴ The Commissioner had an opportunity to meet with some of the affected journalists who shared with him their accounts of being intimidated or assaulted by members of the “self-defence” forces.

31. In Simferopol, the Commissioner received confirmation of reports that media outlets had received warnings and/or were undergoing checks with regard to their alleged involvement in “extremist” activities.²⁵ Those journalists who were covering the march of Crimean Tatars on 3 May 2014 to the Armyansk checkpoint to meet the leader of Crimean Tatar community, Mr Mustafa Dzhemilev, were notably affected by these measures. Despite such actions, the Crimean Tatar television channel ATR continued to be broadcast at the time of the Commissioner’s stay in the region. However, subsequently (24 September 2014), its general director received a letter from officials charged with combating extremism motivated by the channel’s change in content. In particular, the letter specified that the channel “persistently instils the perception about possible repression based on ethnic or religious grounds, fosters the formation of anti-Russian views, deliberately foments distrust among Crimean Tatars towards the authorities and their actions, which indirectly carries with it the threat of extremist activity”.²⁶
32. A few days before the Commissioner’s arrival in Simferopol, the apartment of a popular blogger, Elizaveta Bohutska, had been searched and she had reportedly been questioned in connection to the 3 May rally (see previous paragraph) and in relation to her media reports critical of the policies of the current power-holders in the region.²⁷ Following those incidents, she decided to relocate from Crimea. The local leadership confirmed they were aware of this particular case, but had no intention to take any action on the matter.
33. According to the case-law of the European Court of Human Rights, the press performs a vital role of “public watchdog” in a democratic society.²⁸ The Court has emphasised that “freedom of the press and other news media affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of political leaders.”²⁹

3.4 STATUS OF “SELF-DEFENCE” FORCES (*SAMOOBORONA*)

34. The legal status and functions of the Crimean “Self-Defence” (*Samooborona Kryma*) – auxiliary forces which have been playing a visible role in the events of February-March 2014 and thereafter - were also among the issues raised by the Commissioner with his interlocutors in

²⁴ “Pamfilova: zaderzhanie zhurnalista v Krimu – narushenie prav cheloveka,” Ria Novosti, 19 May 2014, <http://ria.ru/society/20140519/1008461921.html>, see also “Osman Pashaev leaves Crimea”, Kharkiv Human Rights Protection Group, 20 May 2014, <http://khpg.org/en/index.php?id=1400529448>

²⁵ It may also be noted that during the week following the Commissioner’s mission, the OSCE Representative on Freedom of the Media expressed concern about “a pattern of hostile behavior towards members of the media” via a press release issued in Vienna on 19 September 2014 and entitled “Pressure on Tatar media in Crimea must stop”: <http://www.osce.org/fom/123790>

²⁶ See Crimean Field Mission on Human Rights Brief Review of the Situation in Crimea, September 2014, Appendix 2, http://crimeahr.org/sites/default/files/obzor_krymskoy_polevoy_missii_sentyabr_2014.pdf

²⁷ See also OSCE Representative condemns continued intimidation of free voices in Crimea, Vienna 9 September 2014, <http://www.osce.org/fom/123314>

²⁸ See *Observer and Guardian v. the United Kingdom*, judgement of 26 November 1991, §59 (b) and *Jersild v. Denmark*, judgement of 23 September 1994, §35.

²⁹ Cf. for example *Oberschlick v Austria*, judgement of 23 May 1991, §58.

the region. As was mentioned in previous sections, the Commissioner received numerous reports that those forces have apparently been engaged in performing certain quasi-police functions and that, on a number of occasions, members of those forces have reportedly been implicated in cases of serious human rights violations, including abductions, arbitrary detention, ill-treatment and attacks against journalists. One of the many cases communicated to the Commissioner involved two activists, Andriy Schekun and Anatoly Kovalsky, who were detained and allegedly ill-treated by those forces on 9 March 2014. After spending eleven days detained in an unknown location, they were transferred to the territory under control of the Ukrainian government.³⁰

35. During his mission, the Commissioner heard several accounts about abuses committed by members of these units in relation to those expressing critical views about the events unfolding in the region, including journalists, representatives of ethnic minorities and other vulnerable groups. He was also informed about their alleged involvement in the seizure and “nationalisation” of private enterprises. One such case occurred during the Commissioner’s mission and was effectively acknowledged by the local leadership, who indicated that the interference was made due to unlawful actions by the company in question.
36. In June this year the local legislative body, in an apparently retroactive manner, endorsed a proposal to “legalise” those forces through an act³¹ which provided them with a rather wide range of functions, but included only a limited number of checks and appropriate safeguards. Furthermore, the Commissioner was informed that there were two legislative initiatives – one introduced locally³² and another one pending in the State Duma³³ – which provides for immunity from prosecution for actions committed by members of those forces after February 2014.
37. During his encounter with the local leaders and the ombudsperson, the Commissioner raised a number of concerns related to the accountability of the above-mentioned forces. In this context, the Commissioner urged all those responsible to effectively investigate and prosecute all alleged cases of human rights violations committed by members of “self-defence” forces. He reiterated his principled position on this issue – as supported by the ECtHR jurisprudence and other international standards - that amnesties should not be applied for serious human rights violations (in particular cases covered by Articles 2 and 3 of the European Convention on Human Rights). The obligation to protect the right to life and take effective action against torture and other cruel, inhuman or degrading treatment or punishment must be upheld in all circumstances.
38. In a recent judgement, the ECtHR noted that there was a growing tendency in international law “to see amnesties for serious human rights violations as unacceptable because they are

³⁰ Human Rights Watch, *Ukraine: Activists Detained and Beaten, One Tortured*, (25 March 2014), <http://www.hrw.org/news/2014/03/25/ukraine-activists-detained-and-beaten-one-tortured>

³¹ <http://www.rada.crimea.ua/textdoc/ru/6/act/22z.pdf>

³² <http://www.rada.crimea.ua/law-draft-card/4038>

³³ Lower house of the Federal Assembly (Parliament) of the Russian Federation. See [http://asozd2c.duma.gov.ru/addwork/scans.nsf/ID/16740DBDDF67CCDF43257D650048D45D/\\$FILE/613379-6.PDF?OpenElement](http://asozd2c.duma.gov.ru/addwork/scans.nsf/ID/16740DBDDF67CCDF43257D650048D45D/$FILE/613379-6.PDF?OpenElement).

incompatible with the unanimously recognised obligation of States to prosecute and punish grave breaches of fundamental human rights”.³⁴

39. The concerns of the Commissioner about amnesty for members of “self-defence” forces in cases of serious violations were shared by the local ombudsperson. The current leader of the region, Mr Aksionov, stated during the meeting with the Commissioner that any violations - if they were indeed committed by the members of these forces – would be thoroughly investigated and those responsible brought to justice.
40. In the Commissioner’s opinion, the above-mentioned auxiliary forces should be disbanded. Those who have not been implicated in cases of human rights violations may - if they wish so - be integrated into the local police force after undergoing comprehensive professional training, including on the European and international standards concerning protection of human rights by police.

3.5 SITUATION OF HUMAN RIGHTS DEFENDERS AND HUMAN RIGHTS STRUCTURES

41. On 5 March 2014, a group of human rights defenders from Ukraine, the Russian Federation and Crimea established the Crimean Human Rights Field Mission, with a view to ensuring the continued monitoring of the human rights situation on the ground.³⁵ The mission acts from a politically neutral position and pays particular attention to interethnic and interreligious relations, as well as the actions of public authorities and their representatives. Since its creation, the mission has been issuing reports regularly and has come to represent a key source of information about human rights developments in Crimea. During his stay in the region, the Commissioner had an opportunity to meet with several activists working with the Crimean Human Rights Field Mission and other local civil society organisations who provided him with their insights into the complex environment in which they have to operate and the challenges that they encounter. In the course of discussions with various interlocutors throughout the mission, the Commissioner emphasised the need to promote safe and favourable conditions for the work of human rights NGOs. An open and meaningful dialogue between the authorities and civil society would certainly contribute to promoting better understanding and reconciliation among the different groups of people residing in Crimea.
42. The Commissioner received certain reports about instances of intimidation and harassment against human rights activists.³⁶ Such episodes - if they are not condemned unequivocally - may foster negative stereotypes and prejudices towards human rights defenders in general. They can also lead to concrete difficulties and obstacles for the effective conduct of human

³⁴ See [Marquš v. Croatia](#) (Grand Chamber judgement of 27 May 2014). In that case, the Court also noted that “even if it were to be accepted that amnesties are possible where there are some particular circumstances, such as a reconciliation process and/or a form of compensation to the victims, the amnesty granted to the applicant in the instant case would still not be acceptable since there is nothing to indicate that there were any such circumstances.” In that judgement the Court declared inadmissible the complaint under Article 4 of Protocol No. 7 to the Convention regarding the applicant’s right not to be tried or punished twice in relation to crimes committed during the war in Croatia in the 1990s which were amnestied pursuant to a General Amnesty Law. The applicant, a former commander of the Croatian army, had been convicted of war crimes against civilians committed in 1991.

³⁵ The Crimean Human Rights Field Mission receives support from the United Nations Development Program (UNDP) as well as from the Centre for Citizens’ Freedoms in Ukraine.

³⁶ As an illustration, two human rights defenders working for the Crimean HR Field Mission (a Ukrainian national and a Russian national) were taken off the train and questioned by the Russian border officials on 12 September 2014 in Bryansk while they were travelling to Kyiv.

rights work. The Commissioner would like to reiterate the principle that when individuals – together with others or alone – speak out for human rights or work for them with other means, they should be free to do so without being subjected to pressure. He would like to pay tribute to the human rights organisations working in the region for their commitment to fulfilling their mission, despite the challenges and risks involved.

43. In addition to his discussions with human rights organisations, the Commissioner had a fruitful exchange of views and an opportunity to share his concerns with the local ombudsperson,³⁷ Ms Lyudmila Lubina. He would like to underline that human rights structures can play a key role in promoting awareness of European and international human rights standards and norms and ensuring that people living in the region are able to enjoy them fully in practice. The effectiveness of such institutions is in many respects linked to the degree of independence they are able to enjoy and to the attitude of the local authorities to the institution of ombudsperson as such. The authorities should respect their integrity and independence, thus enabling them to perform their duties properly and effectively.

3.6 CITIZENSHIP-RELATED ISSUES

44. During his mission, some of the Commissioner’s interlocutors drew his attention to various aspects of the on-going process of issuance of Russian passports (commonly referred to as “passportisation”) and shared their concerns as to how the choices made by various individuals may eventually affect their access to and enjoyment of a number of human rights.
45. The Russian Federation stipulated in its legislation³⁸ that all permanent residents on the territory of Crimea, unless they explicitly refuse Russian citizenship, will become citizens of the Russian Federation one month after the date on which, according to the Russian Federation, Crimea was incorporated into its territory. Ukraine does not recognise “forced automatic admission” into Russian citizenship by Crimean residents and does not consider it a ground for deprivation of Ukrainian citizenship.³⁹
46. The Commissioner received several reports suggesting that the wish of the person concerned was not always taken into account throughout the above-mentioned process. It is difficult to establish at present in how many cases persons have “automatically” become Russian citizens, i.e. since they did not refuse Russian citizenship within the allocated period of time. In at least some of these cases there are reasons to believe that the affected persons did not have an effective possibility to exercise their choices (see below). The Commissioner was also made aware of some cases of persons who reportedly wished to acquire Russian citizenship but were not in a position to do so due to certain “eligibility” criteria (lack of proof of permanent residence has frequently been invoked in such cases).
47. In the Commissioner’s view, people should have a choice in matters relating to their citizenship. The consent of the person concerned should be the paramount consideration in

³⁷The office of the local ombudsperson was established on 25 June this year. Until April 2014, a representative office of the Ukrainian Parliamentary Commissioner for Human Rights was functioning in the Autonomous Republic of Crimea.

³⁸ Russian Federation Constitutional Law “On admitting to the Russian Federation the Republic of Crimea and establishing within the Russian Federation the new constituent entities of the Republic of Crimea and the city of federal level Sevastopol”, dated 21 March 2014, Article 4.

³⁹ Law of Ukraine “On legal guarantees of people’s rights and freedoms on the temporarily occupied territories of Ukraine”, Article 5.4.

this regard, and this consent should be active and clearly stated. Whereas States have obligations related to the prevention and reduction of statelessness, such obligations could hardly be invoked in the cases referred to above since the persons concerned were not stateless.⁴⁰

48. Another issue of concern raised by the Commissioner's interlocutors relates to the effective possibility to express one's wishes. The period granted for initiating a procedure to refuse Russian citizenship was very short (one month, expiring on 18 April 2014). Moreover, instructions from the relevant migration service as to the exact procedure to follow were only available as of 1 April 2014. Furthermore, information about the places where the relevant application should be submitted was only available after 4 April; from 4 to 9 April only two such places, in Sevastopol and in Simferopol, were functioning; as of 10 April, a total of nine localities had been made available. Finally, additional requirements were introduced during the process, such as the necessity to make an application in person, or that both parents were required for the application of a child.⁴¹
49. Certain persons in closed institutions might have experienced difficulties with expressing their consent. This in particular applies to those imprisoned on remand or serving a sentence,⁴² as well as people in other closed institutions (geriatric institutions, hospitals and psycho-neurological clinics, orphanages, etc.) Concerning prisoners, the Commissioner received information that they had been "consulted" as to their preference, but no details were provided as to the exact procedure followed.
50. Persons who find themselves in the situation described above should also have all the necessary information enabling them to make an informed choice. In other words, they should be fully informed and have a clear understanding of all possible legal consequences attached to one option or the other.⁴³ While individuals who initiated a procedure for refusing Russian citizenship were asked to sign a document stating they were fully aware of the legal consequences of their decision, it would appear that a whole range of important issues related to their future status has not been clarified to date. First and foremost, questions have been raised as to whether these individuals will "automatically" acquire permanent resident status or not, and to what extent this will affect their social and economic rights, access to employment, and similar issues.
51. For certain groups of individuals – such as civil servants – the decision not to accept Russian citizenship meant the loss of their current employment. The Commissioner also received

⁴⁰ Even in cases involving granting of citizenship to a stateless person, such an act cannot be carried out against the wishes of an adult (the situation of stateless children is treated in a more nuanced way, since the principle of "the best interests of the child" should also apply). Otherwise this could be qualified as an interference with the person's private and family life, since the acquisition of citizenship may also entail certain obligations, such as military service.

⁴¹ Report on the human rights situation in Ukraine, Office of the United Nations High Commissioner for Human Rights, 15 May 2014, §127.

⁴² This also applies to the case of the Ukrainian filmmaker Oleg Sentsov and others who were detained in connection with the charges invoked against him. While he maintains that he is a citizen of Ukraine, the Russian authorities consider him as a Russian citizen on the basis of the argument that he did not explicitly refuse Russian citizenship.

⁴³ The European Court of Human Rights requires that any legal norm should be both accessible and foreseeable as to its effects.

reports suggesting that public sector employees (e.g. teaching staff in universities and other educational institutions) were also “advised” to renounce their Ukrainian citizenship.

3.7 OTHER ISSUES

52. Several of the Commissioner’s interlocutors in Kyiv, Moscow and Simferopol drew his attention to the poor conditions of detention in the penitentiary establishments in the region. The local ombudsperson expressed particular concerns over the lack of food and medical supplies and overcrowding in places of detention. The observations and recommendations made by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)⁴⁴ following its delegation’s visit, *inter alia*, to the temporary detention facilities in Alushta, Simferopol and Yalta and the pre-trial detention establishment (SIZO) in Simferopol remain relevant in this regard.

3.8 ACCESS OF INTERNATIONAL HUMANITARIAN AND HUMAN RIGHTS ORGANISATIONS

53. There appears to be an issue with regard to free and unhindered access of international organisations and missions to the region, including those whose mandate is to provide independent and impartial monitoring of the human rights situation. Some of these obstacles stem from the relevant legislative framework, others from its practical implementation; still others arise from what appears to be an arbitrary or selective application of the rules by the relevant executing bodies. Except for the Council of Europe Commissioner for Human Rights, representatives of other international institutions, including UN OHCHR, have not been able to secure access of their monitors to the region after March 2014.⁴⁵
54. On 15 April 2014, the Ukrainian Parliament (*Verkhovna Rada*) adopted a law "On legal guarantees of people's rights and freedoms on the temporarily occupied territories of Ukraine." While it contains no restrictions on the freedom of movement for Ukrainian citizens to/from Crimea, the law provides for restrictions on the freedom of movement of foreigners and stateless persons. According to Article 10.2 of the law, these categories of visitors should obtain a special permit to enter/leave the territory of the peninsula through specific entry points (along the boundary line between the Crimean peninsula and Kherson oblast). The procedure for obtaining special permits is to be determined by the Cabinet of Ministers (Government of Ukraine). At the same time, Article 5 of the law reiterates the State’s obligation to undertake all the necessary measures to guarantee rights and freedoms of the persons residing on the territory of the peninsula. At the time of drafting this report, the procedure for entry into the region was still under elaboration. In his discussions with the official interlocutors in Kyiv, the Commissioner emphasised that it was of utmost importance to ensure that the procedure in question be formulated in a way that would facilitate the work of humanitarian organisations and international human rights monitors and missions in the region.
55. During his exchange of views in Moscow with the Deputy Minister of Foreign Affairs, the Commissioner formed the impression that the Russian authorities consider that the access route via Moscow represents the best option under the current circumstances. Apart from the requirement to obtain a Russian visa, the Commissioner does not have information suggesting that the legislation which is effectively (de facto) applied in the region imposes any additional

⁴⁴ CPT/Inf (2014) 15, report published by CPT following its visit to Ukraine from 9 to 21 October 2013.

⁴⁵ The International Committee of the Red Cross (ICRC) does have access to Crimea.

or separate rules or procedures on foreign citizens and/or stateless persons wishing to enter the region by land from the north.

56. The Commissioner wishes to stress that the question of access to the region should not be politicised: free and unconditional access of international humanitarian and human rights organisations to the peninsula (from all directions and at all times) and effective international monitoring, in particular of minority rights, is of key value in the present situation and will undoubtedly contribute to strengthening a climate of respect and co-operation between various ethnic communities and other minority groups residing in the region. This position is shared by several of the Commissioner's interlocutors who have noted that the present mechanisms for the monitoring of the human rights situation on the ground were not sufficient. International human rights monitors could effectively operate in coordination with the local human rights defenders and relevant human rights structures and should be encouraged rather than prevented from exercising their respective mandates in the region.