



COMMISSIONER FOR HUMAN RIGHTS  
COMMISSAIRE AUX DROITS DE L'HOMME



Strasbourg, 22 February 2017

CommDH(2017)1

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## **4<sup>TH</sup> QUARTERLY ACTIVITY REPORT 2016**

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Commissioner for Human Rights**

1 October to 31 December 2016

Presented to the Committee of Ministers  
and the Parliamentary Assembly

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## 1. Overview

During the period in review, the most common human rights issues I addressed in my country and thematic work were children's rights, women's rights and gender equality, upholding human rights and the rule of law in the struggle against terrorism, and migration.

I raised concerns about children's rights protection in country work in Belgium, Cyprus, the Czech Republic, Ireland, Latvia, and Lithuania. One of the main issues I highlighted was the need to promote inclusive education, particularly for children with disabilities, minority and/or migrant children, as well as children facing severe economic disadvantages. Separate education is not equal education – it is harmful for children placed therein, as the education is often substandard and children learning there do not have the opportunity to interact with their peers. It is also harmful for society as a whole, as children who have not had contact with their peers belonging to various vulnerable groups tend to develop stereotyped views and lack the skills for coping with the challenges of diversity.

In a report on Latvia and a visit to Lithuania, I called for setting more ambitious policy goals and getting children with disabilities out of special schools and special classes and into the mainstream system. In a letter to the Czech authorities, I reiterated the need to provide Roma children access to mainstream education – an issue I had highlighted in a previous report on the country. On a visit to Ireland, the focus was on the need to ensure equal access for all to public schools, most of which are run by religious denominations. Inclusive education was also an important focus of a meeting I had with Irina Bokova, the Director-General of UNESCO. In 2017 I intend to publish a position paper on inclusive education synthesising the results of my country work on the topic and linking it to the extensive work of UNESCO.

A second area of work concerned children in institutions. Residential children's institutions – child care institutions for those without parents or with special health care needs, penal institutions for juveniles, or migrant detention facilities – can never substitute for life in a caring family or family-like environment. Children in detention, even for a short period of time, tend to be traumatised by the experience. Children who grow up or live in institutions for extended periods of time are often subject to violence, including sexual abuse, and have a much more difficult time in developing the autonomy and life-skills necessary for success later in life. This is why children should not be put into prisons, but dealt with through social services and support for families. This is why children should not be relegated to care institutions, but all the necessary support should be given to them and their biological families, foster families, adoptive parents or organisations ensuring family-like environments (e.g., SOS Children's Villages).

In Ireland, I stressed the need to address past abuses in women's and children's homes and in schools in a human rights compliant way. In Lithuania, I also stressed that "correctional boarding schools" were not an appropriate way for dealing with juveniles in conflict with the law. In both Latvia and Lithuania I urged restarting stalled processes of de-institutionalisation and getting children without parental care and with disabilities living back in their communities. In a letter to the Belgian authorities, I urged the government to desist from implementing plans to recommence detention of migrant

children with their families in closed facilities. Finally, in a video message on the second European day on the protection of children against sexual exploitation and sexual abuse, I stressed the special risks faced by children in institutions.

No child should be stateless in Europe, as the Convention on the Rights of the Child envisages the right to a nationality from birth and stateless status can never be in the child's best interest. In my report on Latvia, I encouraged the authorities to ensure that all children have a nationality from birth by granting it automatically to children who would otherwise be "non-citizens". I also addressed the issue of child statelessness in my keynote presentation at a conference organised by the Estonian chairmanship of the Committee of Ministers and in a video message to a conference on the issue in the European Parliament organised by the European Network against Statelessness.

Children who witness violence in the family should also be considered victims of that violence, which often causes deep psychological trauma. Men who beat their wives or partners often beat their children as well. This is why my work against domestic violence bridges the issues of children's rights and women's rights. I sought to promote ratification of the Istanbul Convention – the state of the art standard in this area - in a report on Latvia and in country visits to Ireland and Lithuania. In this context, I also examined the legal and policy frameworks for dealing with domestic violence and violence against women in these countries.

In Latvia, I also urged the authorities to address gender stereotypes and to promote participation of women in public and political life. In Ireland, I encouraged the authorities to review the very restrictive legal regime governing abortion in the country and to address historical abuses against women in a more consistent, victim-friendly manner. In Lithuania an additional focus was the need for more efforts to address the gender pay gap. Finally, I also had a very constructive exchange of views with the newly reconstituted Gender Equality Commission of the Council of Europe.

Upholding human rights while combatting terrorism is a difficult challenge, but a necessary task lest we undermine the very values the terrorists are seeking to attack and inadvertently help them in their recruitment and propaganda efforts. During the period in review I addressed this issue in a memorandum on Turkey, a letter to the authorities in the Netherlands and a meeting with the responsible minister in France.

In the memorandum on the human rights implications of Anti-Terrorism Operations in South-Eastern Turkey, I set out my main concerns regarding curfews and anti-terrorism operations. I concluded that the curfews, which restricted many human rights for a huge segment of the population, lack a solid basis in law. Moreover, as evidenced by the huge number of displaced civilians and collateral damage compared to the small number of terrorists "neutralized", the anti-terrorism operations have often been carried out in a manner completely contrary to the principle of proportionality. In France I discussed with the then Interior Minister the state of emergency and its impact on the separation of powers, human rights safeguards, and social cohesion. Regarding the Netherlands, I exchanged letters with the authorities about three Bills dealing with counter-terrorism and voiced concerns regarding the risk of arbitrariness inherent in vaguely worded laws, the possibility to revoke nationality, and oversight of security services. Finally, I participated in a seminar at Science Po in Paris on democratic oversight of security services, where I promoted my Office's Issue Paper on the subject.

Migration and human rights remained an important concern that I addressed in a report on Croatia, letters to Belgium and Cyprus, and a human rights comment. In Croatia, which witnessed the transit of a large number of migrants, including asylum-seekers, the main concerns were the criminalisation of humanitarian aid to migrants and policies requiring that detained migrants pay for their accommodation and removal from the country. In Belgium, as noted above, the concern was the possible detention of child migrants, while in Cyprus my focus was on guardianship and legal representation for unaccompanied minor migrants. I devoted a human rights comment to the situation of the many migrants living in a prolonged state of social and legal limbo and the relevant human rights obligations, particularly those under the European Social Charter.

## **2. Visits and Missions**

### ***Visit to Ireland***

The Commissioner visited Ireland from 22 to 25 November 2016. The main topics of the visit were the human rights of Travellers and Roma; women's rights and gender equality; and the human rights of children. In the course of the visit the Commissioner held discussions with the President of Ireland, Mr Michael D. Higgins; the Tánaiste (Deputy Prime Minister) and Minister for Justice and Equality, Ms Frances Fitzgerald; the Minister for Foreign Affairs and Trade, Mr Charles Flanagan; the Minister for Children and Youth Affairs Ms Katherine Zappone; the Minister for Housing, Planning, Community and Local Government, Mr Simon Coveney; the Minister for Education and Skills, Mr Richard Bruton; the Minister of State for Justice, Mr David Stanton; and the Minister of State for Communities and the National Drugs Strategy, Ms Catherine Byrne. He also met members of Ireland's delegation to the Council of Europe's Parliamentary Assembly. The Commissioner held discussions with the Chief Commissioner, Ms Emily Logan, and other members of the Irish Human Rights and Equality Commission, and with the Ombudsman for Children, Mr Niall Muldoon. He also met with representatives of non-governmental organisations and other members of civil society. The Commissioner conducted field visits to two Traveller sites in the Dublin area and to a shelter and a counselling centre for women victims of domestic violence in Dublin. Finally, he took the opportunity of the visit to participate as keynote speaker in the Round Table "Ireland and the Council of Europe Today" co-organised in Dublin on 25 November 2016 by the Centre for Criminal Justice and Human Rights, University College, Cork and the Irish Council for Civil Liberties (ICCL), with the support of the Irish Department of Foreign Affairs and Trade.

As concerns the human rights of Travellers, the Commissioner expressed his deep concern at the persisting social exclusion and discrimination they were confronted with in Ireland. With Travellers having been affected in a gravely disproportionate manner by budget cuts as a result of austerity, the Commissioner emphasised the urgent need to re-invest in this community. He welcomed signals that Travellers would soon be recognised as an ethnic group in Ireland. The Commissioner also called for targeted policy measures and more effective involvement of Travellers themselves to address the serious inequalities that continue to affect the members of this community in accommodation, health, education and other fields of life. In particular, the Commissioner stressed the urgency of addressing the insufficient provision of Traveller-

specific accommodation, the inadequate conditions of many Traveller sites and inadequate safeguards against forced evictions.

As regards women's rights and gender equality, the Commissioner welcomed the signature by Ireland of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence and the announced preparation of a second National Women's Strategy. He urged Ireland to ratify the Convention and take concrete measures to tackle domestic violence, including by allocating adequate and sustainable funds to address the shortage of shelter spaces for women victims of violence and by raising awareness about domestic violence and gender-based violence among all relevant stakeholders. In Ireland, austerity measures have exacerbated older forms of gender inequality which hamper women's access to justice and jeopardise progress in women's rights. The Commissioner stressed that Ireland possessed one of the most restrictive legal frameworks on abortion in Europe. Noting the establishment of a Citizens Assembly that would consider the Eighth Amendment of the Irish Constitution, which currently limits the scope of any reforms of this framework, the Commissioner called for moves towards the decriminalisation of abortion, at least in the case of risks to the health of the mother, fatal foetal abnormality and rape or incest.

The Commissioner also stressed that further efforts should be made to deal with all historical abuses against women and children that occurred in Ireland in different contexts, including women's homes, schools and healthcare institutions. Noting a number of measures taken to address these abuses, including compensation schemes put in place by the authorities, the Commissioner stressed the need to ensure that international human rights standards in this field are fully respected. In particular, all groups of victims have a right to truth, full support and effective remedies, as well as prompt, independent and thorough investigations into allegations of abuses to ensure accountability.

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

The Commissioner's report on his visit to Ireland is forthcoming.

### ***Mission to France***

The Commissioner carried out a mission to Paris from 28 to 29 November. In the course of this mission he held a meeting with Mr Bernard Cazeneuve, Minister of Interior, and discussed issues pertaining to the protection of human rights while countering terrorism in the context of the state of emergency, as well as issues related to law enforcement. The Commissioner also met with representatives of national human rights structures, academics, law professionals and a number of non-governmental organisations, with whom he addressed the issue of the impact of the state of emergency and

counterterrorism measures on human rights. Lastly, the Commissioner took part in an expert seminar at Sciences-Po, Paris, and gave a keynote speech on the democratic and effective oversight of national security services (see also below section on Themes).

### ***Visit to Lithuania***

The Commissioner carried out a visit to Lithuania from 5 to 9 December, focusing on the rights of children; the rights of persons with disabilities; and domestic violence and gender equality.

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

As a matter of policy, the Lithuanian authorities have undertaken to depart from the practice of placing children without parental care and people with disabilities in institutions, and to secure alternative care for those who already live in an institutional environment. The Commissioner urged the authorities to intensify their efforts towards deinstitutionalisation. To this end, strategic action should be taken to prevent child neglect and support should be provided to families experiencing difficulties in caring for their children, including by establishing an efficiently-functioning network of community-based services for such families and for persons with disabilities. The foster care system should receive support and be further developed. Children, including those with emotional and behavioural problems, should not be relegated to institutions, but rehabilitated in a family-like environment. The education system should be inclusive and access to mainstream schools should be improved for children with disabilities, including through infrastructural changes to buildings to aid those children whose mobility is impaired.

Lithuania has embarked on a comprehensive reform of legislation relating to legal capacity. However, the Commissioner recommended that, pending the review of more than 6700 cases of people who have been fully deprived of their legal capacity on the basis of the old legislation, further decisive steps be taken to promote reforms in the mental health care system, most notably towards ensuring the availability of supported

decision-making alternatives and drastically reducing and progressively eliminating coercive practices in psychiatry.

As regards gender equality and domestic violence, the Commissioner welcomed the existence of a legislative framework to combat domestic violence, and observed that law enforcement authorities, most notably the police, appear to be quite effective in responding to instances of violence. However, further efforts may be needed to harmonise the 2011 Law on Protection Against Domestic Violence with the provisions of the Criminal Code and Criminal Procedure Code and to implement them effectively in practice, with a view to ensuring the necessary protection for victims and the punishment of perpetrators. To this end, judicial authorities should be made aware of the special role they play in protecting victims of violence from repeated cases of abuse. Judicial and law enforcement authorities should receive continuous training on the application of the law and best international practices and standards in this area. Furthermore, a unified and systematic approach to preventing violence and responding to calls for help should be adopted and promoted throughout the country. The Commissioner also urged his interlocutors in Parliament to proceed rapidly with the ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention).

The Commissioner noted with interest the official public awareness campaign “For a safe Lithuania” which aims inter alia at raising public awareness about the root causes and consequences of domestic violence, as well as the situation of children in institutional care. He further urged the authorities to address issues such as the gender wage gap, and to strengthen the capacity of the Equal Opportunities Ombudsperson’s Office to more effectively address gender-based discrimination.

The report on the Commissioner’s visit is forthcoming.

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

#### ***Report on Croatia***

On 5 October, the Commissioner published a report following his visit to Croatia which took place from 25 to 29 April 2016, focusing on certain major issues concerning transitional justice and social cohesion, the human rights of immigrants, refugees and asylum seekers, and freedom of the media.

Noting that Croatia has substantially improved its human rights law and practice in recent years, the Commissioner expressed concern about certain developments which put these achievements at serious risk. He was concerned about the reported regression of inter-state co-operation in the region on the prosecution of wartime crimes committed during the 1990s and about the persistence of impunity in Croatia for certain serious human rights violations committed in the past. He called on the authorities to put an end to this, and effectively prosecute, try and sanction the perpetrators of wartime crimes.

Addressing the issue of reparations to war victims, the Commissioner welcomed the enactment of a law which provided for reparation to victims of wartime crimes of sexual violence, urging the authorities to remedy the remaining shortcomings in the law and in



its implementation. Commissioner Muižnieks called for stepping up national and regional efforts to solve the pending cases of missing persons and recommended Croatia's accession to the International Convention for the Protection of All Persons from Enforced Disappearance.

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

The Commissioner expressed concern about the negative impact on social cohesion of the reported rise in manifestations of ethnic intolerance and hate crime. He urged Croatia to ensure awareness-raising and the effective implementation of relevant legislation in this field, particularly by improving the system of recording hate crime data and by systematically training law enforcement officials and legal professionals.

The Commissioner welcomed Croatia's commitment to accept more than 1 600 refugees under the EU relocation and resettlement schemes. However, he was concerned about the existence of many obstacles to migrant integration, especially through national language learning, and urged the authorities to eradicate these obstacles. While commending the authorities' humanitarian approach in dealing with migrants, including asylum seekers, who transited through the country in 2015 and 2016, the Commissioner urged Croatia to avoid weakening the legal safeguards which apply to migrants. In this context, he stressed the importance of repealing legislation that criminalises social and humanitarian assistance to irregular migrants and obliges migrant detainees subject to deportation to pay for their accommodation and removal.

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

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

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

On 11 October 2016, the Commissioner issued a statement announcing with regret that he was obliged to cancel a visit to the Russian Federation in view of restrictions imposed upon the programme. The visit under discussion was to take place during the third week of October and had the aim of addressing several pressing human rights themes, including issues relating to migration, freedom of expression, and freedom of assembly and association. As per his usual practice, the Commissioner envisaged meeting with various state and local authorities, national human rights structures and civil society representatives, and also sought to conduct several site-visits to places of human rights relevance, including outside the capital. The details concerning the planned visit to the Russian Federation were duly conveyed to the Russian authorities, who subsequently indicated that the visit would be limited to only one full working day in Moscow, which clearly would have not allowed the Commissioner and his team sufficient time to carry out a substantive country visit. In his statement, the Commissioner observed that accepting these special conditions submitted by the Russian authorities would have been contrary to the principle of treating all countries equally, and expressed the hope that the Russian authorities will restore full co-operation with his office and facilitate the independent and effective performance of his mandate in the future.

### ***Letter to Mr Bohuslav Sobotka, Prime Minister of the Czech Republic, on the human rights of Roma and persons with disabilities***

On 4 November, the Commissioner published a letter addressed to Mr Bohuslav Sobotka, Prime Minister of the Czech Republic, focusing on the human rights of Roma and persons with disabilities.

In his letter the Commissioner reiterated his recommendation to establish an extra-judicial mechanism for compensating Roma women who were victims of forced sterilisations and stressed the need to improve Roma's access to inclusive education and to adequate housing. He also called on the government to redouble its efforts to combat and eradicate anti-Gypsyism. In this context, he urged the authorities to remove the pig farm from the site of the former Nazi concentration camp in Lety, in order to provide a dignified memorial for the Roma murdered there.

Lastly, whilst welcoming the latest changes of the Civil Code concerning legal capacity, the Commissioner called on the Czech Republic to take resolute action in favour of the deinstitutionalisation of persons with disabilities, including children, in order to enable them to live independently and be integrated in their communities

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

### ***Letter to Mr Costas Clerides, Attorney General of Cyprus, on the human rights of unaccompanied migrant children***

On 10 November, the Commissioner published a letter he had addressed to Mr Costas Clerides, Attorney General of Cyprus, concerning the protection of the human rights of unaccompanied migrant children. In his letter, the Commissioner noted that guardianship and legal representation of unaccompanied migrant children is provided by the Social

Welfare Services which lack the necessary expertise for providing proper legal advice. Therefore, if there is a need for legal assistance in these cases this is requested from the Attorney General's Office, which, as the sole legal adviser of all government departments, also represents state services in court. The Commissioner stressed that this practice raises serious issues of independence and impartiality of legal assistance and representation, especially in cases where unaccompanied migrant children seek judicial review of decisions issued by state services such as the Asylum Service or the Refugee Reviewing Authority.

The Commissioner welcomed the fact that, further to the adoption of a recent amendment to the Refugee Law, there is now also a possibility for these children to be represented before courts by the Commissioner for Children's Rights. However, the Commissioner noted that the involvement of the Commissioner for Children's Rights in the legal representation of unaccompanied migrant children concerns only court proceedings, excluding non-judicial asylum proceedings. In addition, the decision whether or not to involve the Commissioner for Children's Rights in the representation of unaccompanied migrant children before courts is taken by the Social Welfare Services who retain a general discretionary power. The Commissioner invited the Attorney General of Cyprus to inform him about the measures he may envisage taking in order to avoid these situations of conflict of interest which adversely affect legal assistance and the representation of unaccompanied migrant children in Cyprus.

The letter is available on the Commissioner's website.

***Letter to Dr Ronald Plasterk, Minister of the Interior and Kingdom Relations and Mr Ard van der Steur, Minister of Security and Justice of the Netherlands on counter-terrorism and human rights protection***

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

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

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

***Memorandum on the Human Rights Implications of Anti-Terrorism Operations in South-Eastern Turkey***

On 2 December, the Commissioner published a memorandum on the human rights implications of anti-terrorism operations in South-Eastern Turkey. This memorandum is based on two visits of the Commissioner to Turkey, in April and September 2016. The former visit included a visit to the region in question.

The memorandum sets out the serious concerns of the Commissioner about human rights violations committed as a result of curfews and anti-terrorism operations conducted in South-Eastern Turkey since the summer of 2015. On the basis of a detailed analysis of these measures, which resulted in extreme restrictions to the enjoyment of human rights by a vast population, the Commissioner concluded that the measures did not satisfy the legal criteria set out by the European Court of Human Rights. The Commissioner was also of the view that the curfews, which were imposed uninterruptedly, round-the-clock, for weeks or months on certain occasions, could not be considered proportionate to the legitimate aims pursued by Turkey. Noteworthy in this connection was the disproportion when the number of civilians affected and the scale of destruction in several big cities are compared to the number of terrorists neutralised and the declared aims behind the curfews.

For these reasons, while fully recognising the right and duty of the Turkish state to fight terrorism, the Commissioner came to the conclusion that these curfews and the anti-terrorism operations accompanying them caused widespread human rights violations simply by virtue of having been imposed, owing to their very nature.

The Commissioner further examined the question of additional human rights violations allegedly perpetrated by the Turkish security forces. He was concerned that the Turkish authorities had not been paying the requisite attention to these allegations, despite the fact that they were numerous and consistent, and their sources were credible. The Commissioner also stated that contrary to their obligations, the Turkish authorities did not appear to conduct effective *ex officio* investigations into each and every death and injury occurring during anti-terrorism operations, in order to prove convincingly that the security forces had taken all the reasonable precautions to avoid casualties. Another concern was the consistent reports and documentary evidence concerning chauvinistic behaviour among security forces which had fuelled a perception of the curfews and anti-terrorism operations as 'collective punishment'.

The Commissioner regretted that, instead of investigating these cases and fighting against impunity, the priority for the Turkish authorities had rather been to reassure security forces and reinforce their immunities against criminal prosecution. He observed that there were only a very few criminal cases where security forces had been treated as suspects or even interrogated. In addition, even for very blatant and serious forms of misconduct, they had only faced limited disciplinary sanctions. The Commissioner also expressed deep concern about attempts by the authorities to vilify the activities of human rights NGOs and lawyers bringing forward allegations of human rights violations which occurred in zones cut off from the rest of the world where there were no independent observers. He was particularly concerned about the arrest and detention of a lawyer who had brought requests for interim measures to the ECtHR, some of which had been granted.

The Commissioner considered that investigations into the casualties which occurred during the operations and into the allegations of human rights violations committed by security forces had not been immediate, diligent and thorough as they should have been. Given the elapsed time since some of the operations, the fact that evidence might have actively been destroyed, and the long-standing, state-centrist attitude of prosecutors, the Commissioner came to the conclusion that it was unlikely that future investigations would fully satisfy the criteria for effectiveness as established in the case-law of the European Court of Human Rights. The Commissioner considered that this should be seen against the background of his previous findings concerning Turkey concerning the problem of impunity, as well as the very large number of judgments by the Court against Turkey still pending for execution concerning the entrenched problem of impunity and lack of accountability.

The Commissioner further examined the issue of compensation for moral and material damages suffered by victims of terrorism or persons who were affected as a direct result of the curfews and anti-terrorism operations themselves. The Commissioner's impression was that the existing compensation framework was inadequate given the scale of the damages he had observed in the region. He also expressed concern about the government's plans to expropriate residents in certain affected areas which, rather than offering a form of redress, could amount to an additional human rights violation in its own right.

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

The memorandum is available on the Commissioner's website along with the Turkish authorities' reply.

### ***Report on Latvia***

On 13 December the Commissioner published a report on Latvia following his visit to that country from 5 to 9 September. The report focused on gender equality and women's rights, the human rights of children, and the human rights of LGBTI persons.

While noting the on-going work in Latvia to develop long-term gender equality policies, the Commissioner encouraged the authorities to reinforce their efforts towards rendering gender equality effective in reality, overcoming stereotypes and prejudices about gender roles, and increasing women's participation in public and political life. Expressing concern about survey data showing high levels of violence against women and domestic violence in Latvia, the Commissioner called on the authorities to proceed promptly with the ratification of the Istanbul Convention. To this end, the authorities should invest in raising public awareness about the objectives of the Istanbul Convention, and ensure that debates on gender equality and violence against women are based on facts, including gender-disaggregated data. The engagement of men and the responsibility of political and community leaders to send a message condemning violence against women

and domestic violence are particularly important. The Commissioner further stressed that it is essential to ensure that there is the requisite capacity among law enforcement, prosecutorial and judicial authorities to investigate, prosecute and punish all instances of violence against women and attend to their protection needs by establishing a sufficient number of adequately-resourced specialised shelters.

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

In the area of children's rights, the Commissioner also expressed concern about the placement of orphans and children without parental care in institutions, and called on the authorities to instead prioritise other types of care in a family-like environment as well as to allocate sufficient funds, and implement information campaigns and training in order to increase the number of guardians and foster families. Invigorating the stalled process of deinstitutionalisation of children will require improved co-operation between state and local authorities. In line with the UN Convention on the Rights of Persons with Disabilities (CRPD), a more inclusive system of education should be put in place where children with disabilities have access to mainstream schools close to their residence. The Commissioner underlined that the placement of students with disabilities in mainstream classes can only be successful if accompanied by structural changes and adequate support services.

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

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

***Letter to Mr Theo Francken, Secretary of State for Migration and Asylum of Belgium on migrant detention***

On 19 December, the Commissioner published a letter addressed to Mr Theo Francken, Secretary of State for Migration for Asylum of Belgium, raising concerns about the intention expressed by the Secretary of State to resume the practice of detaining migrant families with children in closed facilities to be built next to Brussels airport in the near

future. The Commissioner stressed the particularly detrimental impact detention has on children and reiterated that detaining migrant children was never in their best interests, even when detention was a measure of last resort and was limited to a short period of time, as also stated by other international human rights bodies. The Commissioner therefore urged the authorities to reconsider their decision to resume this practice. He invited them to maintain and develop existing alternatives to the detention of migrant and asylum-seeking families, an area in which Belgium has played a leading role in recent years.

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

## **4. Themes**

### ***Human rights of migrants***

On 15 November, the Commissioner published a Human Rights Comment in which he addressed the situation of many migrants living in a state of protracted legal and social limbo in Europe without any long-term prospects. Expressing his concern that many of them end up being homeless or squatting in empty buildings without support from the state, the Commissioner emphasised that under the European Social Charter, the right to housing and emergency shelter also applies to irregular migrants.

The Commissioner underlined that in order to meet current migration challenges in an effective and human rights compliant way, European states should fully abide by their human rights obligations and work together towards common solutions based on inter-state solidarity. The Commissioner stressed that the effective protection of the human rights of all persons, including migrants irregularly present on a state's territory, requires a strict separation of immigration control and enforcement activities from other state and private services. In all actions concerning children, the best interests of the child must be the state's primary consideration.

Lastly, the Commissioner underlined that emphasis should be placed on establishing effective voluntary return programmes for persons not in need of international protection, while assisted voluntary return, reintegration programmes and safeguards in return and readmission procedures must be enhanced.

### ***Children's rights***

On 4 November, the Commissioner gave a keynote address at the conference on children's rights in the migration crisis and in the digital environment organised in the framework of the Estonian chairmanship of the Council of Europe. The first part of his intervention focused on gaps in the protection of the child's best interests in migration and asylum proceedings in member states. Commissioner Muižnieks stressed a number of current practices that are not in line with provisions of the UN Convention on the Rights of the Child, among which were the lack of a child-sensitive approach to asylum, the persisting practice of detaining migrant children and the lack of sustainable and human rights compliant alternatives to detention. Mentioning threats of statelessness facing migrant children, and particularly those born in transit to a safe country, he urged

member states to take measures to prevent a generation of refugee children from being deprived of their right to a nationality. He also called for more effective integration policies, including easier family reunification and reforms of education systems which should stop producing segregation and instead meet the diverse needs of children. As regards children's rights in the digital environment, the Commissioner described some of the threats to children's rights arising from an increasing use of the Internet. They include the risk of coming across harmful content, cyber-bullying, and risks for the protection of private life resulting from the use of social media. However, the Commissioner stressed that risks and threats should not overshadow the extraordinary potential that Internet represents for learning, communicating, playing and exploring the world. He advocated for new, holistic approaches that take into account technological developments, and highlighted that the best protection remains the empowerment of children through education, including on human rights on the Internet, an area in which the Council of Europe has a lot to offer.

On the occasion of the second European Day on the protection of children against sexual exploitation and sexual abuse, held on 18 November, the Commissioner recorded a video message highlighting the plight of children living in institutions. He stressed that these children were more likely to be subjected to sexual abuse and exploitation than others, and that such abuse mostly goes unreported. He therefore urged member states to take measures to ensure better protection of these children and to provide them with accessible remedies. These include helplines, effective complaint mechanisms and the setting-up of National Preventive Mechanisms to ensure adequate monitoring of institutions, as well as rehabilitation and reparation programmes for victims of abuse.

The Commissioner recorded a video message for an event organised on 22 November at the European Parliament by the European Network on Statelessness, in which he reiterated his commitment to working towards eradicating child statelessness in Europe. Highlighting progress achieved in some countries, he recalled the need for more political resolve and for the identification of practical solutions, as well as for continued international co-operation, in order to stop the perpetuation of statelessness.

### ***Human Rights of LGBTI people***

On 26 October, on the occasion of Intersex Awareness Day, the Commissioner joined a statement entitled "End Violence and harmful medical practices on intersex children and adults." The statement was signed by several UN Committees and Rapporteurs, as well as representatives of the African Commission on Human and People's Rights and the Inter-American Commission on Human Rights. The statement recalled that intersex children and adults around the world are subject, sometimes without their consent, to medically unnecessary procedures and treatments aiming at changing their appearance to conform to societal understandings of male and female bodies. These procedures can create lifelong physical and psychological suffering. The statement called on states to prohibit medically unnecessary surgery on intersex children and infants. It further called on states to provide support and counselling to intersex children and their parents, and to uphold the rights of intersex people to health, physical and mental integrity and to live free from harmful practices.

On 17 November, the Commissioner gave the keynote speech at a Meeting of the European Governmental LGBTI Focal Point Network in Strasbourg. He stressed that,



despite notable advances, there remain many challenges as regards the enjoyment of human rights by LGBTI people. Based on his recent work in this area, he highlighted three issues: harmful medical procedures or treatments performed on intersex children; bullying of LGBTI children in schools; and difficulties faced by LGBTI asylum seekers in Europe. The Commissioner called on states to improve their legislative framework, increase awareness-raising about LGBTI rights and take concrete measures to ensure that LGBTI people truly enjoy equal rights and are no longer treated like “second-class citizens.”

On 6 December, the Office of the Commissioner for Human Rights contributed to a training seminar for police organised by the Sexual Orientation and Gender Identity Unit and the Criminal Law Cooperation Unit of the Council of Europe in Strasbourg. The seminar focused on the role of the police in combating discrimination.

### ***Women’s rights and gender equality***

On 17 November, the Commissioner had his second exchange of views with the Council of Europe Gender Equality Commission (GEC) since the beginning of his mandate. He updated the GEC on his thematic and country work related to women’s rights and gender equality, including the promotion of the ratification and implementation of the Council of Europe Convention on preventing and combating violence against women and domestic violence. The discussions, which also explored possibilities for closer co-operation, focused on different subject areas, including: possible ways to combat the increasing criticism and misinterpretation of the word “gender” and misconceptions around the terms “gender ideology” and “gender theory”; existing legal and practical obstacles relating to women’s sexual and reproductive health and rights; and the rights of women refugees and asylum seekers.

### ***National minorities***

On 11 October, the Commissioner delivered a speech at the opening session of the conference on the 4<sup>th</sup> Thematic Commentary of the Advisory Committee on the Framework Convention on the Protection of National Minorities on the scope of application of the Convention. He highlighted the contribution made by the Framework Convention to creating societies where dialogue, understanding and cultural diversity are viewed as sources of enrichment rather than division. He then focused on diversity management in Europe today and the main human rights challenges that this raised. He mentioned the increasingly negative impact of populist discourses on diversity management. He also referred to growing religious intolerance and persisting worrying phenomena such as anti-Gypsyism, highlighting the high cost that the segregation of entire groups of children in education has for society as a whole. He underlined that existing mechanisms to deal with discrimination were often not effective enough. He also noted that the persistence of statelessness in Europe was yet another threat to inclusive societies as it represented one of the most extreme forms of exclusion. Lastly, he listed a number of areas in which member states should step up efforts to improve the integration of migrants. To conclude, he reiterated his commitment to upholding the work and recommendations of the Advisory Committee to strengthen minority protection, while avoiding duplicating its work.

### ***Antisemitism and Holocaust remembrance***

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

The Human Rights Comment ends by concluding that Europeans ignore the evidence of rising antisemitic hate speech, violence and Holocaust denial at their peril. The hate that begins with Jews never ends with Jews.

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

### ***Counter-terrorism and human rights protection***

On 28 November the Commissioner participated in the fourth seminar of the "Queen Mary Reflection Group on Terrorism and Human Rights". The event took place at Sciences-Po Paris, and focused on surveillance, oversight, and human rights in counter-terrorism. The Commissioner held a keynote speech in which he highlighted a number of recent legislative developments in several European countries aimed at fighting terrorism whose impact on human rights give cause for concern. He further presented the main conclusions and recommendations of his Issue paper on democratic and effective oversight of national security services.

### ***Co-operation with National Human Rights Structures***

On 28 and 29 November, two members of the Office of the Commissioner for Human Rights participated in an expert workshop on "strengthening the independence of National Human Rights Institutions" in Warsaw. The workshop was co-organised by ODIHR, the Council of Europe, FRA, OHCHR and ENNHRI. Discussions during the workshop centred around the Paris Principles and concrete methodologies for national human rights institutions to increase their independence. The role of international partners - including the Commissioner for Human Rights - in upholding the independence and effectiveness of national human rights institutions was also discussed.

## 5. Other meetings

### ***Exchange of views with the Venice Commission***

On 14 October, the Commissioner participated in an exchange of views with the European Commission for Democracy through Law (Venice Commission) in Venice. In his introduction, the Commissioner highlighted the good collaboration between his Office and the Venice Commission. Consultations have taken place in several contexts, for instance concerning the legislation of the Russian Federation on non-commercial organisations (the so-called foreign agent law), the legality of curfews declared in South-Eastern Turkey or the bill on the Constitutional Tribunal in Poland. In the framework of his country and thematic work, the Commissioner also greatly benefited from the Venice Commission's work. The Commissioner concluded by stressing that the complementarity of these two institutions must be treasured and that fruitful co-operation should continue.

### ***Meeting with the Slovenian State Secretary for Labour, Family, Social Affairs and Equal Opportunities, Ms Martina Vuk***

On 17 October, the Commissioner met with Ms Martina Vuk in Strasbourg. The State Secretary informed the Commissioner that a law banning corporate punishment of children had just been passed in Slovenia. Furthermore, the discussion covered efforts to implement the Istanbul Convention, as well as the rights of LGBTI people; a law had been adopted in April 2016 recognising same-sex partnerships. Other points raised concerned the new law on discrimination, including as regards the reforms it foresees to the position and mandate of the Advocate for the Principle of Equality, as well as challenges faced by Slovenia in the context of the refugee crisis.

### ***OSCE Conference on Tolerance and Diversity***

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

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

On the same day, the Commissioner had a meeting with Dr Bärbel Kofler, Commissioner for Human Rights Policy and Humanitarian Aid, during which current human rights challenges in Europe were discussed, notably in relation to the migration and refugee crisis.

### ***Meetings with European Union Institutions, Brussels***

On 8 November the Commissioner met with Ms Federica Mogherini, the High Representative of the European Union for Foreign Affairs and Security Policy, in Brussels. They discussed the general human rights situation in Europe as well as the Commissioner's visits to and reports on Turkey and Ukraine and the developments concerning human rights in those countries.

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

### ***Meeting with Ms Irina Bokova, Director-General of UNESCO***

On 29 November, the Commissioner met with Ms Irina Bokova, Director-General of UNESCO in Paris and discussed issues pertaining notably to media freedom and the protection of journalists, migrant integration and inclusive education. They also had an exchange on their respective forthcoming country work and explored possibilities of future synergies.

## **6. Human Rights Defenders**

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

On 30 November, the Commissioner participated in the 7th Inter-Mechanisms Meeting for the protection of human rights defenders in Brussels. Such meetings have been organised on a regular basis since 2008 by the Observatory for the protection of human rights defenders, a joint programme of the World Organisation Against Torture (OMCT) and the International Federation for Human Rights (FIDH). Their aim is to discuss trends and emerging issues pertaining to the protection of human rights defenders, exchange experiences and lessons learned in responding to such challenges, and identify possible ways of co-operation and synergies between mechanisms.

The participants in the meeting included the Commissioner, the UN Special Rapporteur on the situation of human rights defenders, the Special Rapporteur on Human Rights Defenders of the African Commission on Human and People's Rights, representatives of the Rapporteur on Human Rights Defenders of the Inter-American Commission for Human Rights, the OSCE/ODIHR, the EU External Action Service, the Chair of the EU Human Rights Working Group (COHOM), the European Commission (DG DEVCO), the international organisation of *La Francophonie*, the PACE Committee on Legal Affairs and Human Rights, the newly-established EU mechanism to protect human rights defenders, and several international human rights NGOs as well as human rights defenders.

Participants took stock of the practices put in place by the mechanisms to advance the protection of human rights defenders, and discussed ways to improve actions in this regard. An interactive dialogue took place with EU representatives on ways to streamline the coordination between EU institutions and member states on one hand, and inter-

governmental mechanisms established to protect and support human rights defenders on the other, notably in difficult situations.

## **7. European Court of Human Rights**

### ***Third party intervention before the European Court of Human Rights***

On 28 November, the Commissioner published his written observations submitted to the European Court of Human Rights on the case of *Khalid Bagirov v. Azerbaijan* (Application No. 28198/15). This case relates to the disbarment of the applicant, an Azerbaijani lawyer who had been actively involved in the defence of human rights, from the Azerbaijani Bar Association. In his submission, the Commissioner considered that the applicant's case provided an important illustration of the shortcomings in the areas of both freedom of expression and the functioning of the judiciary in Azerbaijan. Stressing the important role lawyers play in serving the cause of justice, the Commissioner also expressed concerns at reports of harassment and other forms of pressure on lawyers in a number of Council of Europe member states, including Azerbaijan. He stated that the hindrances imposed on the applicant were closely linked to his involvement in the protection of human rights as a lawyer. In conclusion, the Commissioner stressed that the disbarment of the applicant should be seen in the context of a more general pattern of repression in Azerbaijan against those expressing dissent or criticism of the authorities, including human rights defenders, their lawyers, journalists, bloggers and other activists. In the case of defence lawyers, disbarment or the threat of disbarment may in particular be used as a tool for punishing lawyers who take on sensitive cases, therefore constituting retaliation for activities which should be perfectly legal in a well-functioning democracy. Lastly, the Commissioner stressed that reprisals against the civil society partners of his Office make it increasingly difficult to work on human rights issues in Azerbaijan.

### ***European Implementation Network event on better implementation of ECtHR judgments***

On 2 December, the Commissioner took part in a panel discussion at an event organised at the European Court of Human Rights in Strasbourg to launch the European Implementation Network (EIN), a non-governmental organisation which aspires to serve as a bridge between the Council of Europe and civil society, and to advocate for the full, effective and rapid implementation of judgments. The event focused on how to improve the implementation of Court's judgments. In his intervention, the Commissioner noted that the backlog crisis at the Court has now been replaced by an implementation crisis. He called for the identification of "implementation champions" at the national level, who could push for implementation and take targeted action.

## **8. Communication and Information work**

Some 90 news items were published by the media covering the Commissioner's work. The main media coverage concerned the Commissioner's comment on freedom of assembly in Poland, the Memorandum on the human rights implications of anti-terrorism

operations in South-Eastern Turkey and the letter to Belgium's Secretary of State for Migration and Asylum on the detention of migrant children.

The Commissioner's concerns at amendments to the law on assemblies adopted in Poland were reported by numerous national and international media: *Agence Europe, 24 heures, La Tribune de Genève, Aktualne, Deutsche Welle Russia, Deutschlandfunk, Frankfurter Allgemeine Zeitung, Gazeta Wyborcza, Gordonua, L'orient-Le jour, Neue Zürcher Zeitung, New Europe, ORF, Polish News Bulletin, PolsatNews, Rzeczpospolita, Salzburger Nachrichten, Sputnik Poland, The Associated Press, The New York Times, The Washington Post, The Guardian, Warsaw Voice, Wschodnik, Wyborcza, Yahoo, France24, Zeit Online, Die Welt, Politico Brussels Playbook.*

*ANSA, ARA News, Birgün, Cuatro, DeMorgen, Deutsche Welle Turkey, Deutschlandfunk, Diken, DPA, Europe Online, DPA, Handelsblatt Online, n-TV, Rundschau Online, Europe Online Magazine, Haberdar, Hurriyet, Kisalfold, Knack, Kölnische Rundschau, Magyarhirlap, n-tv, Salzburg 24, and Sputnik* reported on the Memorandum on the human rights implications of anti-terrorism operations in South-Eastern Turkey.

The letter addressed to the Secretary of State for Migration and Asylum of Belgium that warned against resuming the practice of detaining migrant families with children was largely covered by national media, including *7 sur 7, La nouvelle Gazette, ANSA, Belga News Agency, De Morgen, HLN, SkyNet, De Redactie, Gazet van Antwerpen, Het Belang van Limburg, Knack, La Libre, L'Avenir, Le Soir, Le Vif, Metro, Nieuwsblad, RTBF, and La Meuse.*

The report on Latvia also received wide national coverage, with articles and interviews published mainly by *Delfi, Latvian Public Radio and Latvian Public TV, NRA, and Baltic Daily*, with a main focus on gender equality and children's rights.

In an interview with *Le Monde*, the Commissioner reiterated his concerns about the impact of the state of emergency on human rights, while *RTL Nieuws, ANP, NRC, Trouw, Dutch News, NL Times, Express.co.uk, Volkskrant, Reformatorisch Dagblad, Jurist, Elsevir, and RT* covered the Commissioner's letters addressed to the Ministers of the Interior and of Security and Justice of the Netherlands in which the Commissioner raised concerns about the possible detrimental impact that three counter-terrorism Bills may have on the protection of human rights.

Additional coverage concerned Golden Dawn in Greece (*Les Inrockuptibles*), the visit to Lithuania (*Baltic Daily, ELTA*), LGBTI (*El Mundo*), and Roma in Slovakia (*Reuters, Euronews, Business Insider*).

57 tweets were published, with an increase of 1482 followers (10,2% growth); 966901 people reached and 15655 people engaged. On Facebook the Commissioner published 30 posts, reaching 87 947 people, with an increase of 317 Page "likes" (7.4% growth).

Almost 60,000 unique Internet users visited the Commissioner's website, twice as many as compared to the fourth quarter of 2015 and 43% more compared to the previous quarter of 2016. The number of page views almost doubled in comparison to the previous quarter of 2016 and 40% more visits were registered.

## 9. Next three months

### January

- 18-21/01 Visit to Monaco
- 23-25/01 PACE session
- 26/01 Mission to international organisations in Geneva

### February

- 06-10/02 Mission to Kosovo\*
- 17/02 EU Council Working Group on OSCE and the Council of Europe – COSCE (Brussels)

### March

- 06-08/03 Visit to Portugal
- 20-23/03 Visit to Slovenia
- 27-28/03 “Human rights: a reality for all” Cyprus CM Chairmanship Conference launching the Council of Europe Disability Strategy 2017-2023 (Nicosia)
- 30/03 32<sup>nd</sup> Congress Session (Strasbourg)

## 10. Observations and reflections

During the period in review the most momentous development likely to have a significant impact on human rights was the election victory of Donald Trump as president of the United States. This victory and the turbulence it promises for international affairs follows and adds to the cumulative impact of other challenges to the broader human rights system, which has never been at greater risk in the post-war era. Analysing the potential consequences of President Trump for human rights within the United States lies beyond the scope of these reflections. Here, I offer some preliminary thoughts on possible direct and indirect effects on Europe and things to watch for in the coming months and years.

President Trump did not emerge in a vacuum. His victory represents part of a broader backlash against “politics as usual”, especially the inability of traditional parties and candidates to connect with the electorate and traditional media to speak to the concerns of many people. The US election result also represents the latest revolt against globalisation and the inequality, uncertainty and sense of powerlessness it has

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

engendered. In some circles, this revolt has also targeted European institutions and the so-called “political correctness” (I call it civility) of liberal elites and the human rights community.

In Europe, a Trump victory is the latest in a long series of destabilizing processes or to use a diplomatic phrase – “challenges” that are eroding the foundations of the European human rights system. These challenges include the following: the economic crisis and the social destruction left in its wake; the broader East-West tensions which followed Russia’s actions in Crimea and the conflict in Eastern Ukraine; the migration crisis and the fillip this has given to xenophobic and anti-European forces, including those animating “Brexit”; terrorist attacks and the ensuing insecurity and measures restricting rights; and the attempted coup in Turkey and the repressive measures adopted in its aftermath. These challenges have been accompanied by less dramatic signs of a European human rights edifice in jeopardy, such as non-cooperation of member states with Council of Europe bodies, non-implementation of European Court judgments and open challenges to the legitimacy of the Court.

How could President Trump affect human rights in Europe? The US is a full stakeholder in the United Nations and the Organization for Security and Cooperation in Europe, but only an observer at the Council of Europe. However, President Trump’s rhetoric during the campaign and certain policy moves in his first weeks in office have already echoed in Europe and beyond. Though there are many possible human rights concerns to explore, here, I will focus on three important issue areas: torture, migration and women’s rights. These are areas where President Trump has made clear and repeated pronouncements or taken action in his very first days in office, suggesting that they are priorities.

During the campaign President Trump repeatedly claimed that “torture works” and even if it doesn’t, terrorist suspects “deserve it anyway.” He also repeatedly defended the use of “waterboarding”, an interrogation technique meant to make the victim feel as if he is drowning. This is highly alarming, given the fact that the prohibition on torture is one of the few non-derogable rights in international human rights law. While President Trump’s secretary of defense has come out against the use of torture, a draft executive order leaked to the *New York Times* sent alarm bells ringing, as it called for reopening the CIA black site programme of secret prisons, denying the International Committee of the Red Cross access to detainees in US custody and the continued use of the Guantanamo facility for new captives.

These signals have particular resonance in Europe, as many European countries cooperated with the US following the 9/11 attacks in its programme of “extraordinary rendition,” illegal detention, and torture. This cooperation was highly corrosive of human rights and the rule of law, as many European governments sought to hide it, lied about it, and eventually, faced legal challenges in the European Court of Human Rights, several of which they lost. Two of the three countries hosting CIA black sites – Poland and Lithuania (Romania has heretofore been silent) – have recently stated that they would not cooperate in such programmes again. European governments should be crystal clear with the new US administration that the mistakes of the past will not be repeated, that torture is unacceptable and that anyone engaged in the practice in Europe will be held accountable.

The second human rights issue with a particular resonance in Europe is migration. As candidate, President Trump promised to build a wall with Mexico, deport millions of



irregular migrants, ban all Muslim migrants, and introduce “extreme vetting” for refugees, who could be “Trojan horses” for terrorist attackers. Soon after he assumed office, President Trump adopted a decision putting a four-month hold on allowing all refugees into the US and banning all arrivals of travellers from Syria, Iraq, Iran, Sudan, Libya, Somalia and Yemen (all of which happen to be Muslim majority countries...) pending a security review set to last 90 days.

The narrative of building walls and deporting aliens is one that already has many adherents in Europe. Indeed, recent trends in Europe include the building of border fences, repeated reports of “push-backs” at borders on land and sea, and attempts to legalize push-backs by enshrining the possibility in national legislation. However, in Europe, official discrimination on the basis of the nationality or religion of migrants or asylum-seekers has been uncommon in policy, if not in rhetoric. European governments must resist the temptation to follow suit, stigmatize Muslims, and equate refugees with terrorists. It was heartening to hear the French and German foreign ministers jointly criticise President Trump’s approach.

President Trump’s policy has important ramifications for European countries, which are already grappling with a significant influx of refugees and rancour surrounding the issue. In brief, if the US does less, Europe will have to do more. In a rare statement criticising a major donor country, UNHCR expressed “alarm” at the suspension of refugee resettlement in the US, highlighting the widespread uncertainty caused by the US decision and the fact that, given previous resettlement rates, some 20,000 refugees might have been resettled to the US during the 120 day review period. Even under President Obama, the US was not pulling its weight on refugee resettlement, especially from Syria. European governments can expect even less from the current US administration, heightening the importance of European generosity and cooperation.

The third major human rights issue area in which US policy will affect Europe is women’s rights, particularly sexual and reproductive health and rights. Over the course of his career, as well as during the campaign, President Trump made many sexist statements, which have been well documented by various media outlets (see, e.g. the “sexism tracker” in the *Telegraph* newspaper). During the campaign, President Trump advocated “punishing” women who had abortions, then, “punishing” doctors performing the procedure. One of President Trump’s first actions was an order denying funding to foreign aid groups that discuss abortion in the context of family planning. How much of this funding has heretofore gone to any Council of Europe member states is unclear.

As I noted in the conclusion to the previous quarterly report, in my country visits I have increasingly encountered a conservative wind on issues pertaining to gender equality, which poses a real threat to women’s rights. President Trump’s rhetoric regarding women to date is likely to strengthen that trend. However, one interesting reaction to President Trump’s policy came from the Netherlands, where the minister for foreign aid and development announced the creation of an international safe abortion fund to attempt to compensate the USD 600 million shortfall created by the US policy shift. This is Europe stepping up when the US is pulling back. During the Trump presidency there will likely be a need for European leadership on many human rights issues. Are European countries – individually and collectively - up to the task?