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# **REPORT BY NILS MUIŽNIEKS**

COMMISSIONER FOR HUMAN RIGHTS  
OF THE COUNCIL OF EUROPE

**FOLLOWING HIS VISIT TO UKRAINE  
FROM 21 TO 25 MARCH 2016**

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## EXECUTIVE SUMMARY

Commissioner Muižnieks visited Ukraine from 21 to 25 March 2016. In the course of this visit he travelled to Kyiv, Dnipropetrovsk and the non-government controlled city of Donetsk. He held discussions with the state authorities, lawyers and civil society representatives, and also interviewed victims of torture on both sides of the contact line. The present report draws on the themes of the Commissioner's visit and focuses on the following issues:

### **Right to life**

More than 9000 people have lost their lives since the outbreak of the armed hostilities in the east of the country in April 2014. Reports and allegations of numerous human rights abuses have emerged, including cases of summary and extra-judicial executions; war crimes committed against the civilian population and military personnel in captivity; indiscriminate shelling of populated areas resulting in deaths and serious injuries to civilians; and the shooting down of a civilian airplane in July 2014. Those who live in the conflict-affected areas, particularly those located between check-points on opposing sides, continue to be vulnerable to lawlessness. The reintroduction of the death penalty in the non-government controlled areas is a regrettable step backwards which must be reversed.

### **Torture, ill-treatment and conditions of detention**

The Commissioner and his team interviewed more than a dozen individuals who claimed that they had been subjected to torture or various forms of ill-treatment on either side of the contact line. They also received complaints about poor conditions of detention. There is an absolute prohibition of torture and ill-treatment under international law, including the European Convention on Human Rights. Urgent and sustained measures should be taken on both sides of the contact line to stop such abuses and bring the perpetrators to account. Power-holders at the highest levels of responsibility should deliver the unequivocal message that ill-treatment will not be tolerated.

### **Unacknowledged detention and release of detainees**

Several persons interviewed by the delegation who had experienced deprivation of liberty on government-controlled territory claimed to have been held incommunicado and/or in unacknowledged places of detention for certain periods. On the non-government controlled territories, people were reportedly being held in various locations, including the basements of buildings used by armed groups or entities performing security-related functions. The Commissioner emphasises that there must be unimpeded access to all persons deprived of their liberty – irrespectively whether they are being held in official or “informal” places of detention – on both sides of the contact line. Any instance of deprivation of liberty should be in accordance with a procedure prescribed by law, with all the necessary legal safeguards being available in practice. All individuals who have been deprived of their liberty in an arbitrary manner should be immediately released. Hostage-taking is prohibited under international law.

### **Accountability for serious human rights violations**

Justice is a prerequisite to genuine reconciliation in a society affected by conflict, and establishing and recognising the truth about serious human rights violations is an important component of any reconciliation process. Sustained and co-ordinated efforts by all relevant actors are needed to ensure that all those responsible for serious human rights violations are brought to account. The Commissioner took note of a number of significant shortcomings as regards the investigations into such abuses; moreover, there are many cases where information indicative of a serious violation does not even trigger an investigation. To remedy the foregoing situation, all those involved in the investigation and prosecution of serious human rights violations should possess a thorough understanding of international standards for effective investigations and be willing

and able to apply them in practice. The judicial authorities also have a key role in the efforts to ensure accountability and should be seen as acting in an impartial and independent manner, in the interests of the credibility of the process and of the institutions upholding the rule of law. Victims and their families should be duly informed about the state of investigations and involved to the highest degree possible.

### **Rehabilitation of victims of torture, ill-treatment and other serious violations**

The rehabilitation of victims of serious human rights violations such as torture and ill-treatment is an important international obligation which should be fulfilled without delay. To be effective, rehabilitation must be victim-centered and tailored to the specific needs, problems and expectations of a given victim or a group of victims. Rehabilitation services should be provided to all victims of torture and ill-treatment, without discrimination. Even when such services are performed by civil society organisations or private entities, they should be supported, including through funding, by the relevant state institutions.

### **Missing persons**

The lists of missing persons compiled in Kyiv and Donetsk respectively contain the names of some 650 and 400 persons; however, the data available may not be entirely accurate or up to date. Enforced disappearance is a continuous crime and lasts until the fate and whereabouts of the victim are established with certainty. There is a clear need to step up efforts to investigate cases of enforced disappearances, as well as to establish the fate and whereabouts of the disappeared persons and to identify and prosecute those responsible. To this end, an independent and impartial mechanism for the search of missing persons should be established, and be provided with the necessary human and financial resources. Reparation, in the form of compensation, restitution, rehabilitation, satisfaction and guarantees of non-repetition must also be ensured. The initiatives of various NGOs and volunteer groups to search for the location of gravesites and assist with the return of mortal remains to the families of the victims concerned should be fully recognised and supported.

### **Freedom of movement**

Freedom of movement of civilians across the contact line should be fully protected. The Temporary Order should be revised, with a view to providing a less restrictive environment for the movement of the civilians. Any security measures enforced on either side of the contact line should be balanced with the legitimate interest of the population to move freely between government-controlled and non-controlled territories. Any restrictions imposed should be proportional to the goal pursued, reviewed on a regular basis and lifted whenever possible. The rules and procedures at the checkpoints should be further clarified.

### **Situation of Internally Displaced Persons (IDPs)**

The regulatory framework related to IDPs should be reviewed and amended in order to de-link the payment of pensions and other entitlements from a person's IDP status. Targeted assistance to persons who are currently registered as IDPs should be fully restored. Any verification should be carried out on a case by case basis and assessed on its own merits. Both the verification procedure and procedure for suspension of IDP payments should be clearly defined in the law, and subject to due process and the necessary legal safeguards. Efforts should be made to harmonise the regulatory and normative framework, in order to eliminate any contradictory requirements, and to ensure its full compatibility with international standards.

### **Payment of pensions and other benefits to residents of territories outside government control**

The issue of payment of pensions and other entitlements was brought before the national administrative courts which delivered a final judgment on the matter, whereby the provision of the November 2014 Resolution of the Cabinet of Ministers to suspend such payments to the non-governmental territories was declared to be null and void. The authorities should develop and implement a separate procedure enabling

those persons who permanently reside on the territories outside government control to have access to their pensions and other social entitlements.

**Ongoing reforms in the judicial system and systematic work on human rights**

The reforms in the judiciary should be aimed at strengthening judicial independence and shielding judges from any undue interference and influence. Judicial, prosecutorial and investigating authorities should be provided with all the necessary means, including adequate resources, to be able to perform their duties effectively. Sufficient resources should be made available for the implementation of the Human Rights Strategy and Action Plan.

## INTRODUCTION

1. Commissioner Nils Muižnieks and his delegation visited Ukraine from 21 to 25 March 2016.<sup>1</sup> This was the Commissioner's sixth visit to the country since February 2014. The main focus of the visit was the issue of accountability for serious violations of human rights in the context of the conflict in the east of the country. As part of his continuous dialogue with the Ukrainian authorities, the Commissioner also followed up on issues raised in his previous report, most notably freedom of movement, the situation of internally displaced persons, payment of pensions and social benefits to persons residing in the areas outside government control, and systematic work on human rights.
2. During the mission the Commissioner travelled to Kyiv, Dnipropetrovsk and Donetsk. His visit to the non-government controlled city of Donetsk was facilitated by the UN Human Rights Monitoring Mission in Ukraine.
3. In Kyiv, the Commissioner had discussions with the President of Ukraine, Mr Petro Poroshenko;<sup>2</sup> the Minister of Finance, Ms Natalie Yaresko;<sup>3</sup> the Deputy Prosecutor General and Chief Military Prosecutor, Mr Anatolii Matios; as well as representatives of the Security Service of Ukraine (SBU), Mr Valery Hrebenuk and Mr Mayakin. In addition, the Commissioner met with non-governmental organisations and representatives of international organisations (including UN OHCHR, EU and OSCE) and had a telephone conversation with the Parliamentary Commissioner for Human Rights (Ombudsperson).
4. In Donetsk, the Commissioner held discussions with Mr Dmitriy Popov, head of the Office of the local commissioner for human rights (ombudsperson), as well as meeting representatives of intergovernmental and international humanitarian organisations operating in the area. The Commissioner also visited a psychiatric hospital and a home for older persons located in the city.
5. In Kyiv and in Donetsk the Commissioner and his delegation interviewed more than a dozen persons who had been released from captivity and handed over in the context of exchanges between the opposing sides. The delegation also met with several lawyers, including those providing assistance with applications to the European Court of Human Rights.
6. The Commissioner would like to thank the Ukrainian authorities - in particular, the Permanent Representation of Ukraine to the Council of Europe, as well as the Ministry of Foreign Affairs - for their co-operation and efforts to ensure that the visit was carried out in full compliance with his mandate. The Commissioner would also like to thank the decision-makers in Donetsk for their efforts to facilitate the visit, as well as for providing security for the delegation. Furthermore, he is most grateful to the international organisations represented in Ukraine, most notably the UN Human Rights Monitoring Mission, for their essential advice and assistance. More generally, he would like to extend sincere thanks to all his interlocutors for their willingness to share with him their knowledge, views, and experiences.
7. There have been some positive developments since the Commissioner's last visit to Ukraine in June-July 2015, such as the adoption of the law on the State Bureau of Investigations, and the approval of the State Programme for the integration of IDPs and its accompanying Action Plan. However, many more challenges remain to be addressed.

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<sup>1</sup> During this visit, the Commissioner was accompanied by Deputy to the Director of his Office, Ms Bojana Urumova, and two Advisers, Ms Olena Petsun and Mr Furkat Tishaev. The present report mainly covers developments until the end of March 2016, unless otherwise indicated.

<sup>2</sup> On the margins of his meeting with President Poroshenko, the Commissioner also had a brief exchange of views with the Minister of Foreign Affairs, Mr Pavlo Klimkin, and the Presidential Envoy for the Peaceful Settlement of the Situation in the Donetsk and Luhansk regions, Ms Iryna Gerashchenko.

<sup>3</sup> On 14 April 2016 Ms Yaresko was succeeded by Mr Oleksandr Danylyuk.

8. More than 9000 people, many of them civilians, have lost their lives since April 2014 as a result of the armed conflict in the east of the country. At least 21,532 persons have been injured.<sup>4</sup> The grim statistics represent great suffering of individual human beings on a vast scale.
9. The Commissioner reiterates his call on all sides to the conflict to do their utmost to ensure the full de-escalation of the situation, refrain from using violence and resolve differences through negotiations as outlined by the Minsk agreements of September 2014 and February 2015. It is a fundamental obligation of any member states of the Council of Europe to protect human life.
10. At the time of the Commissioner's visit, the presence of explosive remnants of war and improvised explosive devices were the main cause of civilian casualties in the conflict-affected area. This reportedly had a particularly negative impact on the safety of children residing in the area. In some of the establishments visited by the delegation in Donetsk, there were information leaflets and other materials displayed warning about the danger of mines, including posters specifically addressed to children and their parents. However, certain representatives of international humanitarian NGOs working on the ground indicated that they encountered obstacles when seeking to carry out educational campaigns in local schools aimed at teaching children about the danger of mines.
11. Since the beginning of the conflict, there have been numerous reports of summary and extra-judicial executions taking place in the conflict-affected areas; war crimes committed against the civilian population and military personnel in captivity; and indiscriminate shelling of populated areas causing death and serious injuries, in most cases of civilians.<sup>5</sup> A single incident which caused the loss of life of 298 civilians was the shooting down of the Malaysian Airline flight on 17 July 2014. The process of establishing and recognising the truth concerning such serious human rights violations and violations of international humanitarian law, as well as of bringing those responsible to account and providing adequate and effective reparation to the victims, should be an integral part of the on-going efforts towards a long-lasting solution to the conflict and durable peace and reconciliation in society (see also paragraphs 30-38 below).
12. As regards the extent of criminality jeopardising the security of the population in the areas concerned, the Commissioner was informed that the situation had stabilised somewhat, although there were still frequent reports of looting by criminal groups operating in the areas close to the contact line and in the buffer zone between the opposing sides. According to some estimates, as many as 35,000 to 40,000 people remaining in these areas continue to be vulnerable to lawlessness.
13. The Commissioner took note of the decision taken in the non-government controlled areas to reintroduce the death penalty as a sanction for the "most serious crimes".<sup>6</sup> He raised this issue with Mr Popov who reassured him that such provisions would not apply in practice. The Commissioner, on his part, emphasised that the death penalty must be renounced as a matter of principle.
14. The Council of Europe position on the issue of the death penalty is clearly expressed in the Preamble to Protocol No 13 to the European Convention on Human Rights (the Convention): the right to life is a basic value in a democratic society and the full abolition of the death penalty is essential for the protection of this right and for the full recognition of the inherent dignity of all human beings. As was emphasised by the European Court of Human Rights in the case of *Al-Saadoon and Mufdhi v the United Kingdom*,<sup>7</sup> although 60 years ago, when the European Convention on Human Rights was drafted, the death penalty had not violated international standards, there had been a subsequent evolution towards its complete abolition, in law and in practice, within the Council of Europe space. Two Protocols to the Convention had entered into force, abolishing the death penalty in time of peace

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<sup>4</sup> UN OHCHR, Report on the human rights situation in Ukraine: 16 February to 15 May 2016, §3 and 11.

<sup>5</sup> For more information, see regular reports by the UN Monitoring Mission in Ukraine, as well as relevant reports by the Human Rights Watch, Amnesty International and national human rights NGOs which have been documenting violations and collecting witnesses' accounts.

<sup>6</sup> <http://dnr-online.ru/ugolovnyj-kodeks-dnr/>

<sup>7</sup> Judgment of 2 March 2010, application no. [61498/08](#), §§ 115-122.

(Protocol No. 6) and in all circumstances (the above-mentioned Protocol No. 13). Consequently, the Court held that the death penalty, which involved the deliberate and premeditated destruction of a human being causing physical pain and intense psychological suffering as a result of the foreknowledge of death, could be considered inhuman and, as such, contrary to Article 3 of the Convention.



## TORTURE, ILL-TREATMENT AND CONDITIONS OF DETENTION

15. In the framework of this visit, the Commissioner and his team interviewed in private more than a dozen persons – most of them civilians – who had been held in captivity and/or detained on either side of the contact line. The time-frame of the captivity or detention mostly related to 2014 and 2015; however, some of the persons had been released as recently as 2016. The persons interviewed had mainly been apprehended or captured in the Donetsk region; one person had been deprived of liberty in the Luhansk region. In almost all cases, the Commissioner and members of his team interviewed the persons at length and individually (one interviewee and two interviewers). Those who had been previously deprived of their liberty in Ukrainian-controlled territory were interviewed in the non-government controlled city of Donetsk, and those who had been held in the non-government controlled territories were interviewed in Kyiv. Most of the interviewees were men, but a small minority were women. Generally speaking, their accounts contained a great amount of detail.
16. The persons who had been held on the government-controlled territory claimed they had been ill-treated by members of pro-government volunteer battalions and/or certain members of the Security Service of Ukraine (SBU). The allegations of ill-treatment by the SBU related most notably to detention in Kharkiv and/or Kramatorsk detention facilities, or Mariupol airport. Those who had been detained in non-government controlled territory claimed that they had been ill-treated either by members of para-military groups opposed to the Ukrainian government or representatives of local structures dealing with security and military issues. The Commissioner also received information that many persons, both military and civilians, were held in unacknowledged detention (see more information in paragraphs 24-29 below). Several interviewees reported that they had been held in captivity for a prolonged period of time, in some cases from 20 days to four months.
17. All interviewees claimed that they had been beaten. The alleged beatings were carried out using blunt objects such as the butts of firearms, sticks, batons, and bats, as well as kicks and punches. Some of the beatings were reportedly severe enough to result in a loss of consciousness, concussions, broken bones/ribs, and the inability to walk for a prolonged period of time. Many of the interviewees displayed missing teeth, which they also attributed to the beatings in custody; one man was missing 13 teeth.
18. Several interviewees claimed that they had been subjected to the use of electric stun devices (“tasers”) and, in some cases, electric torture using wires with current attached to different parts of their body. Others alleged that they had been cut with sharp knives or shot at with pneumatic guns at short range, that needles had been inserted under their fingernails, or that their toenails had been pulled off. There were also some allegations of sexual violence or threats thereof, including direct experience of attempted rape, during captivity. Some interviewees claimed having witnessed situations where certain of the women or girls who were being held on the same premises (rooms, basements or cells) with them were being taken away by their captors to be given as a “gift” to fighters or for “interrogation”, and then brought back to the place of detention in a distressed and disheveled state. Certain individuals also alleged that they were given injections, which they presumed to contain psychoactive substances. Many interviewees claimed that they had been handcuffed for several days while in captivity which had allegedly led to the swelling and/or purulence of their injured wrists.
19. Some of the persons interviewed reported that they had directly witnessed fatal beatings, shootings or other forms of extrajudicial execution of their fellow captives. Some individuals also reportedly experienced mock executions. This included discharging a weapon over a person’s head or at a person wearing a bulletproof jacket. There were also several allegations of psychological pressure in the form of threats of an imminent execution (warnings in advance, periodic reminders and daily and hourly countdowns to the “scheduled execution”). Other forms of intimidation and humiliation of captives were also reported during the Commissioner’s visit. They included threats of death or of violence, deprivation of clothing and keeping captives naked for several days in front of other detainees, including those of the opposite sex.
20. Conditions of detention were said to be extremely poor in places of detention on both sides of the contact line. In particular, interviewees claimed that the premises they were held in (at least initially)

were filthy. Humid basements of public buildings, such as schools, universities, stadiums, and even coalmines, were temporarily readapted for detention purposes and lacked windows, proper ventilation, sleeping places and sanitary facilities. Some premises were reportedly so overcrowded (e.g. 30 m<sup>2</sup> for up to 30 people) as to oblige detainees to sleep in shifts. Due to the absence of windows and access to daylight, many of the premises used for detention, in particular the basements, had the lighting switched on 24 hours per day. Most of the captives claimed that they were hardly ever given the possibility to shower (once in several weeks or months), and that access to a lavatory was also restricted (once per day or several days, leading to the inhuman and degrading practice of “slopping out”). The provision of food and water was reportedly minimal and very poor (some detainees claimed that they would not be provided with food for five or more days), and injured and ill captives were not being provided with medical attention, or that the attitude of some of the doctors who did come to see them was perfunctory at best. In this respect, a doctor interviewed by the delegation indicated that he had observed a woman recently released from the Luhansk region to be severely underweight. The use of forced labour was also reported to the Commissioner by some interviewees who had been held in the non-government controlled territories.

21. A striking feature of the allegations received by the Commissioner and his delegation was their consistency (having regard to the fact that the persons were in most cases interviewed individually), and that the patterns of ill-treatment alleged were remarkably similar on either side of the contact line. In some cases, it was claimed that following a transfer to another place of detention operated by another structure or unit, there tended to be an improvement in the treatment provided. However, the interviewees themselves were not always sure which security or armed forces were depriving them of liberty, as they were usually blindfolded (some alleged that their eyes had been covered with duct tape) or hooded during transfers.
22. Apart from physical signs (including but not limited to missing teeth), many of the former captives reported long-term psychological consequences resulting from their ill-treatment in custody. Almost all reported sleep disturbances, such as nightmares and insomnia.
23. The Commissioner would like to recall the absolute prohibition of torture and ill-treatment under international law, including under Article 3 of the European Convention on Human Rights. The European Court of Human Rights has repeatedly emphasised that the prohibition of torture and inhuman and degrading treatment, along with the right to life, are the fundamental rights protected by the Convention, whose core purpose is to protect a person’s dignity and physical integrity. Therefore, combating impunity for such crimes and bringing those responsible to account should be a matter of the highest priority.

## UNACKNOWLEDGED DETENTION AND RELEASE OF DETAINEES

24. Several of the persons interviewed by the Commissioner and his delegation claimed that at least for a certain period of time during their detention on the government-controlled territories, they were held *incommunicado* and/or in unacknowledged places of detention. Those interviewees who had been deprived of their liberty in non-government controlled areas were reportedly held not in “formal” places of detention such as pre-trial establishments (SIZOs) or prisons, but in the basements of various buildings used for administrative and other purposes by various local structures performing military and security-related functions, as well as by armed groups.
25. At the time of the Commissioner’s visit no international mechanism had access to any places of deprivation of liberty on non-government controlled territories, and regret has been expressed by the UN Office of the Commissioner for Human Rights (OHCHR) in its most recent report on Ukraine.<sup>8</sup> The Commissioner’s request to visit such places was also not granted. While access to persons detained in the government-controlled territories was generally granted to the relevant international actors, on 25 May 2016 the UN Subcommittee on the Prevention of Torture (SPT) issued a statement that it decided to suspend its visit to Ukraine after being denied access to places in several parts of the country where it suspected people were being deprived of their liberty by the Security Service of Ukraine (SBU). During the March 2016 visit, the Commissioner and his delegation received information from a number of interlocutors that persons detained in SBU premises were allegedly moved to another location - which was presumed to be in anticipation of a visit by an international monitoring body - and then returned once the relevant delegation had left the area.
26. During his discussions with the relevant interlocutors in Donetsk, the Commissioner emphasised the importance of ensuring access to international organisations and mechanisms to all places of detention. He was informed that the “local legislation” does not at present allow for this kind of supervision of the places of detention. In this respect, the Commissioner would like to underline that it is of utmost importance to ensure unimpeded access of the relevant international mechanisms to all places where persons can be deprived of their liberty, both on government-controlled and non-government controlled territories. In view of the numerous reports of ill-treatment, torture and fatalities in places of deprivation of liberty, such unimpeded access is an indispensable pre-requisite for safeguarding the physical integrity and rights of the persons held therein, and for ensuring their humane treatment and adequate conditions of detention.
27. The Commissioner would like to recall that any deprivation of liberty should follow due process established by law, with all the necessary legal safeguards being available to the persons concerned. The Court has consistently highlighted in its jurisprudence that the very purpose of Article 5 of the European Convention on Human Rights is to prevent arbitrary or unjustified deprivations of liberty.<sup>9</sup> The Court therefore considers that the unacknowledged detention of a person is a complete negation of the fundamentally important guarantees contained in Article 5 of the Convention and constitutes a most grave violation of that provision.<sup>10</sup> Furthermore, there should be a continuing legal basis for the deprivation of liberty for its entire duration.
28. The exchange of captives is regulated by the provisions of the Minsk agreement of February 2015. Paragraph 6 of that document requires to “provide release and exchange of all hostages and illegally held persons, based on the principle of “all for all””. While initially there were instances of large-scale exchanges, the process appears to be blocked at present, with only sporadic simultaneous releases of prisoners taking place. The manner in which such simultaneous releases take place has raised many

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<sup>8</sup> See [Report](#) on the human rights situation in Ukraine 16 February to 15 May 2016, Office of the United Nations High Commissioner for Human Rights, § 36.

<sup>9</sup> *McKay v the United Kingdom*, application no. [543/03](#); GC judgment of 3 October 2006, § 30.

<sup>10</sup> *El-Masri v the former Yugoslav Republic of Macedonia*, application no. 39630/09, GC judgment of 13 December 2012, §233.

concerns, insofar as it does not provide sufficient legal guarantees for the persons concerned and in certain cases has involved *incommunicado* detention, including for a prolonged period of time.<sup>11</sup>

29. There has been a worrying pattern of civilians being taken as hostages for the purpose of exchanges, which is clearly prohibited under international law. Considering the lack of appropriate legal guarantees and safeguards against arbitrariness, it is not excluded that some individuals may have been forced to participate in such exchanges against their will. The Commissioner was also informed by some persons who had been released through exchanges and returned to non-government controlled territory that their passports or other identity documents had been confiscated by representatives of the Security Service of Ukraine and never returned. As a result, they do not possess legally valid documents and do not have a possibility to either cross into the government-controlled territories and/or leave the country. In some cases this also implies that families are unable to meet with their relatives across the contact line.

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<sup>11</sup> For more information, see Report on the human rights situation in Ukraine, 16 November 2015 to 15 February 2016, UN OHCHR, §§ 62 to 66 and Report on the human rights situation in Ukraine, 16 February to 15 May 2016, UN OHCHR, §§ 43-44.

## ACCOUNTABILITY FOR SERIOUS HUMAN RIGHTS VIOLATIONS

30. Genuine reconciliation in any society affected by conflict cannot be achieved without justice. Post-conflict justice has a retributive aspect, in the sense that it is aimed at punishing - through fair proceedings - those who have committed serious violations of international human rights and humanitarian law. However, it should above all be preventive, aiming to ensure that all people affected by the conflict in one way or another may come to terms with the past, and live in peace in a cohesive, pluralistic democratic society. Justice also means provision of adequate, effective and proportionate reparation to comfort and heal the wounds of all victims. Therefore, the Commissioner is of the firm opinion that establishing and recognising the truth about serious human rights violations is an important component and cornerstone of any future reconciliation.
31. The Commissioner shares the concerns expressed by some international and local NGOs he has met on various occasions in Kyiv or Strasbourg, as well as by other relevant international actors,<sup>12</sup> that the amnesty provisions in the Minsk agreements raise questions as to how they would be implemented in practice and whether they would also apply to individuals implicated in serious human rights violations covered by Article 2 and 3 of the European Convention on Human Rights. The Commissioner wishes to recall that under international law amnesties for grave breaches of fundamental human rights are increasingly regarded as unacceptable because they are incompatible with the unanimously recognised obligation of States to prosecute and punish such crimes.
32. Ukraine is not a State Party to the Rome Statute. However, pursuant to the two declarations lodged by the Government of Ukraine on 17 April 2014 and 8 September 2015, it has granted the International Criminal Court jurisdiction over all alleged international crimes committed on its territory since November 2013. The Commissioner also took note that more than 3,000 individual applications related to the events in Crimea or the hostilities in the east of Ukraine have been pending before the European Court of Human Rights.<sup>13</sup> Some of those applications concern alleged violations of Articles 2 and 3 of the ECHR.
33. The responsibility to fight against impunity for serious human rights violations mainly lies with the national authorities. Therefore, the issue of ensuring accountability for serious human rights violations has been raised repeatedly by the Commissioner during his meetings with the relevant interlocutors in Ukraine.
34. During the March 2016 visit, the issue of accountability for human rights violations in the east of the country was discussed with the Chief Military Prosecutor. The Commissioner was subsequently informed about forty-seven criminal proceedings into allegations of serious human rights violations committed by members of governmental military forces initiated since the beginning of the conflict. As of the end of March 2016, fifteen indictments implicating 32 persons had been transmitted to the courts; 24 proceedings were still on-going; seven had been transmitted to the police for further investigative actions and one criminal proceeding had been temporarily suspended while the suspect was on the search list. Furthermore, ten criminal proceedings had been initiated by the police; three of them implicating four individuals had already been transmitted to the courts. The prosecutorial authorities have also initiated numerous criminal investigations into cases of serious human rights violations which transpired in the non-government controlled areas. According to data provided by the Prosecutor's Office more than 2,000 persons have been identified as victims of illegal detention and serious human rights violations in those areas.
35. The Commissioner's interlocutors in Donetsk indicated that certain measures have been taken to prosecute and/or punish those responsible for violation of rules and discipline, including inappropriate treatment of captives. The Commissioner's delegation met several persons who had previously been held in the non-government controlled part of the Donetsk region and their families. At one such meeting a former captive indicated that his spouse had complained to the Office of the local

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<sup>12</sup> See, for instance, end of visit statement of the Special Rapporteur on extrajudicial, summary and arbitrary executions, Christof Heyns, Ukraine: Lives lost in an accountability vacuum, Kyiv, Ukraine, 18 September 2015, Part II.

<sup>13</sup> The individual applications have been lodged either against Ukraine or Russia, or against both of those States.

commissioner for human rights about his ill-treatment in custody. His spouse stated that after having examined their complaint, the head of the Office Mr Popov had forwarded the complaint to the local “military prosecutor” and that certain inquiries had reportedly been opened as a result. However, the persons concerned indicated that they were not aware of any concrete outcome. In addition, a former captive indicated that he had been questioned by the “military prosecutor” in the Luhansk region for the purpose of providing evidence against his para-military captors.

36. The Commissioner took note of the concerns already expressed by certain international organisations and local NGOs that there was no systematic or consistent approach towards ensuring accountability for serious human rights violations. In this respect, two reports by the International Advisory Panel (IAP) of the Council of Europe - on the review of the Maidan Investigations and the review of the investigations into the tragic events in Odesa of May 2014 – identified several important shortcomings, both structural and operational, in the way that the investigations into the events in question were being conducted. Most notably, the IAP highlighted the need for an independent and effective mechanism for the investigation of serious human rights violations committed by law enforcement officers and other public officials. It also stressed that it was of central importance for the purpose of maintaining the confidence of all sectors of the public in the criminal justice system that the authorities, including the judicial authorities, are seen to act in an impartial and equal manner in the conduct of the investigations and court proceedings. Furthermore, in order to ensure the quality of the investigations, the relevant authorities were required to demonstrate sufficient thoroughness and diligence in initiating and/or pursuing the investigation, with a view to ensuring its effectiveness. Those shortcomings should be rigorously addressed in order to ensure effectiveness of the on-going and/or any future investigative proceedings. In order to fully comply with obligations under international law, such investigations should be victim-oriented.
37. The Commissioner also received information suggesting that in certain cases the prosecutorial authorities have been devoting their efforts into dealing with minor offences instead of dealing with the most serious human rights abuses. Furthermore, the Commissioner heard complaints that in certain cases a pattern displayed on both sides of the contact line was to attribute responsibility for any past or on-going human rights abuses to the opposite side.
38. As regards any investigations into the cases of serious human rights violations, irrespectively whether they are being conducted on government-controlled or non-government controlled territories, they should comply with the general principles established in the case-law of the European Court of Human Rights: first and foremost, 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. The investigation must be comprehensive and seek to shed light on all significant events and circumstances related to the case. It 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.

## REHABILITATION OF VICTIMS OF HUMAN RIGHTS ABUSES

39. The Commissioner underlines the importance of providing rehabilitation to victims of gross human rights violations, which constitutes an obligation under the relevant international instruments. The rehabilitation process should include not only medical and psychological care, but also social, legal, educational and other measures, as well as family support. To be effective, rehabilitation must be victim-centred and tailored to the specific needs, problems and expectations of a given victim of a group of victims.
40. In his Human Rights Comment ["Torture survivors have the right to redress and rehabilitation"](#)<sup>14</sup>, the Commissioner emphasised the obligation by the states to ensure that long-term programmes of rehabilitation are accessible to all victims of torture or ill-treatment without discrimination and with full respect for victims' right to confidentiality. This may either be done through the direct provision of these services by states, or by support or funding to private or non-governmental programmes. Irrespective of the arrangements found, it is essential that persons who have experienced torture are able to place their trust in the rehabilitation services offered. Cooperation between NGOs and state services is therefore vital to ensure the effective provision of holistic rehabilitation services to victims.
41. While in Donetsk, the delegation was informed that psychological assistance was available to the affected individuals through a telephone hotline. During his meetings with the psychologist and the head of the Office of the local commissioner for human rights, the Commissioner was also informed that victims of ill-treatment were being provided with various social benefits, including temporary communal accommodation and food. Furthermore, the Commissioner was informed that children affected by the conflict were receiving psychological assistance by local and external professionals. At the same time, international NGOs operating in that area informed the Commissioner that they had faced certain obstacles in providing rehabilitation services to children affected by the conflict.
42. In Kyiv, the Commissioner was informed by civil society representatives that until 2016 the rehabilitation of former civilian captives – who had been subjected to ill-treatment – was mainly carried out by various civil society and volunteer initiatives, rather than by state authorities. It would appear that in 2016 the Ukrainian authorities have taken several initiatives to provide rehabilitation to victims of torture, including through a draft law on the protection of civilian captives and a new state programme providing the possibility for psychological assistance to persons who had been captured or apprehended, detained on the other side of the contact line, and subsequently exchanged. Members of the delegation had a discussion with a medical doctor in the hospital in Feofania, who informed them that as from February–March 2016 a new state programme had taken effect, allowing both military personnel and civilians who had been subjected to ill-treatment to receive not only medical but also psychological assistance if the medical personnel found that to be necessary. The Commissioner also received information it was envisaged to establish special centres for rehabilitation of victims. However, the Commissioner formed the impression that these positive initiatives may be hindered by a lack of funding.

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<sup>14</sup> Published on 7 June 2016.

## MISSING PERSONS

43. The Commissioner was informed that there were some 650 missing persons on the lists compiled in Kyiv and 400 on those compiled in Donetsk. It is not clear to what extent the data collected by the Ukrainian national agencies has been cross-checked with the information provided from the non-government controlled territories. Moreover, it would appear that the methodology used in Kyiv and Donetsk for declaring a person as missing is different. On both sides of the contact line, relatives of the missing have formed groups to unite their efforts to search for missing family members. In addition, a number of Ukrainian NGOs, human rights organisations and various volunteer groups are working on identification and collecting information about the missing persons, as well as providing logistical, legal and other assistance to the families of missing persons. The non-governmental organisations and volunteers have also been searching for gravesite locations and assisting with return of the mortal remains to families. However, the recovery of mortal remains from areas where there are ongoing hostilities is extremely difficult.
44. The Commissioner considers that it is of paramount importance to set up an independent mechanism for the search of missing persons composed of representatives of all sides to the conflict. This should be done as soon as possible, because with the passage of time it will be increasingly difficult to search for information on the whereabouts of the persons in question and to find witnesses who may help to clarify their fate. Such an independent mechanism would greatly benefit from the expertise and assistance of the ICRC. Furthermore, the Commissioner is of the opinion that the clarification of the fate of missing persons should be an important part of any conflict settlement negotiations and related reconciliation efforts.
45. The Commissioner would like to recall that under customary international humanitarian law, each party to a conflict must take all feasible measures to account for persons reported as missing as a result of the conflict and must provide their family members with any information it has on their fate and whereabouts. All parties to the conflict must therefore make their best efforts to search, and facilitate the search, for persons reported missing due to a conflict. Such searches should continue without any time limit until all feasible measures to account for the missing persons have been taken.
46. The Commissioner notes with satisfaction the ratification by Ukraine of the International Convention for the Protection of All Persons from Enforced Disappearance. The Convention explicitly establishes the right of every person not to be subjected to enforced disappearance as a non-derogable right. Further, it affirms that the widespread or systematic practice of enforced disappearance constitutes a crime against humanity and is not subject to statutory limitations. Article 17 of the Convention also provides that no one shall be held in secret detention (see paragraphs 24-28 above). The national legislation should now be brought in line with the Convention's standards, including in respect of the rights of the victims and their families, and the legal status of missing and disappeared persons must be adequately regulated.
47. According to the Committee on Enforced Disappearances, state parties must incorporate in their legislation the "declaration of absence as a result of enforced disappearance", a procedure aiming to address the legal situation of disappeared persons and that of their relatives in areas such as social welfare, financial matters, family law and property rights.<sup>15</sup>
48. The European Court of Human Rights has dealt with a number of applications related to missing persons and enforced disappearance. In all cases of enforced disappearance adjudicated so far the Court has found a violation of Article 5 of the European Convention on Human Rights (ECHR). The Court applies a presumption of violation of Article 2 of the ECHR when the victim has last been seen alive in life-threatening circumstances and the respondent state fails to provide convincing explanations as to his or her fate and whereabouts.<sup>16</sup>

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<sup>15</sup> See, for instance, Committee on Enforced Disappearances (CED), "Concluding observations on the report submitted by Germany", CED/C/DEU/CO/1, 27 March 2014, §§ 26 and 27.

<sup>16</sup> *Bazorkina v Russia*, judgment of 27 July 2006, §§ 110-112.



49. In *Cyprus v Turkey*<sup>17</sup> the Court found a continuing violation of Article 2 on account of the failure of the Turkish authorities to conduct an effective investigation into the whereabouts and fate of missing persons who disappeared in life-threatening circumstances. The Court also declared an on-going violation of Article 5 and considered Article 3 violated in respect of the families of missing persons, assessing that the silence of the authorities in the face of the real concerns of relatives attained a level of severity that could be categorised as inhumane treatment. Furthermore, in *Aslakhanova and Others v Russia*,<sup>18</sup> the Court provided certain useful indications on the nature of required measures to redress the systemic failure to investigate disappearances, and most notably with a view to eliminating the suffering of the relatives of the victims.
50. In the Issue Paper "[Missing persons and victims of enforced disappearance in Europe](#)"<sup>19</sup>, the Commissioner provided detailed observations and recommendations to Council of Europe member states on various aspects of looking into and acting on all cases of missing persons and enforced disappearances, including the strengthening of domestic legislation and the eradication of impunity for enforced disappearance. The Issue Paper also includes an overview of good practices and initiatives undertaken worldwide, in particular with reference to programmes of exhumations, identification and return of mortal remains; the adoption of legislation and thorough investigation and prosecution of those responsible for acts of enforced disappearance; and the provision of redress to victims.

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<sup>17</sup> Judgment of 10 May 2001, application no 25781/94, §§ 123-136.

<sup>18</sup> Judgment of 18 December 2012; applications nos. [2944/06](#) and [8300/07](#), [50184/07](#), [332/08](#), [42509/10](#), §§ 222-237.

<sup>19</sup> CommDH/IssuePaper(2016)1, published on 17 March 2016.

## FREEDOM OF MOVEMENT

51. Since the Commissioner's visit to the east of Ukraine in the summer of 2015, the situation as regards freedom of movement across the contact line has worsened. A passport control procedure has been introduced at non-government controlled checkpoints, which further delays the waiting time for civilians wishing to cross the contact line. The Commissioner also observed that control procedures at the checkpoints took a long time and received information that they were sometimes carried out in an intrusive manner. On the other hand, the infrastructure around certain check-points had improved to some extent with the installation of portable sanitary facilities. As during the previous visit, the delegation observed lines of cars extending more than a kilometre with very long waits for crossing the contact line in either direction. In view of the heavy presence of military personnel on both sides of the contact line, including at the checkpoints, the civilians waiting in lines continue to be exposed to potential shelling, as well as the dangers associated with the presence of the explosive remnants of war and mines which can be found in very close proximity to the road. The delegation itself saw the remains of a minibus which had struck a mine the previous month just off the road, resulting in several casualties (three persons killed and two others injured on 10 February 2016).
52. There is a limited number of crossing points on the contact line, and most of them are located in the Donetsk region and only one in the Luhansk region.<sup>20</sup> The situation is further complicated by the fact that checkpoints cease to operate whenever the security situation deteriorates in a given area. As a result of such closures, there are even longer lines and waiting times at those checkpoints which do remain open. Moreover, a significant number of people attempt to bypass checkpoints, most notably in the Luhansk region (where there is only one), and use informal routes, no matter how dangerous such detours may be due to the heavy presence of the mines and unexploded ordnance in such areas. Still others seek to cross into government-controlled territories via the Russian Federation, even if such crossings could amount to an administrative offence. The only crossing in Luhansk region – a pedestrian crossing over a collapsed bridge in Stanytsia Luhanska – closes whenever the fighting intensifies. An attempt to open a second checkpoint in Zolote in Luhansk region failed, since the armed personnel at the non-government controlled checkpoints obstructed the movement of people wishing to proceed into non-government controlled areas.<sup>21</sup> Those living in the so-called “grey zones” – the territories between government-controlled and non-government controlled checkpoints - are in a particularly precarious situation, since the restrictions imposed on their freedom of movement have greatly affected their access to medical care and other services of vital importance.
53. The Temporary Order on the control of the movement of people, transport vehicles and cargo through the contact line in the Donetsk and Luhansk region – which was approved by the “Operational Headquarters of the Anti-Terrorist Operation” and entered into force in January 2015 – introduced a permit-based system for civilians wishing to cross the contact line in either direction. It also introduced restrictions on the movement of cargo and on public transport. Despite certain changes introduced subsequently, that document remains restrictive and is not conducive to free movement for civilians. Persons wishing to cross the contact line are usually not aware of exact rules and procedures at checkpoints, since such information is not generally available, which often leads to arbitrary treatment by personnel at the checkpoints. Furthermore, corruption at the checkpoints on both sides of the contact line has been reported as a persistent problem.
54. According to official data, a total of 670,000 persons crossed the contact line through the checkpoints in April, and 720,000 in March 2016.<sup>22</sup> People continue to move back and forth across the contact line to visit relatives and property left behind, collect social benefits, withdraw cash, access medical care,

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<sup>20</sup> According to information provided by the UN OHCHR, as of 15 February 2016, only four crossing points between the government-controlled and non-government controlled areas remained in operation. The three crossing points allowing people to pass through in motor vehicles are all located in the Donetsk region.

<sup>21</sup> For more information, see OCHA, Humanitarian Bulletin: Ukraine, Issue 09, 1-20 April 2016, pages 2-3.

<sup>22</sup> For more information, see OCHA, Humanitarian Bulletin: Ukraine, Issue 09, 1-20 April 2016, pages 2-3.

and purchase food and medicine. The Commissioner would like to reiterate that such movements should be encouraged on both sides of the contact line and that any security-related restrictions should be reasonable and kept to the minimum necessary.

## SITUATION OF INTERNALLY DISPLACED PERSONS

55. In January 2016, amendments to the Law on IDPs entered into force, whereby registration procedures were simplified and foreign legal residents and stateless persons were enabled to be recognised as IDPs. At the time of the Commissioner's visit to Ukraine, more than 1.7 million IDPs were registered in government-controlled areas.
56. On 16 December 2015, the Ukrainian Cabinet of Ministers adopted a Comprehensive State Programme for Support, Social Adaptation and Reintegration of IDPs until 2017, along with an accompanying Action Plan. The Programme and the Action plan provide a framework for addressing various issues related to internal displacement, including as regards durable solutions. However, in view of economic and financial constraints, no budgetary allocations have yet been made available for the Programme's implementation.
57. On 21 February 2016, the government announced its intention to carry out a residence verification procedure of those registered as internally displaced persons in five regions in the east. As a result, in March this year, payments were suspended to an estimated 600,000 IDPs, without any prior notification. The manner in which verification procedures were carried out varied depending on the region. In some cases a lack of co-ordination and exchange of information between the state institutions involved in the verification procedure significantly extended the time required to complete the required paperwork. In the meantime, the prolonged suspension of payments has had dire effects on those individuals for whom they were the sole source of income. According to the Pension Fund in the Luhansk region, the payments of 87,000 pensioners were suspended in March. Only 18,200 of those persons have seen a resumption of their payments by the end of April 2016.<sup>23</sup> This situation has had a particularly detrimental effect on persons with disabilities, reduced mobility and/or in poor health.
58. A number of amendments to Cabinet of Ministers Resolutions concerning IDP registration and payments have further complicated the situation. According to Resolution No. 167 passed on 14 March 2016, IDPs can no longer register their address at "non-residential premises". As a result, thousands of IDPs whose current IDP certificates are linked to state institutions (e.g. Department of Social Protection) have to re-register with a new address.
59. The Commissioner urges the Ukrainian authorities to resume the provision of targeted assistance to all IDPs, and to adopt a clear and transparent procedure for the verification of IDP status, as well as a procedure and criteria for the suspension of IDP payments to persons who are no longer displaced and/or have decided to return to their original place of residence. The above-mentioned procedures should be clearly reflected in the relevant regulatory framework, and any suspension of payments should only take place with prior notification to the persons concerned and be accompanied by all the necessary legal safeguards. The regulatory framework should be further reviewed and amended in order to de-link the payment of pensions and other benefits or entitlements from the IDP status of persons entitled to receive them (see also paragraphs 60-65 below).
60. A new Ministry of Occupied Territories and Internally Displaced Persons was established on 20 April 2016 through a Decree of the Cabinet of Ministers. Since the beginning of large-scale displacement resulting from the conflict, the Commissioner has been calling for the establishment of a single central state entity in charge of the overall coordination of humanitarian responses to the IDP situation. Until now, the Ministry of Social Policy has been playing the leading role in developing policies related to IDPs; however, certain functions in this area have been attributed to other state agencies pursuant to the legislation in force. Therefore, if it is envisaged that the newly-established Ministry will become the main actor in relation to IDPs, that should be duly reflected in the applicable regulatory framework.
61. While the national authorities bear the duty and responsibility to provide protection and humanitarian assistance to internally displaced persons within their jurisdiction, the Commissioner would also like to

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<sup>23</sup> For more information, see OCHA, Humanitarian Bulletin: Ukraine, Issue 09, 1-20 April 2016, pages 1-2.

recall that according to the United Nation Guiding Principles on Internal Displacement, there is the obligation to prevent displacement from occurring in the first place. Most notably, Principle 5 states that “all authorities and international actors shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, in all circumstances, so as to prevent and avoid conditions that might lead to displacement of persons”.<sup>24</sup>

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<sup>24</sup> UN Guiding Principles on Internal Displacement, [E/CN.4/1998/53/Add.2](#), Principle 5.

## PAYMENT OF PENSIONS AND OTHER BENEFITS

62. Pursuant to Resolution No 595 of 7 November 2014 of the Cabinet of Ministers (“About Financing of State Institutions, Payment of Social Benefits to Citizens and Provision of Financial Support for Some Enterprises and Organisations of Donetsk and Luhansk regions”), payments from the state budget, the Pension Fund of Ukraine and other obligatory state social insurance funds were suspended on non-government controlled territories, which has exacerbated the hardship of the population residing in those areas. During the March 2016 visit, the Minister of Finance informed the Commissioner that 1.1 million pensioners from the non-government controlled areas received their pension payments after registration on government-controlled territory (out of 1.4 pensioners registered in the non-government controlled areas at the beginning of the armed hostilities). The remaining 300,000 have their pensions accrued and it was envisaged that those would be payable once the persons concerned arrived in government-controlled territory.
63. According to certain estimates, hundreds of thousands of people out of the overall number of 1.7 million registered IDPs may not be, in reality, permanently residing on government-controlled territory. Some of them registered as IDPs in order to continue receiving their pensions or other social benefits from the Ukrainian government, since the existing legal framework does not envisage any alternative mechanism.<sup>25</sup> Others might have relocated to the government-controlled territories for a certain period of time during the most intense hostilities, and later decided to return to their homes. As a result of the verification procedure currently underway, it appears to be likely that both their IDP and pension payments have been suspended.
64. Certain provisions of the above-mentioned Resolution of the Cabinet of Ministers, including those related to the payment of pensions, have been challenged in the national administrative courts. In April 2015, the Kyiv Administrative Court declared paragraph 2 of the above-mentioned Resolution as null and void. The decision of the Administrative Court was subsequently challenged by the government at the appellate and cassation levels, but upheld in both instances.
65. The case-law of the European Court of Human Rights on property-related issues includes judgments concerning pensions. For instance, in an admissibility decision regarding *Stec and Others v. United Kingdom*<sup>26</sup>, the Court stated that in cases where a State enacts legislation granting an automatic social benefit, it is possible to generate protected property rights in the meaning of Article 1 of the Protocol No. 1. In *Moskal v. Poland*<sup>27</sup>, while implicitly acknowledging that utilitarian concerns underlie any state's organisation of its welfare system, the Court nevertheless insisted that those legitimate concerns must be balanced against principles of fairness, equal treatment and individual dignity.
66. In *Pichkur v. Ukraine*, the ECtHR stated that ‘If a Contracting State has legislation in force providing for the payment of a welfare benefit as of right, whether conditional or not on the prior payment of contributions, that legislation must be regarded as generating a proprietary interest falling within the ambit of Article 1 of Protocol No. 1 for those satisfying its requirements’.<sup>28</sup> The Commissioner was informed that there is currently a group of cases against Ukraine pending before the Court submitted by persons residing in non-government controlled areas concerning the non-payment of their pensions.
67. Resolution 2202 (2015) adopted by the UN Security Council at its 7384th meeting endorsed the “Package of measures for the Implementation of the Minsk Agreements”, adopted and signed in Minsk on 12 February 2015. One of the measures of the package (paragraph 8) is the “definition of

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<sup>25</sup> During his meeting with representatives of the Ukrainian Parliament on 24 May 2016 in Strasbourg, the Commissioner was informed that draft legislation regarding the payment of pension to persons residing on non-government controlled territories was being considered by the Parliament.

<sup>26</sup> GC decision as to the admissibility of applications nos. 65731/01 and 65900/01 by *Stec and Others against the United Kingdom*, 6 July 2006, §§ 50-54.

<sup>27</sup> Judgment of 15 September 2009, application no 10373/05, §§ 49-51, 61 and 64.

<sup>28</sup> Judgment of 7 February 2014, § 41. In this particular case, the Court found a violation of Article 14 of the Convention taken in conjunction with Article 1 of Protocol No. 1 due to decision not to pay pension to the Ukrainian citizen who relocated from Ukraine and was a permanent resident in Germany.

modalities of full resumption of socioeconomic ties, including social transfers such as pension payments and other payments (incomes and revenues, timely payments of all utility bills, reinstating taxation within the legal framework of Ukraine)". It is envisaged that Ukraine would reinstate control of the segment of its banking system in the conflict-affected areas and that an international mechanism to facilitate such transfers could be established.

## ONGOING REFORMS IN THE JUDICIAL SYSTEM AND SYSTEMATIC WORK ON HUMAN RIGHTS

68. A law on the State Bureau of Investigations entered into force at the beginning of 2016. Once fully operational, this agency will be responsible for investigating crimes committed by high-ranking officials, members of law enforcement agencies, judges, as well as military crimes. Until then, law enforcement agencies, prosecutorial authorities and security services will continue to exercise their respective investigative functions. During his meeting with the President of Ukraine, the Commissioner discussed further steps with regard to the reforms in the judicial branch, as well as the reform of the Prosecutor's Office.<sup>29</sup>
69. The Commissioner also discussed the reform of the Prosecutor's Office during his meeting with prosecutorial authorities. He emphasised the important obligations which are incumbent on investigating, prosecutorial and judicial authorities with regard to fighting impunity for serious human rights violations. The authorities concerned should be made fully aware of their obligations in this regard and dispose of the necessary means, including resources, in order to be able to carry out their functions.
70. The Commissioner reiterates that the ability of the law-enforcement system to be effective in combating impunity for the most serious human rights violations and bringing those responsible to account, *a fortiori* if they originate from within the system, would be a litmus test for the success of the on-going reforms.
71. The Human Rights Action Plan, adopted on 23 November 2015, envisages multiple activities aimed at addressing systemic issues, including those related to the effective functioning of the judiciary and the prosecutorial and investigative authorities, as well as conflict-related challenges. In his dialogue with the Ukrainian authorities, the Commissioner has been advocating for the swift adoption of such a document and continues to follow its implementation.
72. During his meeting with the Minister of Finance the Commissioner underlined the importance of providing allocations from the state budget to support the implementation of the Human Rights Strategy and Action Plan. In March 2016, the Ombudsman approved a plan for the continuous monitoring of activities by the governmental officials concerning the implementation of the Human Rights Strategy and Action Plan. The Commissioner observes that the most significant part of the efforts to ensure proper implementation of the Human Rights Strategy and Action Plan would be to integrate human rights into the everyday work of public administrations and to ensure effective co-ordination and co-operation between authorities at all levels by setting up networks for discussion and exchange of experiences and best practices.

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<sup>29</sup> Amendments to the Constitution of Ukraine concerning the functioning of the judiciary were approved by the Parliament on 2 June 2016.



## CONCLUSIONS AND RECOMMENDATIONS

73. All parties to the conflict must respect the right to life, which implies ending the fighting and violence in the east. The Commissioner reiterates his call to all parties to the conflict to seek a peaceful solution on the basis of the Minsk Agreements of September 2014 and February 2015. The provisions of international humanitarian law should be fully and rigorously respected by all sides and at all times.
74. All efforts should be made by the relevant authorities to end impunity for serious human rights violations and to ensure the effective prosecution and sanctioning of those responsible for the commission of such crimes, irrespective of the side of the conflict which they represent or their position in the command hierarchy. Only full accountability for serious human rights violations can bring justice to all victims and allow for lasting reconciliation.
75. Everyone claiming to be a victim of conflict-related crimes should have effective access to justice and be provided with effective remedies and reparation. There should be programmes of assistance available to survivors of ill-treatment and their families, striving to ensure their rehabilitation to the highest extent possible.
76. The Commissioner wishes to recall the absolute prohibition of torture and ill-treatment under international law, including under Article 3 of the European Convention on Human Rights, which binds all parties to the conflict. Ill-treatment by law enforcement officials has been a long-standing concern and there is a need to undertake a comprehensive set of measures in order to eradicate it from the law-enforcement system, with a view to preserving the integrity and credibility of the institutions responsible for upholding the law. Those measures should aim at further strengthening the National Preventive Mechanism, increasing transparency and public oversight over the prison system, an unequivocal and sustained message from power-holders at the highest levels of responsibility that ill-treatment and impunity will not be tolerated, as well as awareness-raising and professional training for public officials.
77. Unimpeded access to all individuals deprived of their liberty should be ensured on both sides of the contact line, including to those who are held in unofficial, informal or ad-hoc places.
78. The Ukrainian authorities should co-operate with various NGOs in order to ensure the effective provision of holistic rehabilitation services to victims of human rights abuses. Rehabilitation programmes should be tailored to address the specific needs of each and every victim or group of victims. Rehabilitation services should be accessible to all survivors of torture or ill-treatment without discrimination and with full respect for their right to confidentiality.
79. The Commissioner would like to emphasise once again the importance of bringing those responsible for serious human rights violation to account, as a matter of justice for the victims and a cornerstone of any genuine and lasting reconciliation in society. The investigating, prosecutorial and judicial authorities at all levels have important obligations with regard to fighting impunity for serious human rights violations. They should be made fully aware of those obligations and dispose of the necessary means, including resources, in order to be able to carry out their respective functions. This also entails measures to strengthen institutional capacities and provide resources for effective investigation into all allegations of serious human rights violations in the east of the country. While recognising the multitude of challenges related to the investigation and prosecution of all those implicated in such abuses, including in the cases indicating the possible involvement of mercenaries and/or foreign fighters, the Commissioner recommends to ensure full co-operation with the relevant international mechanisms which may provide assistance and expertise in this regard.
80. The Commissioner recommends that an independent mechanism for the search of missing persons be established. There should be co-operation with the relevant international mechanisms to effectively solve cases of missing persons and enforced disappearances. The national legislation regulating the punishment for enforced disappearances and the rights of the victims and their families should be reviewed to ensure that it is fully compatible with the relevant international standards.
81. The regulatory framework related to freedom of movement should be revised and the applicable restrictions should be proportionate to the aim pursued. Any restrictions should be reviewed on a regular basis, and lifted, even if partially, whenever the situation permits. Information about rules and

control procedures at the check-points should be publicly available, in order to minimise the risks of arbitrary treatment of those seeking to cross the contact line. The right of civilians to move freely across that line should be fully protected and respected by all parties to the conflict.

82. The Commissioner would like to recall that all barriers impeding the access of humanitarian aid, as well as those affecting the ability of international organisations and missions to reach out to the most vulnerable groups of the population, including those residing on the non-government controlled territories and areas between the check-points, should be removed.
83. The Commissioner observes that there is an acute need to promote a message of reconciliation and tolerance. In this respect, all the media working in the conflict-affected areas should assume their responsibilities for ethical reporting and send a consistent message of tolerance and reconciliation, and should promote the right of all victims of the conflict to access justice.
84. The reforms in the judiciary should strengthen the independence and impartiality of judges and ensure their protection from any interference or undue influence. The litmus test for the success of the reforms taking place in the judiciary, prosecutorial and law-enforcement system will be its demonstrated ability to efficiently combat impunity for grave crimes and hold those responsible to account, including when they originate from within the law-enforcement system.
85. Planning for the implementation of the Human Rights Strategy and Action Plan should be co-ordinated with the budgetary process to ensure proper funding. Budget proposals should also be regularly screened from a human rights perspective and parliamentarians should be informed about the consequences of their decisions and choices and how those would affect the protection of human rights.