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## **ANNUAL ACTIVITY REPORT 2015**

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**by Nils Muižnieks,  
Commissioner for Human Rights  
of the Council of Europe**

Presented to the Committee of Ministers  
and the Parliamentary Assembly

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## Foreword by the Commissioner

2015 was a year of fear and insecurity in Europe. In such an atmosphere, governments tend to neglect their human rights obligations and public opinion sometimes encourages this trend. Recurrent fears about possible military escalation in eastern Ukraine and ongoing economic malaise were increasingly overshadowed in 2015 by a growing sense of vulnerability to new terrorist threats and panic at the apparent inability of European governments to cope with the influx of asylum seekers. The instinctive response in many quarters was to retreat back into one's "national fortress", to build fences, to grant enhanced powers to security services and to restrict freedoms. European co-operation faltered and European institutions struggled to formulate a response, as the divergent stances of member states often proved irreconcilable.

Ukraine continued to be the locus of much death and suffering. The conflict in Ukraine's east has already resulted in more than 9,000 deaths, around 20,000 injured, and close to two million internally displaced persons. Hundreds of thousands more live in damaged or temporary housing with little or no access to clean water, food and health care. As a result of the security situation, Ukraine derogated certain rights under the European Convention on Human Rights (ECHR). In order to assess the situation first-hand, I conducted a visit to eastern Ukraine in July, including to Donetsk and Kramatorsk. I subsequently published a report focusing on the humanitarian situation, humanitarian access to the non-government controlled areas, and freedom of movement. The rest of Europe cannot ignore the tragedy and hardship in Ukraine. We must all assist in achieving peace with justice.

France suffered horrific terrorist attacks in January and November of 2015, prompting not only a robust French military response against Daesh, but also the imposition of a state of emergency in France and derogation from several articles of the ECHR. France and a number of other European states responded to the terrorist threat by enacting legislation to enhance the powers of the security services to conduct intrusive intelligence gathering and surveillance. I sent letters expressing concerns about draft legislation to the French and Swiss authorities, and wrote several opinion editorials urging the maintenance of the rule of law and human rights while countering terrorism. I acknowledged the legitimacy of enhancing the budgets and powers of security services, but urged a concomitant strengthening of democratic oversight. In order to provide guidance to member states, I published an Issue Paper on "Democratic and effective oversight of national security services".

Even more widespread than fear of terrorism was a growing fear occasioned by continuing migrant inflows. I encountered this multi-faceted fear in many European countries. For some, the influx signalled the helplessness of individual governments and Europe as a whole to control borders. For others, the continuing arrivals and the attending strains exacerbated doubts about Europe's ability to manage diversity and fed anti-Muslim prejudices, which were already widespread. Even the most welcoming expressed doubts about how some local authorities would cope with growing strains on stretched housing markets, overcrowded schools, and overburdened health systems. Among the public, there appeared to be a vague sense of foreboding that Europe would never be the same again. For mainstream politicians, the concern was more concrete – how to face down far-right populist parties which were already exploiting the influx for political gain. This was the unfavourable context in which I tried to inject a human rights component.

The human rights of migrants, including asylum seekers and refugees, were one of the most common areas of my Office's work in 2015. These issues formed the sole or primary focus in visits to Spain, Bulgaria, Germany, Belgium, Hungary and Cyprus. In these countries, I examined allegations of pushbacks and ill-treatment at borders, access to international protection, reception conditions, treatment of vulnerable groups, such as victims of torture or trafficking, and children, as well as xenophobia towards the new arrivals. I also intervened as a third party in several migration-related cases before the European Court of Human Rights (the Court) and sought to raise awareness about the human rights aspects of the crisis through much communications and outreach work.

I became increasingly concerned over the course of 2015 that too little attention was being devoted to integration of the new arrivals. What is more, a growing trend in many countries augured huge problems in achieving integration in the future. This was a series of measures taken by various governments with the declared motivation of making their countries less attractive for migrants by addressing alleged “pull factors”. These measures, such as cuts in benefits, the seizure of migrant assets, granting protection for only a short period of time, and restricting access to family reunification, will all hinder integration without significantly impacting on the scale of future arrivals, which are driven by the “push factors” of war and failed states. In the concluding section of my third quarterly report, I laid out what an effective integration policy entailed. I will be issuing more detailed guidance for governments in 2016.

In last year’s annual report I noted the emergence of a worrying trend of growing pressure on human rights defenders and journalists. This trend persisted and deepened in 2015. The grave human rights crisis in Azerbaijan continued, with additional human rights defenders and journalists detained, imprisoned or driven into exile. I responded by intervening as a third party in five different cases against Azerbaijan before the Court in which defenders or journalists faced persecution for their human rights work and criticism of the government. I also sought to raise awareness in various European media about my human rights concerns in that country. Regarding the Russian Federation, another country where human rights defenders face a difficult working environment, I published an update to my earlier opinion on the “foreign agent law” and its implementation, especially domestic jurisprudence. As the Russian authorities were not available to continue a dialogue with me within the country in 2015, I organised a meeting with Russian human rights defenders and digital rights experts in Strasbourg.

I devoted special attention to human rights defenders addressing women’s rights and gender equality by organising a round table in Vilnius and publishing a human rights comment on the challenges they face. Women defenders, especially those addressing domestic violence or reproductive health, are often subject to hate speech, threats, sexual harassment, and assault. Defenders focusing on gender equality are often marginalised by their colleagues in the broader human rights sector. The round table helped my Office gain a better understanding of these issues, which we have sought to address more systematically in our work.

Media freedom continued to come under pressure in 2015 in a host of Council of Europe member states. Journalists faced threats, attacks and arrests, as well as judicial, financial and physical harassment. I focused on media freedoms in country visits to Bulgaria, Serbia, and San Marino. I also sought to intervene on behalf of media freedom through statements and media work regarding Armenia, Azerbaijan, Poland, “the former Yugoslav Republic of Macedonia,” Turkey, and Ukraine. As a follow-up to my 2014 mission to the Crimean peninsula, I made a statement on the closure of Crimean Tatar television.

The landscape I describe above is a bleak one, but even in the darkest of situations, there is still light. Those who cherish human rights, who value Europe, cannot remain silent, cannot withdraw into themselves. We must magnify the light of human rights. To all human rights defenders, to all those who protect the most vulnerable, to all those politicians who stand by principles and values even when it is not electorally convenient, I say: do not leave the battlefield. With you, we will overcome this negative period and build a stronger Europe based on human rights for all.



Strasbourg, 14 March 2016

# 1 Country visits

## 1.1 Introduction

In the course of 2015 Commissioner Muižnieks continued to rely on country visits as an important means of pursuing a continuous, constructive dialogue with member states.

In his country visits, the Commissioner addressed specific human rights issues that he had identified as requiring particular attention. Issues covered by the visits include, among others: human rights of migrants, refugees and asylum-seekers; human rights of people with disabilities; the situation of Roma, Travelers and Roma immigrants; freedom of expression and media freedom; equal treatment including women's rights and gender equality and the situation of ethnic and religious minorities; the human rights of LGBTI persons; administration of justice and the human rights protection system; transitional justice; and the impact of the economic crisis on the enjoyment of human rights.

Reports and other documents published by the Commissioner after these visits contain both an analysis of the selected human rights issues and detailed recommendations to member states about possible means of improvement. In certain cases, as part of his dialogue with national authorities, the Commissioner addresses letters to the former to outline concerns and provide advice on specific issues. These documents, along with the replies from the authorities, are made public on the Commissioner's website and are widely circulated among policymakers, NGOs and the media.

The present chapter contains brief summaries of the Commissioner's visits carried out in 2015 and of their outcome.

## 1.2 Visits

### *Visit to Spain*

The Commissioner visited Melilla and Madrid from 13 to 16 January 2015 in order to discuss issues pertaining to the human rights of migrants, refugees and asylum-seekers in Ceuta and Melilla, Spain's territories in Northern Africa.

In Melilla, the Commissioner held meetings with the Government's Delegate, Mr Abdelmalik El Barkani and the President of the city, Mr Juan José Imbroda Ortiz. He also met with the Head of the Guardia Civil in Melilla, Colonel Ambrosio Martín Villaseñor; the Head of the National Police, Mr José Angel González Jiménez; and representatives of civil society organisations. He visited the border check-point of Beni Ansar, where an office to register asylum claims started operating in November 2014. He also visited the triple-fence surrounding Melilla and the Centre for Temporary Stay of Migrants (CETI), where he met with Centre's Director, Mr Carlos Montero Díaz, other staff members and with persons accommodated in it.

In Madrid, the Commissioner met with the Secretary of State for Security, Mr Francisco Martínez Vázquez. He also met with the Ombudsperson, Ms Soledad Becerril Bustamante, UNHCR's Representative in Spain and civil society representatives. Additionally, the Commissioner held, on 27 January 2015, an exchange of views with members of the Spanish delegation to the Parliamentary Assembly of the Council of Europe on issues raised during the visit.

The main issue of the visit was the draft amendment to the Aliens Act aimed at establishing a special regime for Ceuta and Melilla and allowing the immediate return of migrants who did not enter Ceuta and Melilla through a regular border post. While recognising that Spain has the right to establish its own immigration and border management policies, the Commissioner stressed that it must also uphold its human rights obligations. Therefore, he urged the Spanish authorities to ensure that any future legislation fully comply with these obligations, which include ensuring full access to an effective asylum procedure, providing protection against refoulement and refraining from collective expulsions. He also underscored

Spain's obligation to ensure that no push-backs of migrants occur in practice and to effectively investigate all allegations of excessive use of force against migrants by law enforcement officials at the border.

The Commissioner welcomed the opening of an asylum office at one of Melilla's border check-points and the effective co-operation of the police with UNHCR. At the same time, he highlighted the need to strengthen the asylum system in Melilla so as to allow all persons in need of protection, irrespective of their country of origin, to access the territory safely, to have their situation assessed on an individual basis and to submit international protection claims. Additionally, he urged the authorities to take urgent steps to improve existing arrangements for the reception of migrants in Melilla and clarify rules governing transfers to the mainland.

The press release issued at the end of the visit (16 January) is available on the Commissioner's website. The visit also served as a basis for the written comments the Commissioner submitted to the Court as third party in November on two cases against Spain (N.D. and N.T., Applications No 8675/15 and No. 8697/15). These cases related to alleged pushbacks of migrants from the Spanish city of Melilla to Morocco (see below, European Court of Human Rights).

### ***Visit to Norway***

The Commissioner visited Norway from 19 to 23 January. The visit focused on the human rights of people with disabilities, the situation of Romani people/Taters (Norwegian Travellers), Roma and Roma immigrants, and the human rights protection system.

During his visit, the Commissioner engaged in a dialogue with representatives of the national authorities, including the President of the *Storting* (Parliament), Mr Olemic Thommessen; the Minister of Local Government and Modernisation, Mr Jan Tore Sanner; the Minister of EEA and EU Affairs, Mr Vidar Helgesen; the Minister of Children, Equality and Social Inclusion, Ms Solveig Horne; the Minister of Health and Care Services, Mr Bent Høie; State Secretary at the Ministry of Justice and Public Security, Mr Hans J. Røsjorde; and State Secretary at the Ministry of Foreign Affairs, Mr Bård Glad Pedersen. The Commissioner also held meetings with the Parliamentary Ombudsman, Mr Aage Thor Falkanger; the Equality and Anti-Discrimination Ombud, Ms Sunniva Ørstavik; the Director of the National Institution for Human Rights, Ms Kristin Høgdahl; the Deputy Ombudsman for Children, Mr Knut Haanes; the Parliamentary Intelligence Oversight Committee; members of the Norwegian delegation to the Parliamentary Assembly of the Council of Europe; and Chair of the Government Commission on Norwegian Travellers, Mr Knut Vollebæk. In addition, the Commissioner met with civil society representatives.

Following the visit, the Commissioner published a report on 18 May. While welcoming Norway's ratification of the UN Convention on the Rights of Persons with Disabilities (CRPD), the Commissioner pointed out that Norway still failed to fully promote the self-determination, legal capacity and effective equality of people with psycho-social and intellectual disabilities. The 2013 Guardianship Act continued to allow substituted decision-making and plenary guardianship in this area, a practice which is not in line with CRPD obligations. The Commissioner urged the Norwegian authorities to revoke plenary guardianship and full incapacitation regimes and to develop new systems of supported decision-making, based on individual consent, together with people with psycho-social and intellectual disabilities.

The Commissioner noted the Norwegian national strategy 2012-15 to reduce the use of coercion in mental health care but recommended a more comprehensive approach to bring about fundamental changes. He called on Norway to reform legislation on involuntary placements in order to apply objective and non-discriminatory criteria which are not specifically aimed at people with psycho-social disabilities. Medical treatment should be based on free and fully informed consent with the exception of life-threatening emergencies when there is no disagreement about the absence of decision-making capacity. The Commissioner was not convinced that the documented use of electroconvulsive therapy without consent in Norway was in line with human rights standards.

The Commissioner expressed serious concerns about the situation of the Roma community in Oslo. He identified the extremely frequent use of child protection measures which separate children from their families and low school attendance as the main problems. The Commissioner urged the Norwegian authorities to review Roma children's alternative care decisions for their human rights compliance and to provide support to Roma parents in exercising their parental role. The best interests of the child should be a primary consideration. He also recommended the development of programmes for mediators and teaching assistants to improve Roma children's school attendance.

While welcoming the withdrawal of the Government's proposal for a nation-wide prohibition of begging, the Commissioner remained concerned about bans at municipal level on begging and "sleeping rough". He stressed that a blanket ban on non-aggressive begging had a discriminatory impact on Roma immigrants and that it interfered with freedom of expression. The Commissioner recommended the revocation of such bans and pointed out that the authorities should ensure the sufficient availability of emergency accommodation to those in need, including immigrants.

The Commissioner observed that the arrival of Roma immigrants to Norway had been accompanied by worrying manifestations of anti-Gypsyism and hate speech. He urged the authorities to firmly condemn all instances of racist and xenophobic hate speech and to ensure effective investigations into such cases. The Commissioner also highlighted the positive and inclusive work of the Government Commission set up to establish a shared understanding of past injustices and abuses experienced by Romani people/Tatars in Norway.

The Commissioner noted with satisfaction the process of reforming the Norwegian National Institution for Human Rights and recommended that the mandate of the Equality and Non-discrimination Ombud be reinforced with the authority to provide assistance and legal representation to victims of discrimination.

### ***Visit to Bulgaria***

The Commissioner carried out a visit to Bulgaria from 9 to 11 February, focusing on media freedom, the human rights of persons in institutions (children and persons with disabilities) and the human rights of migrants, including asylum seekers and refugees.

During his visit, the Commissioner held discussions with the Bulgarian authorities, including the Deputy Prime Minister and Minister of Labour and Social Policy, Mr Ivaylo Kalfin; the Minister of Foreign Affairs, Mr Daniel Mitov; the Minister of Interior, Mr Veselin Vuchkov; the Minister of Justice, Mr Hristo Ivanov; the Minister of Education and Science, Mr Todor Tanev; the Prosecutor General, Mr Sotir Tsatsarov; the President of the State Agency for Child Protection, Ms Eva Jecheva; and the President of the State Agency for Refugees, Mr Nikola Kazakov. The Commissioner also met with the Chairperson of the Bulgarian Delegation to the Parliamentary Assembly of the Council of Europe, Ms Djema Grozdanova; the Chairperson of the Council for Electronic Media, Mr Georgi Lazanov; and the Ombudsman of Bulgaria, Mr Konstantin Penchev. Furthermore, the Commissioner held meetings with representatives of international and non-governmental organisations and visited a correctional boarding school for girls in Podem and the Reception Centre for Asylum Seekers in Voenna Rampa, Sofia, which he had last visited in December 2013.

On 22 June, the Commissioner followed up this visit by publishing a report. While noting that the deinstitutionalisation process for children living in social and medical care institutions had already yielded positive results, the Commissioner called on the Bulgarian authorities to address the risk of re-institutionalisation of children in smaller residential settings, the continuing placement of children and the overrepresentation of Roma children, poor children and children with disabilities in those institutions. He called on the authorities to step up efforts towards supporting families and preventing their separation and to develop a fully-fledged system of community-based services and alternative care for all children in need. The Commissioner also called for a general reform of the juvenile justice system. In particular he urged the authorities to stop placing children in correctional boarding schools and socio-pedagogical boarding schools created in the 1950s to deal with children's "anti-social behaviour", and to continue with the rapid phasing out of the latter. Noting recurrent reports of human rights violations perpetrated against

children living in all types of above-mentioned institutions, the Commissioner called for full and effective investigations into such allegations.

The Commissioner noted that Bulgaria had committed to deinstitutionalising adults with disabilities. However, this process started only recently, progress is very slow and there have been cases of re-institutionalisation in smaller settings. Noting that one of the main obstacles to the deinstitutionalisation of adults with intellectual and psycho-social disabilities was the legal capacity regime currently in place, which often leads to the placement of persons under full or partial guardianship in institutions, the Commissioner urged the Bulgarian authorities to move forward with plans to change the legislation, implementing a shift from substituted to supported decision-making.

While the living conditions of asylum seekers in reception centres had improved since the refugee crisis of mid-2013, the sustainability of the public funds for covering the costs of basic assistance for asylum seekers remained of concern. The Commissioner called on the Bulgarian authorities to improve the system for the early identification and support of vulnerable asylum-seekers with special needs. The Commissioner called upon the Bulgarian authorities to ensure that, in law and in practice, the detention of asylum seekers was compliant with Bulgaria's human rights obligations and that children were not subjected to immigration detention, whether with or without their families. The Commissioner expressed concern about consistent reports of push-backs of migrants carried out by Bulgarian law enforcement authorities at the Turkish border and recalled Bulgaria's obligations to respect the right to seek and enjoy asylum, to refrain from summary returns and collective expulsions, and to fully and effectively investigate all related allegations. The Commissioner also called for further efforts in the field of integration of refugees in Bulgarian society.

Despite existing legal guarantees, media freedom in Bulgaria is currently impeded or threatened by a combination of practices which, taken together, create an environment conducive to widespread self-censorship among journalists and undue external pressure on media. Recalling that media pluralism is the institutional guarantee for the fulfilment of the right to receive and impart information, the Commissioner called on the Bulgarian authorities to take action to secure it by: establishing independent monitoring of media ownership and financing; adopting rules aimed at limiting excessive concentration of media ownership; and addressing the lack of independence of media outlets from political and economic influence. Alarmed at numerous reports of sanctions imposed on media including by the Financial Supervisory Commission and alleged attempts to force media outlets to reveal their sources, in relation to their reporting on the banking and financial sectors, the Bulgarian authorities were urged to ensure full respect of Article 10 of the ECHR as interpreted by the Court. The Commissioner also called on the Bulgarian authorities to do their utmost to protect journalists from physical and other forms of violence. Defamation should be fully decriminalised and shortcomings in self-regulation and other limits in the regulation by the Council for Electronic Media should be addressed.

### ***Visit to Serbia***

The Commissioner carried out a visit to Serbia from 16 to 20 March, focusing on issues concerning transitional justice, action against discrimination, and media freedom.

During his visit, the Commissioner held discussions with national authorities, including the Prime Minister, Mr Aleksandar Vučić; the Deputy Prime Minister and the Minister of Trade, Tourism and Telecommunications, Mr Rasim Ljajić; the Minister of Justice, Mr Nikola Selaković, the Minister of the Interior, Mr Nebojša Stefanović; the Minister for Labour, Employment, Veterans and Social Affairs, Mr Aleksandar Vulin; the Government Agent before the Court, Ms Vanja Rodić; the State Secretary of the Ministry for Culture and Information, Mr Saša Mirković; the Prosecutor for War Crimes, Mr Vladimir Vukčević; the committee for human and minority rights and gender equality of the Serbian parliament; the Director of the Office for Human and Minority Rights, Ms Suzana Paunović; and the Commissioner for Refugees and Migration, Mr Vladimir Cucić. In addition, the Commissioner met with the Commissioner for the Protection of Equality, Ms Nevena Petrušić; the Commissioner for Information of Public Importance and Personal Data Protection, Mr Rodoljub Šabić; and the Ombudsman, Mr Saša Janković. He also met with the Director of the Civilian Security Agency, Mr Aleksandar Djordjević, as well as with representatives



of the associations of judges and prosecutors of Serbia. Meetings were also held with a number of non-governmental organisations, representatives of the media sector and of the international community. The Commissioner also visited the Veternik institution for persons with intellectual disabilities, near Novi Sad, and two irregular Roma settlements - Antena and Čukarička Šuma.

On 8 July the Commissioner published his report in which he welcomed the strengthening of regional co-operation in the prosecution of wartime crimes committed during the 1990s' wars. However, he remained concerned at the lack of accountability for certain serious violations of international human rights and humanitarian law in Serbia. Underlining that this longstanding issue adversely affects the ongoing efforts aimed at achieving justice and durable peace in the region, the Commissioner urged Serbia to take all necessary measures to end impunity, and effectively prosecute, try, and sanction wartime crimes in line with international and European standards. The need to strengthen and provide the War Crimes Prosecutor's Office ('WCPO') with all necessary resources and public support, to reinforce the witness protection system and to effectively investigate and prosecute all reported cases of threats and intimidation of witnesses was highlighted in this context. Commissioner Muižnieks also noted that additional efforts at national and regional level were necessary to resolve the pending cases of missing persons in Serbia and in the region, in line with the standards which have been developed notably through the Court's case-law.

The Commissioner urged Serbia to execute promptly, fully and effectively the judgments of the Court, in particular the pilot judgments concerning serious, structural human rights issues. Noting the need to strengthen the capacity of legal professionals in this context, the Commissioner encouraged Serbia to pursue and implement the plan to systematically second legal professionals to the Court's Registry and to the Department for the Execution of the Court's judgments. The Commissioner remained seriously concerned at the plight of about 88 000 forcibly displaced persons in Serbia, many of them Roma from Kosovo,\* who were still in need of durable solutions. He called on the authorities to address this issue with determination and in close co-operation with UNHCR in order to work towards finding durable solutions for this population. As approximately 3 800 Roma remain stateless or at risk of statelessness, despite the authorities' commendable efforts to address the lack of birth registration and personal documentation of Roma, the Commissioner urged Serbia to accede to the Council of Europe treaties concerning nationality and statelessness and to strengthen its efforts to resolve these serious, longstanding issues.

The Commissioner called for more efficient implementation of the anti-discrimination legislation whose enhancement was welcomed. Praising an important role played by well-respected national human rights structures in this field, the Commissioner urged the authorities to provide them with all necessary resources and support, while fully respecting their independence. He also stressed the need to impose adequate, dissuasive sanctions for all hate crimes in order to prevent recurrence.

Commissioner Muižnieks expressed deep concern about the fact that many persons with intellectual and psycho-social disabilities, including children, remained in large institutions for social care despite the commitment of the authorities to moving towards deinstitutionalisation. He called on the authorities to draw up and implement, with the active involvement of persons with disabilities, a comprehensive and ambitious plan that should be based on a policy of zero admission to institutions and their replacement with community-based services. It was of serious concern to the Commissioner that persons with disabilities in Serbia may be fully deprived of legal capacity and consequently of their civil and political rights. He called on the authorities to fully and effectively align domestic law and practice with the standards of the UN Convention on the Rights of Persons with Disabilities and the relevant case-law of the Court in order to ensure that all these persons enjoy legal capacity on an equal basis with others in all aspects of life.

Welcoming the 2013 ratification by Serbia of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence ('the Istanbul Convention'), Commissioner

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

Muižnieks called on the authorities to give full effect to the domestic laws and policies aimed at advancing women's rights. The authorities were also called upon to ensure that all acts of violence against women, including domestic violence, are effectively investigated and prosecuted, and that dissuasive penalties are imposed on all perpetrators. While he acknowledged the progress made in advancing the rights of LGBTI persons, the Commissioner noted that homophobia and discrimination against LGBTI persons persisted, in particular in the workplace. He urged the authorities to continue taking strong public positions against discrimination in this field and to promote public awareness of the value of diversity and respect for all persons' sexual orientation and gender identity.

Lastly, while he noted with satisfaction the strengthening of the legislative framework concerning media freedoms, the Commissioner called for its effective implementation and remained committed to continuing to closely follow developments in this area. The Commissioner was seriously concerned that issues pertaining to media freedoms were discussed in a highly polarised and politicised environment, which seriously undermined the prospects for advancing in this field. He urged politicians to put an end to inflammatory remarks against journalists and other forms of pressure on the media that had led to self-censorship and discouraged journalists from performing their important tasks in a democratic society. He was worried at the fact that four journalists remained under 24-hour police protection, while acts of violence against journalists continued to affect their freedom of expression. The Serbian authorities were called on to live up to their positive obligation to initiate effective investigations in all cases of physical violence or verbal threats against journalists, and to bring all perpetrators to justice. The authorities were also urged to carry out effective investigations and conclude by bringing to justice all those responsible for the three assassinations of journalists that occurred between 1994 and 2001. The Commissioner underlined the importance of ethical journalism, whose principles must be promoted and nurtured by all media professionals and associations, notably through systematic training and enhanced media self-regulation.

### ***Visit to Germany***

The Commissioner carried out a visit to Germany on 24 April (Karlsruhe) and from 4 to 8 May (Berlin and Potsdam) focusing on the legal and institutional framework for the protection and promotion of human rights, on the human rights of asylum seekers, refugees and immigrants, and on the fight against racism and extremism.

During his visit the Commissioner held discussions with the German authorities, including the Federal Minister for Foreign Affairs, Mr Frank-Walter Steinmeier; the Federal Minister of Justice, Mr Heiko Maas; the Federal Minister of Labour and Social Affairs, Ms Andrea Nahles; the State Secretary at the Federal Ministry of Interior, Ms Cornelia Rogall-Grothe; the State Secretary and Federal Government Commissioner for Migrants, Refugees and Integration, Ms Aydan Özoğuz; the Federal Government Commissioner for Human Rights Policy and Humanitarian Aid, Mr Christoph Strässer; the Federal Government Commissioner for Human Rights Ms Almut Wittling-Vogel; the Deputy Director-General for the Federal Intelligence Services, Mr Hans-Jörg Schäper; the Foreign policy advisor to Chancellor Angela Merkel, Mr Christoph Heusgen; members of the German delegation to the Parliamentary Assembly of the Council of Europe; the Chairman of the NSA investigative committee of the German Bundestag, Mr Patrick Sensburg; and the Federal Prosecutor General, Mr Harald Range.

In Potsdam, the Commissioner met with the Minister of Justice of Brandenburg, Mr Helmut Markov, and with the Minister of Interior of Brandenburg, Mr Karl-Heinz Schröter. In Karlsruhe, he met with the Chief Administrative Officer of the Karlsruhe District (*Regierungspräsidentin*) and the Head of Department for the reception of asylum seekers and refugees in Baden-Württemberg.

The Commissioner also held meetings with the Director of the German Institute for Human Rights, Ms Beate Rudolf; the Director of the Anti-Discrimination Agency, Ms Christine Lüders; the Federal Commissioner for Data Protection and Freedom of Information, Ms Andrea Voßhoff; a member of the Joint Commission of the States of the National Agency for the Prevention of Torture, Mr Hartmut Seltmann; and a member of the G-10 Commission, Mr Ulrich Maurer. In addition, the Commissioner met

with representatives of non-governmental organisations in Berlin, Potsdam and Karlsruhe and with UNCHR.

On 1 October, the Commissioner followed up this visit by publishing a report. With regard to the first issue, he welcomed the strengthening of the German Institute for Human Rights through the adoption of a law giving it a solid legal basis. However, the powers of the Institute should be increased. Other institutions for the protection and promotion of human rights in Germany currently have inadequate means and powers and are not sufficiently independent, including the Federal Anti-Discrimination Agency and the National Agency for the Prevention of Torture. A fully independent and well-functioning complaints mechanism covering the conduct of all law enforcement officials should be established.

While Germany has a general framework in place for the democratic oversight of the intelligence and security services, it could be improved to ensure that human rights are fully protected against any abuse by these services. The parliamentary oversight operated by the Parliamentary Control Panel must be bolstered by strengthening its support staff and technical expertise. The resources and technical expertise available to the G-10 Commission should also be reviewed. All oversight bodies should have access to all information which they deem to be relevant to the fulfilment of their mandates. Adherence to Article 8 of the ECHR, which guarantees the right to private life, should be ensured with respect to all activities of the state parties, including all their national security and intelligence activities.

As concerns the human rights of asylum seekers, refugees and immigrants, the Commissioner welcomes the considerable efforts made by Germany to receive the high numbers of persons arriving. With the number of applications steadily increasing, there is a need for more staff responsible for making asylum decisions. In spite of the challenges arising from the numbers, reception conditions must remain in line with human rights standards. To this end, nationwide obligatory minimum standards for the operation of reception facilities should be introduced and the Federal Government should better support the Länder and municipalities in shouldering the costs of reception. Further steps should be taken to improve asylum seekers' access to health care, language courses and family reunification.

The Commissioner finds that the figures available on the operation of the Dublin system in Germany (notably the minimal differential between transfers of asylum seekers from and to the country) illustrate the fact that Europe is maintaining a system which is unfair to asylum seekers without even obtaining the results for which it is purportedly kept alive. Dublin cases are also further aggravating the backlog of cases pending before German courts. The Commissioner believes that there is a pressing need to overhaul the Dublin Regulation and calls on Germany to take the lead in replacing it with a more human rights oriented system.

The Commissioner welcomes the measures the German authorities have taken since 2013 to help Syrian refugees. The German authorities should continue to play a leading role in this regard, increase the resettlement quota and fully align the status of resettled refugees to that of persons granted status after an asylum procedure in the country.

With regard to the fight against racism and intolerance, the Commissioner is concerned that these phenomena are on the rise in Germany, as also mirrored in an upsurge of attacks against facilities for asylum seekers. The German authorities should broaden their approach to combating racism, from one which focuses almost exclusively on the activities of extremist organised groups to one which recognises that racism, including racially motivated offences, often come from individuals not at all associated with these groups.

While the NSU (National Socialist Underground) affair illustrates the seriousness of hate crimes committed by extreme-right wing movements, the Commissioner believes that the reform efforts it is prompting should have a broader reach. Thus, the amendments introducing the racist motivation as an aggravating circumstance of ordinary offences should be accompanied by formal guidance for the police and prosecutors and by training of judges on racist offences. The German authorities are also invited to improve their system for recording and following up on hate crime. The Commissioner also urges the German authorities and political leaders to condemn all instances of hate speech and hate crime.

Following the NSU affair, the German authorities could look more deeply into the extent to which structural forms of racism may be preventing law enforcement authorities from providing a professional service to Germany's minority groups. Concerned in particular at reports of racial profiling practices, the Commissioner invites the German authorities to consider introducing a standard whereby powers relating to control, surveillance or investigation activities can only be exercised on the basis of a suspicion founded on objective criteria, and to strengthen the training of law enforcement officers on identity checks. Allegations of racist or racially discriminatory conduct by law enforcement officials should also be effectively investigated and the possible racist motivation of such acts should always be closely examined.

Lastly, the Commissioner calls on the German authorities to keep their legislation against racial discrimination and racist hate speech under review. In particular, he stresses the need to ensure effective legal protection for victims of discrimination by public authorities and the importance of comprehensive data broken down by grounds such as ethnic origin for acting effectively against racism and discrimination.

### ***Visit to San Marino***

The Commissioner carried out a visit to San Marino from 9 to 10 June 2015. The report focused on freedom of expression and media freedom and on the fight against discrimination, including women's rights and gender equality, the human rights of persons with disabilities and the human rights of LGBTI persons.

During his visit, the Commissioner was granted an audience by Their Excellencies the Captains Regent and met with the Minister of Foreign and Political Affairs, Mr Pasquale Valentini; the Minister of Internal Affairs, Public Function, Justice and Relations with the Township Councils, Mr Gian Carlo Venturini; the Minister of Education, Culture and University, Scientific Research, Social Affairs and Gender Equality, Mr Giuseppe Morganti; the Minister of Health and Social Security, Family, National Insurance and Economic Planning, Mr Francesco Mussoni; and the Minister of Labour, Co-operation and Information, Mr Iro Belluzzi. The Commissioner also met with the Bureau of the Grand and General Council (the Parliament of San Marino) and members of the Delegation of San Marino to the Parliamentary Assembly of the Council of Europe. In addition, the Commissioner met with magistrates from different branches of the judiciary, including the President of the Guarantor's Panel, Mr Carlo Fusaro, as well as representatives from various public bodies competent in the field of human rights, including the Commission for Equal Opportunities, the Authority for Equal Opportunities, the Social-Health Department of the Social Security Institute, the Minors' Service and the Mental Protection Service. The Commissioner also held meetings with representatives of civil society and visited a centre and workshops catering for persons with disabilities, the Territorial Domiciliary Service and the Minors' Service.

Following this visit, the Commissioner published a report on 15 October. With regard to media freedom, the Commissioner's main concern related to the adoption of a new law on publishing and the profession of media operators, which foresees an enforcement mechanism for a future code of ethics that goes beyond self-regulation and carries a risk of undue interference with media content. The Sammarinese authorities should therefore replace this mechanism with one that is more respectful of media freedom and the principle of self-regulation. The Commissioner also encouraged the Sammarinese authorities to decriminalise defamation and review the sanction for disclosing pre-trial information.

As concerns the fight against discrimination, the Commissioner encouraged the authorities to address a number of gaps in San Marino's anti-discrimination legislation and to ratify the revised European Social Charter. Considering that the Commission for Equal Opportunities did not meet the independence and effectiveness requirements for an equality body, the Commissioner encouraged San Marino to set up a human rights structure in compliance with the Paris Principles, which could also fulfil this role.

Regarding women's rights and gender equality, the Commissioner welcomed the progress made on combating violence against women, while calling for the speedy ratification of the Istanbul Convention

and the reinforcement of the competent national body. He focused on the specific problems relating to foreign-national women, in particular private carers, and on the need to address the gender gap in employment and political participation. The Commissioner encouraged San Marino to review the very strict criminal law provisions on abortion in the light of relevant international standards.

While welcoming progress concerning the human rights of persons with disabilities, the Commissioner encouraged San Marino to support its recent legislation with a clear action plan and adequate resources. He also urged a thorough review of the Sammarinese legal capacity legislation to align it with the United Nations Convention on the Rights of Persons with Disabilities. Notwithstanding the excellent quality of care in residential settings, the Commissioner also encouraged San Marino to support efforts to move towards fully community-based living arrangements.

As for the human rights of LGBTI persons, the Commissioner recommended the introduction of a framework based on self-determination in order to ensure the legal recognition of a person's gender. The Commissioner also recommended the introduction of legal protection for same-sex couples in the form of a civil union or registered partnership, while in the meantime extending the current protection enjoyed by non-married, cohabiting opposite-sex couples to same-sex couples. He furthermore called on the authorities to raise awareness on the human rights of LGBTI persons and to promote respect and equality.

### ***Visit to Slovak Republic***

The Commissioner visited Slovakia from 15 to 19 June. His visit focused on issues concerning systematic work for the implementation of human rights, and Slovakia's action against discrimination.

During his visit, the Commissioner engaged in a dialogue with the national authorities, including: the Deputy Prime Minister and Minister of Foreign and European Affairs, Mr Miroslav Lajčák; the Deputy Prime Minister and Minister of Interior Mr Robert Kaliňák; the Minister of Justice, Mr Tomáš Borec; the Minister of Education, Science, Research and Sport, Mr Juraj Draxler; the Minister of Labour, Social Affairs and Family, Mr Ján Richter; the First Deputy Prosecutor General, Mr René Vanek; and the Deputy Prosecutor General, Mr Jozef Szabó. The Commissioner also held meetings with the Public Defender of Rights, Ms Jana Dubovcová; the Executive Director of the Slovak National Centre for Human Rights, Mr Marian Mesároš; the Plenipotentiary of the Slovak Republic for Roma Communities, Mr Peter Pollák; and the Deputy Speaker of the Slovak Parliament Ms Erika Jurinova and the Parliamentary Committee for Human Rights and National Minorities. Furthermore, Commissioner Muižnieks met with civil society representatives. While in Košice the Commissioner met with representatives of the local and regional authorities and carried out visits to the social care institution for persons with disabilities in Šemša; the elementary school in Kecerovce; and the Roma settlements of Moldava nad Bodvou and Veľká Ida.

In his report published on 13 October the Commissioner noted that although Slovakia's anti-discrimination framework is comprehensive, it provides a differing degree of protection for various vulnerable social groups. It must be reformed to close all protection gaps. In this regard, the recent adoption of the first national human rights strategy is an important step towards framing a coherent and transversal approach. The Commissioner welcomed the efforts made to systematise the implementation and monitoring of human rights through the human rights strategy and stressed that its success is also linked to that of relevant sectorial action plans and their effective implementation, notably at local level. In addition, he urged Slovakia to provide the Ombudsperson and the National Centre for Human Rights with adequate support and resources to effectively carry out their mandates.

Commissioner Muižnieks remained seriously concerned by the persistent manifestations of anti-Gypsyism and hate speech, and instances of excessive use of force by the police during raids in Roma settlements. It appears that the authorities underestimated the incidence and implications of racist hate crime, including racially motivated police violence, affecting Roma. More and resolute efforts are needed to condemn, effectively investigate and sanction such crimes. The placement of Roma children in special schools, the segregation of Roma, and their substandard housing situation must also be addressed as a matter of priority. The recent legislative developments regularising informal dwellings should be

reinforced by preventing evictions without the provision of adequate alternative accommodation. Slovakia was urged to intensify its efforts aimed at protecting the human rights and social integration of Roma, in line with the Council of Europe standards.

As concerns persons with disabilities, Commissioner Muižnieks welcomed the on-going reform aimed at prohibiting the full legal incapacitation of persons with psychosocial and intellectual disabilities as of July 2016. The authorities were called on to finalise this process and develop a flexible system of supported decision-making, based on individual consent and necessary judicial safeguards to ensure that persons placed under guardianship can challenge this measure. At the same time, the Commissioner remained concerned about the slow deinstitutionalisation process and the practice of transforming traditional residential institutions into smaller housing units. The authorities were urged to refrain from placing additional persons with disabilities in residential institutions. Opening new - even if smaller - institutions should be avoided. Instead, resources must move to the development of individualised support services. The report also highlighted the need to improve the access of children with physical or sensory disabilities to mainstream schools.

The strengthened policy and institutional framework notwithstanding, persistent anti-gay public discourse and hate speech have been very worrying. The Commissioner noted that they must be countered by effective measures, including the extension of the provisions of domestic hate speech legislation to cover sexual orientation, gender identity, and sex characteristics. The provisions of the Criminal Code establishing hatred based on ethnicity, race, skin colour and sexual orientation as an aggravating circumstance should be also extended to cover transphobic hate crime. Law enforcement officials should be adequately equipped to identify and effectively investigate such incidents. The Commissioner underlined that hate crime, including hate speech, requires effective investigations and sanctioning by the authorities. This would send a strong signal that hate crime has no place in a democratic society. Furthermore, in light of the recent case-law of the Court, the Commissioner encouraged Slovakia to provide legal recognition to same sex couples allowing them to address the practical problems related to the social reality in which they live.

Lastly, the Commissioner called on the authorities to promote and fully respect the human rights of trans and intersex persons, including intersex children. Special attention should be paid to countering practices imposing medical interventions and non-marriage requirements for the official recognition of gender reassignment. In particular, Slovakia was called on to set up strong and explicit guarantees protecting intersex children from unnecessary surgical procedures aimed at assigning them a sex without their free and informed consent.

### ***Visit to Ukraine***

The Commissioner carried out a visit to Ukraine from 29 June to 3 July, focusing on the humanitarian situation in the east of the country. As part of this mission, he travelled to Kyiv, Dnipropetrovsk, Donetsk and Kramatorsk.

In Kyiv, the Commissioner met with the Prime Minister, Mr Arseniy Yatsenyuk; the Speaker of the Parliament, Mr. Volodymyr Groysman; and the Minister for Foreign Affairs, Mr Pavlo Klimkin. He also held meetings with the Deputy Minister of the Interior, Mr Tigran Avakyan; Deputy Minister of Justice, Ms Nataliia Sevostianova; Deputy Prosecutor General/Chief Military Prosecutor Mr Anatolii Matios; and representatives of several parliamentary factions. In addition, the Commissioner met with the Parliamentary Commissioner for Human Rights, non-governmental organisations and representatives of international organisations including the UN OHCHR and the OSCE. In Donetsk, the Commissioner had meetings with representatives of the local decision-makers, the local ombudsman for children, the deputy to the local commissioner for human rights and representatives of international intergovernmental and humanitarian organisations operating on the ground. The Commissioner visited hospital no 21 in Kuybyshev district and a traumatology unit in the city centre, as well as residential areas in the vicinity of the contact line. In Kramatorsk, he met the head of the state civil and military administration of the Donetsk region.

On 3 November the Commissioner published a report on this visit, which provided an independent analysis of the following issues: the humanitarian situation in the areas affected by the conflict in the east of the country, the situation of internally displaced persons (IDPs), human rights of children, freedom of movement and access of humanitarian organisations. The Commissioner also followed up on the topics which he had discussed with the Ukrainian authorities during his visits to Ukraine in 2014, such as investigations into serious human rights violations; police and judicial reforms and systematic work to implement human rights.

The Commissioner expressed his profound concern and sadness over the loss of thousands of lives and the severe hardship experienced by ordinary people living in the communities affected by the conflict. He urged all sides to do their utmost to de-escalate the situation and to refrain from using violence so as to focus on resolving differences through negotiations as outlined by the Minsk agreements of September 2014 and February 2015. As a result of the protracted conflict, five million individuals are estimated to be in urgent need of assistance to meet their basic needs. Access to clean water has become a pressing issue for up to 1.3 million people.

The Commissioner was alarmed by the level of destruction military activities had caused to infrastructure, including medical facilities, schools and kindergartens. He urged the authorities to take a flexible, proactive and pragmatic approach with regard to payment of social benefits to persons residing in non-government controlled territories, with a view to minimising the severe hardship experienced by the population which has already been greatly affected by the armed hostilities, food insecurity, higher prices for basic goods and non-functioning banking sector.

While acknowledging the adoption of the legislative framework for IDPs in 2014, the Commissioner urged the authorities to develop a detailed action plan for IDPs, which would, inter alia, include measures aimed at providing IDPs with durable housing solutions and livelihood opportunities. The action plan should also address issues such as protection against discrimination on the basis of displacement; access to justice; protection of property rights; safeguarding the right to vote; and integration into the host communities.

With regard to the human rights of children, the Commissioner called upon the authorities to adopt regulations for a simplified procedure allowing children and parents living in non-government controlled areas to acquire identity documents and legally valid educational certificates, and to develop and put in place an effective statelessness determination procedure. The Commissioner also expressed concern about the conditions of social care institutions in conflict affected areas and recommended an information campaign to raise awareness of the risks of land mines and unexploded ordnance among children and parents.

As concerns freedom of movement, the Commissioner urged the government to review the existing security measures with a view to ensuring that the current barriers affecting movement across the demarcation line are brought to the necessary minimum.

The Commissioner expressed concern that the access of humanitarian organisations to the affected population had been hampered on both sides of the contact line. In his discussions with the Ukrainian authorities, he advocated the establishment of humanitarian corridors and the simplification of administrative procedures for humanitarian aid. Furthermore, the Commissioner encouraged the decision-makers in Donetsk and Luhansk to ensure unhindered access of humanitarian organisations to the affected groups living in non-government controlled territories and to reconsider any decisions affecting their ability to do so.

With regard to investigations into serious human rights violations, the Commissioner urged his interlocutors to address structural and operational deficiencies in the independence and effectiveness of investigations, as identified by the International Advisory Panel. There is also a need to raise awareness among prosecutorial and judicial authorities of the applicable international standards for effective investigations, their practical application and the respective roles of the authorities to combat impunity.

While welcoming the ongoing police and judicial reforms, the Commissioner reiterated his long-standing recommendation to establish an independent complaints mechanism for police activities. Furthermore, he encouraged the authorities to include all necessary safeguards concerning the use of firearms in the current legislative regulation on police.

Finally, the Commissioner welcomed the adoption of the National Human Rights Strategy and provided his specific guidelines for the preparation of a National Human Rights Action Plan. He also urged the authorities to review and reconsider on a regular basis their decision to derogate from the European Convention on Human Rights and other international human rights instruments.

### ***Visit to Belgium***

The Commissioner carried out a visit to Belgium from 14 to 18 September, focusing on three main issues: the human rights of migrants and asylum-seekers; the human rights of persons with disabilities; and the human rights of Roma and Travellers.

During the visit, the Commissioner met with Mr Koen Geens, Minister of Justice; Mr Didier Reynders, Minister of Foreign Affairs; Mr Theo Francken, State Secretary for Asylum and Immigration; and Ms Elke Sleurs, State Secretary for the Fight against Poverty, Equal Opportunities, Persons with Disabilities and Science Policy. He also held meetings with representatives of the government of the French Community (Mr Demotte, Minister-President of the Community; Ms Simonis, Minister of Social Advancement Education, Youth, Women's Rights and Equal Opportunities; and Mr Madrane, Minister of Youth Welfare, Community Justice Centres and the Promotion of Brussels), representatives of the Flemish Government (Ms Homans, Minister of Internal Administration, Civic Education, Housing, Equal Opportunities and the Fight against Poverty; Ms Crevits, Minister of Education; and Mr Vandeurzen, Minister of Welfare, Public Health and Family) and representatives of the Government of the German-speaking Community (Mr Paasch, Minister-President; and Mr Antoniadis, Minister for Family, Health and Social Issues). The Commissioner also met with representatives of the Brussels regional government and its Flemish and French Community Councils (Minister Vanhengel; State Secretary Debaets; and Minister Laanan).

The Commissioner also met with Ms De Bruecker and Mr Herman, the Federal Ombudspersons; Mr De Vos, the Délégué Général aux droits de l'enfant of the French Community; Mr Vannobergen, the Flemish Parliamentary Child Ombudsman; Ms D'Hondt, the Head of the National Commission for Children's Rights; and with representatives of the Inter-Federal Centre for Equal Opportunities (the Inter-Federal Centre) and the Federal Migration Centre (Myria). Moreover, he held discussions with representatives of UNHCR and of various civil society organisations.

The Commissioner visited a detention centre for migrants (Caricole centre, situated near Brussels airport) and family units in which migrant families with children are accommodated as an alternative to detention (Beauvechain). He also visited the psychiatric ward of the prison of Forest in Brussels, as well as living units for persons with disabilities (Brussels). Additionally, he went to the Maximilien Park in Brussels, where at the time of his visit several hundred asylum-seekers were camping while awaiting the registration of their claims with the Aliens Office.

The Commissioner commended the Belgian authorities for their decision to increase the quota of Syrian refugees they accept for resettlement. He also praised the positive response of Belgian civil society organisations to the arrivals of refugees. However, given the drastic increase in such arrivals over the weeks prior to his visit, he urged the authorities to speed up registration procedures and increase their reception capacity. The Commissioner also underlined the need to address long-standing concerns in the field of asylum and migration, in particular the systematic detention of asylum-seekers at Belgian airports. He urged the authorities to keep using existing alternatives to detention for families of migrants with children and to refrain from resuming the practice of detaining these families in closed centres. He also raised issues pertaining to the protection of children's rights in asylum and migration proceedings and to the system for monitoring the conditions and treatment of migrants and asylum-seekers in detention.



Regarding the rights of persons with disabilities, the Commissioner noted progress in some areas, such as the adoption in 2014 of a new law on legal capacity, which must now be implemented in line with the UN Convention on the Rights of Persons with Disabilities (UNCRPD). However, important concerns persist in other areas, including the continuing high rate of institutionalisation of persons with disabilities. While steps have been taken in some parts of the country to reverse the trend towards institutionalisation, the Commissioner called on the authorities to take more resolute measures to implement the right of persons with disabilities to live independently and be included in the community, enshrined in the UNCRPD. He is also seriously concerned that, despite marked differences in the laws and practices of the three communities, the number of children with disabilities who are educated separately from other children in specialised schools is still exceptionally high in Belgium. The Commissioner called for a nationwide commitment to inclusive education, in order for Belgium to fulfil its obligations under the UNCRPD. In line with the relevant judgments of the Court against Belgium, he also urged the authorities to take resolute measures to prevent violations of the rights of detainees with psycho-social and intellectual disabilities, who can currently spend several years in totally inadequate detention conditions, pending transfer to a specialised psychiatric institution.

Furthermore, the Commissioner expressed concerns about serious problems of social exclusion among Roma migrants from other European countries. While praising existing good practices at the local level, he insisted on the need to expand social intervention directed at the most vulnerable Roma families. Referring to the situation of Belgian Roma and Travellers who maintain an itinerant or semi-itinerant way of life, the Commissioner deplored the fact that they were increasingly subjected to forced evictions and highlighted that their way of life should be better respected, notably by substantially increasing the provision of halting sites throughout the country. He also raised serious concerns about the reported over-representation of Roma migrant children and of children of Belgian Roma and Traveller families in specialised education, and, in general, about their low school participation and high drop-out rates.

The Commissioner's report following this visit was published in January 2016.

### ***Visit to Georgia***

The Commissioner visited Georgia from 9 to 13 November to follow up on the report he published in May 2014 which focused on the administration of justice and the protection of human rights in the justice system as well as tolerance, non-discrimination and the situation of ethnic and religious minorities.

In Tbilisi, the Commissioner met with the Minister of Foreign Affairs, Mr Giorgi Kvirikashvili; the Minister of Internally Displaced Persons from the Occupied Territories, Accommodation and Refugees, Mr Sozar Subari; the Minister of Education and Science, Ms Tamar Sanikidze; the Minister of Justice, Ms Tea Tsulukiani; the Minister for Reconciliation and Civic Equality, Mr Paata Zakareishvili; the Deputy Head of the State Security Service, Mr Levan Izoria; the Deputy Chief Prosecutor, Mr Giorgi Gogadze; the President of the Constitutional Court, Mr George Papuashvili; and the Chairperson of the Supreme Court, Ms Nino Gvenetadze. In addition, the Commissioner held discussions with the Public Defender (Ombudsman), Mr Ucha Nanuashvili, members of the Georgian Bar Association, representatives of civil society, and international partners.

The Commissioner visited Batumi in the Autonomous Republic of Adjara where he met with the Chairman of the Government of Adjara, Mr Archil Khabadze; the Chairperson of the Human Rights Committee in the Supreme Council of Adjara, Ms Medea Vasadze; the Regional Representative of the Public Defender, Mr Giorgi Charkviani; and civil society actors.

The Commissioner also travelled to the administrative boundary line with South Ossetia, close to the village of Odzisi, and discussed the human rights situation in the conflict-affected areas with several interlocutors in Tbilisi.

On 15 December, the Commissioner addressed his observations on the human rights situation in Georgia to the Prime Minister. The observations were published on 12 January 2016.

The Commissioner welcomed the positive trends and achievements of justice sector reforms in Georgia, including those in the area of juvenile justice. However, a number of concerns regarding the independence and functioning of the justice system were reported to the Commissioner. He notably called upon the Georgian authorities to ensure that the selection, appointment and transfer of judges are transparent, merit-based and done in accordance with clear criteria, in order to fully guarantee judicial independence and ensure public trust in the judiciary. The introduction of a procedure for the random allocation of cases among judges on the basis of an automatic distribution system would improve the functioning of the judiciary and contribute to better shielding judges from internal and external interference, notably when it comes to high profile cases.

The Commissioner recalled that the existence of a three-year probationary period for judges before their appointment for life continued to raise concern with regard to the ability of judges to adjudicate cases independently, as this rendered them more vulnerable to pressure. Specific cases of alleged pressure and interference with the work of judges were brought to the attention of the Commissioner, notably in relation to Constitutional Court judges and the first instance court judge in the high profile case of the TV station Rustavi 2. The Commissioner also urged the Georgian authorities to remedy problems in the functioning of disciplinary proceedings against judges with a view to addressing possible abuse and avoiding any perception of impunity. The Commissioner highlighted the pertinence of the recommendations provided by the Venice Commission and the Directorate of Human Rights of the Council of Europe in addressing issues regarding the judiciary in Georgia.

The Commissioner expressed concern about the alleged use of politically-motivated measures and a biased approach towards members of the opposition. He recalled that the work of law enforcement agencies and judicial bodies should be free from political interference and should only be guided by the protection of the public interest. While recent changes in the Law on the Prosecutor's Office have brought some improvement to the selection, appointment and dismissal procedures of the Chief Prosecutor, concerns remained regarding the work of this key institution in the criminal justice system. The Commissioner underlined that further efforts should be undertaken to increase the impartiality and accountability of prosecutors and that the competence and capacity of prosecutors to carry out effective investigations into allegations of human rights violations should be strengthened. The Commissioner also urged the Georgian authorities to investigate effectively reported instances of abuse by the police. He raised the case of Giorgi Mdinardze, a defence lawyer, who was reportedly beaten by police officials in Tbilisi when he was defending a juvenile, and reports of repeated abuse at the Kobuleti police station.

The Commissioner urged the Georgian authorities to establish the necessary conditions for the effective implementation of the anti-discrimination law, including by adopting the proposed amendments to the law which were pending before the Parliament. The latter would reinforce the position of the Ombudsman in addressing discrimination, notably with regard to the private sector and would extend the deadline for submitting complaints to the courts. Although it was reported to the Commissioner that instances of hate crime and hate speech had increased in the last few years, legal provisions penalising racism, intolerance and discrimination remained underused. In this respect, the Commissioner looked forward to the introduction of internal guidelines in the Prosecutor's Office regarding the application of article 53.3 of the Georgian Criminal Code establishing discrimination as an aggravating circumstance. The Commissioner stressed that violence against LGBTI persons and those defending their human rights should be effectively investigated and adequately punished, specifically referring to incidents that took place on 17 May 2013 in Tbilisi on the occasion of the International Day against Homophobia and Transphobia.

The Commissioner noted with concern that, since the publication of his report in May 2014, further cases of disputes between majority and minority religious groups, mostly about issues pertaining to religious properties and places of worship, have resulted in reported instances of intolerance and discrimination against members of religious minorities. Specific incidents targeting members of the Muslim community Jehovah's Witnesses were brought to his attention. The Commissioner reiterated that unlawful restrictions of religious freedoms, and in particular acts of violence, should be effectively investigated and adequately punished, in accordance with the legal provisions in force. The investigation into earlier reported incidents of unlawful restrictions on religious freedoms, including those which took place in Nigvziani and Samtatskaro, should be completed. Recalling that the marginalisation and alienation of minority groups

was a direct threat to social cohesion, the Commissioner encouraged the Georgian authorities to engage in a genuine dialogue with all religious denominations in order to tackle issues of concern applying a human rights-based approach.

While in Batumi, the Commissioner visited a semi-formal settlement on the outskirts of the city called “dream town”, which is inhabited by hundreds of families who relocated from other parts of the country – mainly high mountainous regions of Adjara – because of poverty, difficult living conditions and natural disasters. Many of the families settled in “dream town” live in substandard conditions with no running water or sewage and lack adequate healthcare and social assistance. The Commissioner urged the authorities to assess the socio-economic situation of the population living in “dream town”, provide assistance to those who are in need and offer durable solutions to address the housing and other needs of the families and individuals concerned.

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

The Commissioner visited Hungary from 24 to 27 November. During the visit, he discussed the human rights situation of immigrants, asylum seekers and refugees, following sweeping changes introduced in Hungarian law and practice in this field over the summer of 2015. The focus was on developments since the Commissioner’s last report on Hungary, published on 16 December 2014, which also covered, among other issues, the human rights situation of immigrants, asylum seekers and refugees.

The Commissioner held meetings with the Minister of the Interior, Mr Sándor Pintér; the Minister of Justice, Mr László Trócsányi; the State Secretary for Security Policy and International Cooperation, Mr István Mikola; the State Secretary for Social Affairs and Inclusion, Mr Károly Czibere; the Parliamentary State Secretary of the Ministry of Defence, Mr Tamás Vargha; and the Director General of the Office of Immigration and Nationality, Ms Zsuzsanna Végh. He also had meetings with the Chief Prosecutor, Mr Péter Polt and the Chairperson of the Hungarian delegation to the Parliamentary Assembly of the Council of Europe, Mr Zsolt Németh. The Commissioner also met the Commissioner for Fundamental Rights, Mr László Székely. He held discussions with representatives of UNHCR and of civil society organisations. The Commissioner furthermore visited the Röszke transit zone at the Serbian border and the Debrecen asylum detention centre, where he met the staff and detainees.

The Commissioner noted that with close to 400,000 people arriving at its borders in search of international protection in 2015, Hungary had been confronted with an unprecedented task in this field. However, he concluded that a series of swift measures taken in recent months had rendered access to international protection extremely difficult and had unjustifiably criminalised immigrants and asylum seekers. These measures include the introduction of an accelerated asylum procedure lacking essential safeguards; the construction of razor-wire fences at the Serbian and Croatian borders; the creation of makeshift transit zones where an extremely accelerated asylum procedure (referred to as border procedure) applies; and the proclamation by the government of a mass migration crisis during which the border procedure applies. The Commissioner urged the authorities to replace the new measures with a fully human rights compliant asylum procedure. He also called on them to repeal newly established offences related to illegal crossing of the border fence and the specific fast-track criminal procedure applicable to these offences, which are particularly problematic in terms of fair trial standards.

The Commissioner also stressed the high risk of refoulement of asylum seekers and persons transferred to Hungary from other EU member states under the Dublin regulation (“Dublin returnees”) on the grounds of inadmissibility of their claims, in contradiction with international and European legal standards. This is the consequence of Serbia being considered as a safe third country by the government, in contradiction with UNHCR’s position. The increasing recourse to detention of asylum seekers and Dublin returnees is also worrying, especially in light of concerns about its arbitrariness and the quality of judicial review of detention decisions. Noting the absence of a reliable system for identifying vulnerable persons and unaccompanied minors in asylum detention, the Commissioner urged the authorities to improve asylum detention conditions and to put in place a rigorous system of identification of all special needs to ensure that vulnerable people and children are not placed in detention.

Finally, the Commissioner called on the government and political leaders to refrain from using xenophobic rhetoric linking migrants to social problems or security risks. At the same time, a genuine, fully-fledged programme of integration that would ensure migrants' access to housing, employment and other social rights should be put in place.

The press release issued at the end of the visit (27 November) is available on the Commissioner's website. The visit also served as a basis for the written comments the Commissioner submitted to the Court as a third party in December, in relation to two cases against Austria. The cases concerned the transfer of the applicants from Austria to Hungary under the Dublin III Regulation.

### ***Visit to Cyprus***

The Commissioner's visit to Cyprus from 7 to 11 December focused on certain issues pertaining to the protection of the human rights of immigrants and asylum seekers, and on the impact of the economic crisis on the enjoyment of human rights, in particular by women, children and older persons.

During his visit the Commissioner held discussions with the Cypriot authorities, including the President of the Republic, Mr Nicos Anastasiades; the Minister of Foreign Affairs, Mr Ioannis Kasoulides; the Minister of Interior, Mr Socratis Hasikos; the Minister of Justice and Public Order, Mr Ionas Nicolaou; the Minister of Finance, Mr Harris Georgiades; and the Permanent Secretary of the Ministry of Foreign Affairs, Mr Alexandros Zenon. In addition, the Commissioner met with the Commissioner for Administration and Human Rights, Ms Eliza Savvidou; the Commissioner for Children's Rights, Ms Leda Koursoumba; and members of the Technical Committee on Gender Equality.

The Commissioner also met with representatives of international organisations, academics, and a number of non-governmental organisations. He carried out visits to the premises of a charity in Nicosia, where he met with victims of the economic crisis, to the reception centre for asylum seekers in Kofinou and to the migrant detention centre in Mennogeia. Furthermore, the Commissioner gave a lecture on the impact of the economic crisis on the enjoyment of human rights at the University of Cyprus.

In addition, the Commissioner went to the UN buffer zone, where he met with members of the Technical Committee on Gender Equality that was established in 2015 under the on-going peace talks. He also met with the members of the Committee on Missing Persons (CMP) as well as with its technical staff, and visited the anthropological laboratory of the CMP. Lastly, he crossed the Green Line and met with the Turkish Cypriot leader, Mr Mustafa Akıncı.

At the end of his visit, the Commissioner welcomed the readiness of Cyprus to receive asylum seekers in the context of the EU relocation scheme, but expressed serious concern about the grave shortcomings of the national asylum system. He invited the authorities to intensify their efforts to improve reception conditions and fully align domestic asylum procedures with European human rights standards. He stressed the need for long-term reception policies matched with adequate funding for their implementation. The Commissioner also underlined that, in view of the expected reunification of the island, it is all the more important for the authorities to draw upon the Council of Europe's expertise and step up their efforts to enhance all migrants' integration and social cohesion, promote tolerance and eradicate hate speech and other forms of hate crime.

The Commissioner welcomed the end of the practice of detaining Syrian asylum seekers as well as the reduction by half of the detention capacity of the Menoyia detention centre for migrants, in line with CPT recommendations. Stressing that detention of failed asylum seekers and of other migrants in view of their deportation is widespread, he expressed his concern about the insufficient social and psychological support offered to detainees, as well as the prolonged and sometimes repeated detention of migrants without reasonable prospect of removal, and called on the authorities to apply alternatives to detention in order to avoid depriving migrants of their liberty for excessively long periods.

As regards the impact of the economic crisis and austerity measures, the Commissioner noted that certain social groups have been particularly vulnerable, especially migrant children and single parent

families. He welcomed the establishment of a Guaranteed Minimum Income scheme (GMI), but expressed his concern about its implementation and urged the authorities to redress this situation by making it possible for social services to process the GMI applications promptly and adequately. He also called on the authorities to conduct human rights - including gender equality - impact assessments of all austerity measures, as well as to consult with national human rights structures and civil society organisations and experts before embarking upon their implementation.

The Commissioner's report following this visit is forthcoming.

### **1.3 Missions**

#### ***Mission to Paris***

On 17 February, the Commissioner travelled to Paris in order to launch the report following his visit to France from 22 to 26 September 2014, in which he addressed issues concerning action against intolerance and racism, and the human rights of migrants, Travellers, Roma and persons with disabilities. He held a press conference and took part in a public debate with experts on the conclusions and recommendations on his report organised by *Sciences Po*, and the French National Consultative Commission of Human Rights. He also met with members of the French delegation to the Parliamentary Assembly of the Council of Europe.

By presenting his report on France the Commissioner noted that despite advances in legislation and measures to combat intolerance and racism, discrimination and hate speech not only persist in France but are on the rise. There is an urgent need to combat this in a sustained and systematic manner. In recent years, there has been a huge increase in antisemitic, anti-Muslim and homophobic acts. In the first half of 2014 alone, the number of antisemitic acts virtually doubled, while the number of Jews leaving France for Israel tripled compared with 2012, which is a telling indication of their feeling of insecurity. The rising number of anti-Muslim acts, 80% of which are carried out against women, and homophobic acts, which occur once every two days, is also cause for great concern. The Commissioner underlined that it is essential to put an end to such acts, including on the Internet, and to punish those responsible. The Commissioner welcomed France's sound legal and institutional framework for combating racism and discrimination and urged the authorities to continue to fight resolutely against these phenomena. To this end, it would be helpful to give full effect to the criminal law provisions recognising "testing" as evidence of discriminatory conduct and to include the fight against discrimination in a national plan to promote and protect human rights. Ratifying Protocol No. 12 to the European Convention on Human Rights on the general prohibition of discrimination would also help to further strengthen the legal framework.

The trend towards more stringent and more complex rules in the asylum and immigration field raises serious questions of compatibility with France's international commitments, particularly with regard to being granted asylum and the reception of asylum seekers. The serious and chronic inadequacies in the reception of asylum seekers force many of them to live in extremely vulnerable and degrading conditions. Lasting solutions need to be found as a matter of urgency to ensure that everyone has effective access to reception centres and social protection. The reception and care of unaccompanied migrant minors highlights a further shortcoming in the French migration system. There are between 7,000 and 12,000 such children living in France, 3,000 of whom are in Mayotte. Many are left without any social or educational support or medical care and some are even homeless. Their age is often determined following certain highly questionable procedures, especially when these involve bone age tests. It is not uncommon for these children to be deprived of their liberty when they arrive at the border unlawfully. The French authorities were called on to put an end to these practices and provide better reception conditions, including overseas.

The Commissioner also called on the French authorities not only to honour their commitment to take in 500 Syrian refugees, but to take in even more and to remove all barriers, such as the obligation to have an airport transit visa, which undermine their chances of being granted asylum. The Commissioner also urged the authorities to improve the living conditions of migrants in Calais and to afford them greater protection against violent xenophobic attacks. Commissioner Muižnieks noted that France should not

adopt or implement legislative or other measures to accelerate asylum procedures still further, until the structural problems in the national asylum authorities have been resolved. He underlined the need to improve the effectiveness of remedies in the asylum and immigration field, by expediting the introduction of suspensive appeals against all decisions taken in these matters, including overseas. In addition, he recommends that the authorities improve the legal aid and procedural guarantees offered to immigrants and asylum seekers and cease the practice of holding hearings by the 'liberties and detention judges' in the annexes of regional courts located in the immediate vicinity of administrative detention centres or waiting zones.

High levels of anti-Gypsyism have prevailed in France for a very long time, and the Commissioner called on the authorities to firmly tackle hostile speech and acts directed at migrant Roma and Travellers, including on the Internet. He recommended that the authorities put an end to the discriminatory system applied to Travellers, provide appropriate camping areas and ensure effective access to education for the children of Travellers by promoting solutions more in keeping with their lifestyle. Like Travellers, migrant Roma continue to be targeted and stigmatised by hate speech emanating from certain politicians and by sometimes harmful media coverage. They are also the victims of violence perpetrated by individuals and at times even by members of law enforcement agencies, in particular during forced eviction operations. The Commissioner also underlined the urgent need to guarantee Roma access to healthcare, education, housing and employment, and to conduct public awareness-raising activities to combat stereotypes and prejudice against Roma and Travellers.

With regard to the situation of persons with disabilities, the Commissioner noted that despite a well-developed legal framework and the priority given to independence and social inclusion, these are not always guaranteed in practice. There is an urgent need to rectify a situation which continues, de facto, to perpetuate the social exclusion and marginalisation of persons with disabilities. The serious delays in ensuring that public places are accessible and the shortcomings in the arrangements concerning guidance and support for these persons should be dealt with as a matter of priority. The Commissioner was also concerned that thousands of persons with disabilities are obliged to leave France to find more appropriate solutions to their situation abroad, particularly in Belgium. He also condemned difficulties in access to employment and the discriminatory conditions applying to workers with disabilities within certain specialised facilities. Lastly, while welcoming the measures adopted to promote the education of children with disabilities in mainstream schools, the Commissioner notes with concern that no education solution has yet been found for some 20,000 of these children, and particularly for those with autism spectrum disorder. The authorities should step up their efforts to ensure that all children receive appropriate education. The authorities should also attach priority to setting up local services promoting the social inclusion of people with disabilities, and improve the support provided to those with autism, in particular by making greater use of educational, behavioural and developmental methods in the care they are given.

### ***Mission to Oslo***

The Commissioner visited Oslo from 1 to 3 June, to meet with Norwegian authorities and to participate in a conference presenting the results of the work of the Norwegian Tater/Romani Commission. The Commissioner met with Ms Erna Solberg, the Prime Minister; Mr Bård Glad Pedersen, State Secretary at the Ministry of Foreign Affairs; and Ms Anne Karin Olli, State Secretary at the Ministry of Local Government and Modernisation. During his meetings with the Norwegian authorities, the Commissioner outlined the findings and recommendations of the report on his visit to Norway published on 18 May and discussed possible follow-up measures planned by the authorities.

At the Conference organised by the Norwegian Tater/Romani Commission, the Commissioner made a keynote address on the need to promote reconciliation between national authorities and Roma and Traveller communities in Europe. The Commissioner stated that age-old myths and deeply-rooted prejudices must be replaced by a narrative based on sound knowledge and understanding of the past. The history of rejection, exclusion and persecution of Roma and Travellers in Europe should be brought to light and explained to the majority populations. The Commissioner pointed out that Roma should be recognised as victims of massive human rights violations.

## ***Mission to Berlin***

To mark the publication of his report on Germany (see Country visits, above), the Commissioner presented it at a press conference organised at the Bundespressekonferenz on 1 October and at a public event organised together with the German Institute for Human Rights on 2 October. The day before publication, the Commissioner also met with the Minister of Justice, Mr Heiko Maas, and the State Secretary at the Federal Minister of Justice, Dr. Stephanie Hubig to present the report to them.

### **1.4 Continuous Monitoring**

#### ***Letter addressed to the members of the French Senate Commission discussing the surveillance bill***

On 18 May the Commissioner sent a letter to the members of the French Senate Committee which was discussing the surveillance Bill. The Commissioner reiterated the importance of adopting a law which is fully compliant with human rights standards and urged the senators to dispel the concerns raised this text, namely by clarifying its scope, counterbalancing the powers of the executive and ensuring an effective remedy for those targeted by surveillance measures.

#### ***Letter to the Chairperson of the Parliament of Ukraine on the need to secure independence of the Ombudsman institution***

On 29 May 2015, the Commissioner published a letter addressed to Mr Volodymyr Groysman, the Speaker of the Parliament of Ukraine, expressing concern about legislative proposals put forward by a number of parliamentarians aimed at annulling the appointment of the current Parliamentary Commissioner for Human Rights (Ombudsman), Ms Lutkovska. In his letter, the Commissioner referred to the well-established principles pertaining to the functioning of national human rights institutions (NHRIs) and highlighted the important role played by parliaments in ensuring the independence and effectiveness of NHRIs in promoting and safeguarding human rights at the national level.

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

On 1 June the Commissioner published a letter sent on 18 May to the Prime Minister of Serbia, Mr Aleksandar Vučić, in which he expressed his concern at reports concerning concerted efforts by certain politicians and some media in the country aimed at casting shadows over the Serbian Ombudsman's independence and moral stature.

The Commissioner recalled that he was mandated to "facilitate the activities of national ombudsmen or similar institutions in the field of human rights" and that over many years the work of these structures has proved to be of the utmost significance for the promotion and effective protection of human rights in Europe. He reiterated that Serbia had a well-respected Ombudsman whose work, along with that of the Equality Commissioner, has contributed immensely to Serbia's efforts to enhance and deepen democracy, human rights protection and the rule of law.

In his letter the Commissioner stressed his concern about public verbal attacks on the Ombudsman by some members of the government following the Ombudsman's call for the de-institutionalisation of persons with intellectual and psychosocial disabilities. He also noted with concern reports that the Ombudsman and his advisers were prevented by the Minister of Defence from completing an *in situ* inspection of the Military Security Service, which was being carried out within the framework of the Ombudsman's mandate.

Commissioner Muižnieks urged the Prime Minister and his government to take all necessary measures to fully safeguard the Serbian Ombudsman's integrity and that of his Office. He underlined that he would continue to monitor the developments closely and spare no effort, in accordance with his mandate, in

order to facilitate the activities of the national ombudsman and to enhance his independence and effectiveness.

### ***Opinion on Russian Legislation and Practice in relation to NGOs – an Update***

On 9 July 2015 the Commissioner published an Update to his Opinion on the Legislation and Practice in the Russian Federation on Non-Commercial Organisations in Light of Council of Europe Standards. The original Opinion was published on 15 July 2013 and focused on the compatibility of the so-called 2012 Foreign Agents Law with European human rights standards. The Update to the Opinion considers further legislative amendments to Russian legislation on NGOs, including the so-called 2015 Law on Undesirable International NGOs. It also analyses the implementation of the legislation on NGOs and its practical consequences for NGOs.

In the Update, the Commissioner observes that the legislative amendments introduced since the original Opinion of 2013 have amplified the already serious problems related to the lack of legal certainty, arbitrariness and disproportionate sanctions illustrated by the wide discretionary powers granted to the Prosecutor's Office and the executive authorities in implementing the legislation. He highlights cases of inconsistent and simultaneous application of the Foreign Agents Law by several state authorities on the same NGO without giving the NGOs concerned effective opportunities to challenge their treatment in the courts. The analysis of the enforcement of the law also reveals violations of the procedural rights of NGOs by the domestic courts in their failure to duly assess evidence or arguments presented by the NGOs and to deliver adequately reasoned decisions. In particular, the courts have usually not given sufficient consideration to the NGOs' submissions on the applicability of European human rights standards.

Furthermore, the Commissioner stresses that a growing number of NGOs in the Russian Federation have faced serious negative consequences as a result of the enforcement of the Foreign Agents Law. Many NGOs have initiated self-liquidation proceedings or have already been liquidated. Others have been subjected to heavy fines for not registering as foreign agents voluntarily. Stringent sanctions and frequent inspections, including the possibility for NGO managers to face criminal charges, can have a chilling effect on the work of civil society. The Commissioner concluded that the overall application of the law had confirmed his initial concerns as to the incompatibility of the Foreign Agents Law with European standards. The Commissioner called on the authorities of the Russian Federation to revise the legislation on NGOs and to suspend any further application of the Foreign Agents Law pending the adoption of the amendments.

### ***Letter to Switzerland's Federal Councillor, Head of the Federal Department of Defence, Civil Protection and Sport***

On 16 October the Commissioner published a letter he had sent on 23 September to Mr Ueli Maurer, Federal Councillor, Head of the Federal Department of Defence, Civil Protection and Sport, concerning Switzerland's draft law on intelligence. Although the draft law contained a number of safeguards against possible abuses of power by the intelligence services, the Commissioner was concerned that some measures, such as the use of surveillance tools to record non-public communications and the powers of the intelligence services to explore the network cable, raised issues of compatibility with the right to respect for private life. Referring to plans to extend the period in which telecommunications service providers are obliged to retain secondary personal data, the Commissioner stressed that suspicionless mass retention of communications data is contrary to the rule of law, incompatible with core data-protection principles and ineffective. Finally, the Commissioner stressed the importance of independent mechanisms ensuring democratic and effective oversight of the activities of intelligence services, which review the compatibility of these activities with human rights standards.

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

Commissioner Muižnieks was informed that in early 2015 the Czech authorities had prepared a bill allowing a review of individual claims of involuntarily sterilised women to receive compensation. The



Commissioner believes that this piece of legislation, if adopted, has the potential, even belatedly, to provide adequate redress to the Roma women who were victims of forced sterilisations.

On 22 October the Commissioner published a letter on the above issue, which had been sent on 6 October to the Prime Minister of the Czech Republic, Mr Bohuslav Sobotka. In his letter the Commissioner expressed his concern about the Czech government's decision not to proceed with the adoption of the law allowing the granting of compensation to the Roma women who were victims of forced sterilisations.

The Commissioner noted that involuntary sterilisation of Roma women without their full and informed consent has been a persistent problem in the Czech Republic. In his 2011 report, the Commissioner's predecessor, while welcoming the expression of regret by the Czech authorities for this unlawful practice, deplored the lack of an effective domestic mechanism to enable victims to seek and obtain compensation for the harm they had suffered. In his letter the Commissioner underlined that according to the case-law of the Court, such practices violate the human freedom and dignity of the victims, thus constituting serious human rights violations and therefore governments are obliged to establish accessible and effective mechanisms to obtain reparations.

## **2 Thematic activities**

### **2.1 Introduction**

The Commissioner covered a wide range of human rights themes in his work in 2015. Particular attention was given to the human rights of immigrants and refugees, freedom of expression and media freedom, and counter-terrorism and human rights protection. The Commissioner continued to highlight children's rights, the human rights of people with disabilities, LGBTI persons and Roma, and women's rights. Racism and intolerance, trafficking in human beings, statelessness and missing persons were also among the Commissioner's concerns.

Two major research papers together with the Commissioner's recommendations were published. The Issue Paper on democratic and effective oversight of national security services provides guidance for strengthening human rights protection in the field of security service operations. The Issue Paper on human rights and intersex people addresses the medical, legal and administrative obstacles which prevent intersex people from fully enjoying their human rights.

Although not referred to in detail in this chapter, the Commissioner's activities also covered inclusive education and the new sustainable development agenda. In a Human Rights Comment on inclusive education published in May, the Commissioner stressed that European states can no longer afford to ignore modern societies' need for broadly inclusive education and that it was a necessary investment for long-term social cohesion in all European countries. In a Human Rights Comment on the 2030 sustainable development agenda published in October, the Commissioner pointed out that the agenda was based on universal respect for human rights and that Europe should make it its own to the benefit of the most vulnerable groups in our societies.

### **2.2 Freedom of expression and media freedom**

Freedom of expression and media freedom continued to be central issues in the Commissioner's country and thematic work in 2015. A specific focus was given to these issues in his reports on Bulgaria, San Marino and Serbia. In these countries, some of the main issues raised included: the levying of large fines by the financial regulator directly on media outlets for "market manipulation" (Bulgaria); the establishment of an enforcement mechanism for a code of ethics which goes beyond self-regulation and carries a risk of undue interference with media content (San Marino); and violence against journalists and effective investigations (Serbia).

2015 also marked the launch of the Council of Europe's internet platform for the protection of journalists. The Commissioner intervened in several cases reported on the platform, including the Russian authorities' closure (by dint of not re-registering) of ATR TV in Crimea, threats against a journalist in "the former Yugoslav Republic of Macedonia", and the Turkish authorities' arrest of Cumhuriyet newspaper's Editor-in-Chief and its Ankara Bureau Chief. More generally, on several occasions the Commissioner reacted through social media to the arrest and harassment of journalists and media workers, especially in Azerbaijan and Turkey. He also expressed concern at several attacks against journalists, including in Armenia, Poland, Serbia and Ukraine.

On the occasion of World Press Freedom Day on 3 May, the Commissioner published a statement and recorded a video message for the Brussels Platform for Journalism in which he underscored that journalists had increasingly become fair game in Europe. European leaders should improve the conditions in which the press works, in particular by removing all legislative obstacles which impinge on the rights of the press, freeing journalists who are imprisoned for what they have reported and by refraining from violent or intimidating reactions against journalists.

On 20 May, the Commissioner participated in the 1st Eastern Partnership Media Conference in Riga, organised by the Latvian Presidency of the Council of the European Union. In his opening speech the Commissioner took stock of the main issues, trends and challenges in the media environment in Eastern Partnership countries (i.e. Armenia, Azerbaijan, Belarus, Georgia, Republic of Moldova and Ukraine). He highlighted his concerns about the physical safety of journalists, including those who work in Ukraine, and recalled the responsibility of states to effectively investigate and punish not only the perpetrators but also those who mastermind attacks against the press.

With regard to media independence and media diversity, the Commissioner stressed the problem of propaganda affecting virtually all Eastern Partnership countries and the instrumentalisation of media to serve political interests. Condemning restrictions placed on re-broadcasting foreign TV channels, the banning of journalists from entering countries, as well as biased reporting and the neglect of journalistic ethics, the Commissioner highlighted the need for independent and diverse media, ethical journalism and truth-telling as primary ways to counter propaganda and disinformation. Finally, the Commissioner emphasised the obligation of governments and political decision-makers to create favourable conditions for media pluralism and independence.

On 13 October, the Commissioner participated in a Council of Europe Conference entitled "Freedom of expression: still a precondition for democracy?" at which over 400 participants assessed the major challenges in this field today. Intervening as member of a panel in the introductory session of the Conference, the Commissioner focused not only on the main challenges and solutions as they emerge from his extensive country and thematic work in this field, but also responded to questions about the tools at his disposal to ensure that these challenges are met.

On 3 November, the Commissioner participated in a conference on freedom of expression and media freedom in the Western Balkans and Turkey (Speak Up! 3) organised by the EU Commissioner for European Neighbourhood Policy and Enlargement negotiations, Johannes Hahn. In his opening speech, the Commissioner gave an account of his work on media freedom and freedom of expression in Turkey and in Western Balkan countries, warning against a clear risk of erosion of progress achieved in these fields in recent years and pointing to the need for swift progress to be made in a number of areas. These areas include: protecting journalists against violence and judicial harassment, and against specific threats resulting from mass surveillance; protecting journalists acting as whistle-blowers; preventing censorship on the Internet; and promoting media pluralism and ethical journalism.

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

Human rights of immigrants, refugees and asylum seekers featured prominently in the Commissioner's work in 2015. He took an active part in various debates on these issues, reminding Council of Europe member states of their human rights obligations towards immigrants, asylum-seekers and refugees.

Issues pertaining to migration were addressed in the Commissioner's visits to Belgium, Germany, Bulgaria and Cyprus, and *ad hoc* visits to Hungary and Spain, as well as through third party interventions before the Court. The rights of internally displaced persons (IDPs) were high on the Commissioner's agenda during his visits to Ukraine, Georgia and Serbia, and Roma migration was addressed during his visit to Norway. During his country visits, the Commissioner met many migrants, refugees and IDPs in order to obtain first-hand information about their situation and specific needs.

Four Human Rights Comments were dedicated to the human rights of migrants, including Roma migrants and Syrian refugees. In a Human Rights Comment published in February, which addressed the situation of Syrian refugees, the Commissioner reiterated the need for a 'reset' in Europe's approach towards refugees and urged European states to be more generous and assume their responsibility for providing effective protection to those in need. In July, the Commissioner warned against prejudice and myths about Roma migrants in Europe stressing, *inter alia*, that more should be done to provide Roma migrants with effective support for durable solutions, based on existing good practices, instead of repressive measures and stigmatisation. The Commissioner's Human Right Comments, published in August and November respectively, aimed to raise awareness about the basic social rights of irregular migrants and the need to improve protection for victims of forced labour and human trafficking.

The Commissioner published several opinion editorials in key media outlets urging human rights compliant responses to the surge in migration. In an Opinion published in April by Open Democracy, the Commissioner pointed out that the Mediterranean sea had become a huge graveyard as thousands of migrants continued to drown under Europe's distracted eyes, and highlighted the urgent need to take concrete steps to enact adequate laws, devise effective policies and change political rhetoric concerning asylum seekers and migrants.

In July, the New York Times published the Commissioner's Opinion Editorial "You're better than this, Europe", in which he noted that immigration had become such a contentious issue that it was tearing apart what remained of the European project and its facade of solidarity. He reiterated the need to increase legal avenues for migrants to reach Europe, to replace provisions that criminalise migrants with a humane approach to their needs, and to ensure extensive search-and-rescue operations in the Mediterranean. He pointed out that the European Union should implement development policies in refugees' countries of origin to help address causes of migration. When it signs co-operation agreements with those countries, the EU must ensure that its partners respect human rights.

In February and March the Commissioner gave interviews to the BBC on issues pertaining to immigration. In the first interview, given in the aftermath of yet another migrant boat tragedy off the Libyan coast, the Commissioner regretted that the search and rescue operation Mare Nostrum had been cancelled. In the second interview, concerning the issue of outsourcing migration to third countries such as Libya, the Commissioner drew attention to the risks involved and called for opening up new venues for legal migration.

In September the Commissioner launched the social media project #RaysOfHope which promoted laudable initiatives undertaken by ordinary European citizens to help migrants, including asylum seekers, and to push for policy change. In addition to highlighting these extraordinary examples of humanity and empathy, this initiative aimed at countering the increasingly xenophobic political rhetoric which influenced public debate about migration in some countries. The initiative lasted until 9 November, and it was accompanied by a Thunderclap campaign urging the EU and European countries to finally adopt a migration policy which was fully aligned with European human rights standards.

Two of the Commissioner's Third Party Interventions before the Court in 2015 concerned migration. In November he submitted his comments concerning the cases of *N.D. v. Spain* and *N.T. v. Spain* (Applications No. 8675/15 and No. 8697/15) relating to alleged pushbacks of migrants from the Spanish city of Melilla to Morocco. In December he submitted comments concerning the cases of *S.O. v. Austria* and *A.A. v. Austria* (Applications No. 44825/15 and No.44944/15). These cases relate to the return of the two applicants from Austria to Hungary under the Dublin III regulation (see the chapter on the Court below).

In November, the Commissioner highlighted the positive role of national human rights structures in protecting the human rights of immigrants and refugees in his keynote speech at the general assembly meeting of the European Network of National Human Rights Institutions in Utrecht. In December, he visited Frontex in Warsaw to meet with its Director, Fabrice Leggeri. The Commissioner addressed a plenary meeting at Frontex outlining his work on immigrants' and refugees' human rights. He referred to his country visits and pointed out that his future work would need to focus on migrant integration. The representatives of Frontex informed the Commissioner about their activities in response to the main migration challenges at EU borders and in the Western Balkans. They also spoke about the follow-up taken by Frontex in implementing the European Ombudsman's recommendations on setting up a human rights complaints mechanism and changes to regulations governing 'joint return operations'.

During the year, the Office participated in conferences on European Asylum Law (October, Trier) and "Europe's Migration Dilemma – How can we Fix a Broken System?" (Berlin, March).

## **2.4 Children's rights**

In 2015, the Commissioner examined issues related to children's rights during several country visits. The main issues raised were: the lack of access to inclusive education for Roma children and children with disabilities (Serbia and Slovakia); denials of school enrolment (Bulgaria); undue placement in social care, child protection and juvenile delinquency institutions (Bulgaria, Serbia and Ukraine) and in child welfare services (Norway); and birth registration and access to identity documents and nationality (Serbia and Ukraine). Additionally, in his report on Ukraine, the Commissioner recommended the launching of an awareness-raising campaign about the risks of land mines and unexploded ordnance among children and their parents in areas affected by the armed conflict. During his visit to Belgium, he raised issues pertaining to the rights of children in migration and asylum procedures. During his visit to Cyprus, the Commissioner drew attention to the impact of austerity measures on the human rights of vulnerable groups in society, especially children. The Commissioner also continued to express his firm commitment towards eradicating statelessness among children (see the section on statelessness below).

An article on "Children and Justice" written by the Commissioner following his participation in a conference on juvenile justice in Stockholm in 2014 was published in a collective work on child-friendly justice, edited by the Stockholm Centre for the Rights of the Child. In May, the Commissioner issued a Human Rights Comment on the need to promote inclusive education as a means of strengthening social cohesion in diverse societies.

On the occasion of the first European Day against sexual exploitation and sexual abuse of children, held on 18 November 2015, the Commissioner issued a statement in which he underscored the importance of a special day devoted to this issue. Awareness-raising about sexual abuse and exploitation of children was still needed in European societies. He recalled that, in his country work, he had often underlined the heightened risks faced by children in a situation of vulnerability, such as migrant children, children with disabilities and children belonging to marginalised groups in society. Nonetheless, he also stressed that all children can face risks of sexual abuse and sexual exploitation, including due to their increasing use of the Internet, where they can become victims of grooming and even be recruited for sexual exploitation. He called on all states which have not yet done so to ratify the Lanzarote Convention on the protection of children against sexual abuse and sexual exploitation. On 16 November, he addressed a video message on this issue to the Slovenian Parliament, released on the occasion of the celebration by the Slovenian authorities of the European Day against sexual exploitation and sexual abuse of children.

## **2.5 Human Rights of persons with disabilities**

The protection and promotion of the rights of persons with disabilities continued to be one of the priority areas in the Commissioner's work in 2015 and was one of the issues examined in the Commissioner's visits and reports concerning Belgium, Bulgaria, Hungary, Norway, San Marino, Serbia, and the Slovak Republic.

The human rights of persons with intellectual or psychosocial disabilities, in particular their rights to legal capacity and to be included in the community, were also major areas of focus in 2015. In addition to raising these issues during the aforementioned country visits, the Commissioner looked more closely at the question of involuntary measures affecting persons with psychosocial disabilities in his report on Norway. On this last issue, the Commissioner submitted comments on a working document containing a draft Additional Protocol to the Convention on Human Rights and Biomedicine concerning the involuntary placement and involuntary treatment of “persons with mental disorder”, which had been prepared and opened for consultation by the Committee on Bioethics (DH-BIO).

In these comments, the Commissioner expressed his view that the draft Additional Protocol did not present sufficient added value owing to its primary focus on legal safeguards. He argued that safeguards that rely on medical reports and which function within legal systems that are inherently discriminatory vis-à-vis persons with psychosocial disabilities are often inadequate to prevent human rights violations in the context of involuntary measures. The Commissioner also found that the scope, definitions and provisions of the draft Additional Protocol were too broad to offer considerably more legal certainty to the persons concerned. Considering that the text also presented a number of risks, including a potential incompatibility with the United Nations Convention on the Rights of Persons with Disabilities, the Commissioner expressed his view that the draft Additional Protocol should not be adopted. He stressed, nevertheless, that member states clearly needed guidance on ways and means of reducing the need for coercion in psychiatry, stating that DH-BIO was in a good position to offer such guidance.

The right of children with disabilities to inclusive education was another common theme which was examined in Belgium, Bulgaria, San Marino, Serbia and Slovakia. The Commissioner consistently stressed that segregation in “special” classes or schools was often the beginning of a lifetime of discrimination and isolation, calling on these member states, with the exception of San Marino which has made significant progress in this area, to step up their efforts to ensure fully inclusive education.

The Commissioner continued to address the human rights of persons with disabilities at various fora. Notably, he participated in a ministerial meeting with delegations from EU member states and in the subsequent high-level meeting on disability which took place in Riga on 11 May, during which he delivered an opening address. In his speech, the Commissioner concentrated on the main pitfalls in the implementation of the human rights of persons with disabilities, based on his extensive monitoring work on disability issues. He focused mainly on the right to inclusive education, integration in the labour market, deinstitutionalisation, and the right to legal capacity for people with disabilities. The Commissioner highlighted major common shortcomings in member states as well as numerous examples he had encountered where superficial changes in legislation and terminology disguised a lack of real progress.

## **2.6 Human rights of LGBTI people**

The Commissioner’s activities in protecting the human rights of lesbian, gay, bisexual, trans and intersex people (LGBTI) had a strong focus on intersex persons. On 12 May, the Commissioner published an Issue Paper on human rights and intersex people. The six-chapter document addresses the medical, legal and administrative obstacles which prevent intersex people from fully enjoying their human rights. Stereotypes and norms grounded in the binary female-male classification have led to unnecessary medical and surgical interventions on intersex infants without their consent and a climate of incomprehension in society.

The Issue Paper informs governments and practitioners about current human rights developments, including global best practices, to protect and empower intersex people. It also contains the Commissioner’s recommendations on ways to move forward especially in the legal and medical fields. It is urgent to end unnecessary medical treatment and surgery on intersex individuals without their consent; to respect their right not to undergo sex assignment treatment; to review medical classifications which treat variations in sex characteristics as a pathology; and to ensure intersex persons’ right to self-determination by facilitating their legal recognition in official documents.

Further measures are needed to give intersex people full access to their medical records, raise public awareness, carry out professional training and improve counselling to intersex children and their parents. Professional standards, legal safeguards and judicial control should be reinforced to ensure future human rights compliance. The Commissioner stresses that the measures to protect the human rights of intersex people should be developed together with intersex persons and organisations representing them.

The Issue Paper was widely disseminated. It was launched in May at the IDAHO 2015 Forum in Budva, Montenegro. On 29 June, the Commissioner gave a video message to the European Intersex Forum in Douarnenez in which he pointed out that national authorities, human rights structures, intersex activists and medical professionals should all be involved in responding to the serious human rights issues faced by intersex people. On 8 September, the Commissioner addressed an event on the human rights of intersex people organised by the LGBTI Intergroup of the European Parliament in Strasbourg. He stressed the need to raise awareness of the human rights challenges faced by intersex persons and urged governments to identify and remedy gaps in the protection of intersex people. On 16 and 17 September, the Office participated in an expert meeting on the human rights of intersex people organised by the OHCHR in Geneva. The Issue Paper was used as one of the reference documents of the meeting.

In 2015, the Commissioner also highlighted the need to take action against homophobic and transphobic hatred. On 11 May, he addressed the IDAHO 2015 Forum “Ending hate crime and violence” in Budva through a video message. He noted that hate crimes against LGBTI people remained a grim reality across Europe and that in addition to individuals, its targets included NGO offices and pride events. The Commissioner advocated a comprehensive response: legislation, reporting, investigations, sanctions, victim support and education were all essential elements for addressing homophobic and transphobic hatred in a coordinated manner.

In a statement published on Facebook on 14 September, the Commissioner expressed his support to the participants of the Belgrade Pride Week and Pride March in Serbia. On 22 October, he gave a video message to an international conference on transgender issues in social and medical context in Kyiv in which he encouraged member states to follow the current European trend towards recognising the self-determination of trans people regarding their gender. In his video statement to an international conference on gender, diversity and social Inclusion, which took place in Istanbul on 5-6 November, the Commissioner pointed out that the discrimination and hate experienced by LGBTI persons were often based on stereotypical expectations for gender roles which did not reflect reality.

The human rights of LGBTI persons were a topic during several country visits. In Serbia, the Commissioner encouraged the authorities to promote the public’s respect for all persons’ sexual orientation and gender identity and recommended non-intrusive conditions for legal gender recognition. In Slovakia, he urged more vigorous efforts in addressing persistent homophobic discourse and hate crimes against LGBTI persons, as well as considering reforms towards the legal recognition of same sex couples. A similar call for legal recognition was made in San Marino. In Georgia, the Commissioner urged the authorities to effectively investigate and adequately punish hate crimes against LGBTI persons.

## **2.7 Human Rights of Roma and Travellers**

As previously, in 2015 the Commissioner raised concerns related to the human rights of Roma and Travellers during his visits to a number of countries (Norway, Serbia, Slovakia, Germany and Belgium). In the reports following the visits, he made recommendations on the following issues of concern: anti-Gypsyism, hate speech and hate crime (Germany, Norway, Serbia and Slovakia); police violence against Roma and ethnic profiling (Germany and Slovakia); sterilisation of women without their free and informed consent (Slovakia); school and housing segregation (Serbia and Slovakia); forced evictions (Serbia and Slovakia); and the return of Roma migrants to Kosovo (Germany). In October, the Commissioner addressed a letter to the Czech authorities calling on them to adopt a bill on reparations for involuntary sterilisations of Roma women providing remedies for these serious human rights violations.

The Commissioner also highlighted the crucial issue of recognising the tragic history of Roma in Europe in order to better address current human rights violations. In June, he gave a keynote address at a conference presenting the results of the work of the Norwegian Tater/Romani Commission in Oslo. He described the way in which prejudices and myths, deeply-rooted in European history, continued to present an overwhelming burden in the lives of Roma and Travellers today. He stressed that age-old myths and prejudices must be replaced by sound knowledge and understanding of the past.

He reiterated this view in a Human Rights Comment published shortly before the commemoration of the *Pharrajimos*, the Roma Holocaust, which takes place every year on 2 August. The Commissioner pointed out that the lack of awareness of tragic episodes of Roma history in Europe among the general public prevents the full understanding of their present situation and makes it easier to perpetuate serious human rights violations. He called for public recognition and apologies by policy-makers for past human rights violations, supported the establishment of truth and reconciliation commissions and recommended increased dissemination of information on Roma history, so as to combat growing anti-Gypsyism more effectively.

In another Human Rights Comment published in July, the Commissioner focused on Roma migration to the European Union, which is often perceived as an “invasion” and dealt with by the media in an uninformed and sometimes inflammatory way. He stressed, however, that in a number of places in Europe, the arrival of Roma had not necessarily turned into a major political and media debate and that existing good practices demonstrated that the durable social inclusion of Roma was possible. The Commissioner also referred to practices adopted by countries in the Western Balkans to prevent Roma from migrating into the European Union, which had resulted in human rights violations. He urged politicians and media to stop playing on fears of massive inflows of migrants and stigmatising Roma in this context.

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

Women’s rights and gender equality continued to feature prominently in the Commissioner’s work in 2015. The Commissioner examined these issues during his visits to San Marino, Serbia and Cyprus.

In a statement published on his website to mark International Women’s Day (8 March) and the 20th anniversary of the Beijing Declaration and Platform for Action, the Commissioner pointed out that in spite of progress in some areas, gender stereotypes and sexism continued to threaten women’s rights and stressed that such reactionary trends had to be combated. He called for greater efforts to tackle discrimination on grounds of sex and hate speech against women, a phenomenon that is especially widespread on the Internet. The Commissioner also urged member states to ensure that their reaction to the economic crisis did not lead to a regression in women’s rights. Many austerity measures had had a disproportionate impact on women and resulted in a feminisation of poverty and a heightened risk of exploitation for women,

Throughout the year, the Commissioner paid attention to the worrying number of women experiencing violence in Europe and the inadequate response of national authorities, including the police, prosecutors and judges to this phenomenon. As a first step to counter these human rights violations, states that have not yet done so should ratify the Council of Europe Convention on preventing and combating violence against women and domestic violence.

On 6 and 7 July, the Commissioner’s Office organised a round table with human rights defenders on women’s rights and gender equality in Europe in Vilnius, Lithuania. The participants discussed issues related to violence against women and access to justice for victims; gender-based discrimination and stereotypes in the education system; and the situation of human rights defenders promoting women’s rights and gender equality. Following the round table, the Commissioner published a Human Rights Comment on women’s rights defenders (see the chapter on human rights defenders below).

Reproductive rights were a major issue in the Commissioner’s letter addressed to the Prime Minister of the Czech Republic in October, in which he called for the adoption of the bill on reparations for the

involuntary sterilisation of Roma women. In the report on San Marino, the Commissioner called on the national authorities to improve the very restrictive law on abortion. As a minimum, he urged the authorities to decriminalise abortions performed to preserve the physical and mental health of women, or in cases of fatal foetal abnormality, rape or incest.

## **2.9 Combating racism and intolerance**

In 2015, the Commissioner continued to insist on the need to step up the fight against hate speech and hate crime, which are steadily increasing in Europe. Immigrants and asylum-seekers in particular have been targeted by growing racism and intolerance in several countries as described, for example, in the reports on the Commissioner's visits to France and to Germany. Hate speech and hate crimes against Roma also remain worrying features in several countries as underlined by the Commissioner's reports on Norway, Serbia, Slovakia and Germany. Moreover, the Commissioner expressed particular concern at the growing number of antisemitic and anti-Muslim offences and called on politicians to refrain from using hate speech which legitimises racism, strengthens extremist and populist political parties, and condones some of the worst human rights violations of the past. Shortcomings in the reporting of hate crimes, a lack of monitoring of racially and religiously motivated hate speech and deficiencies in the judicial response to hate crimes were also highlighted as issues deserving improvement in the countries concerned.

On the occasion of the International Day of Commemoration in memory of the victims of the Holocaust, on 26 January, the Commissioner published a statement in which he urged European states to increase their efforts to implement systematic and continuous public awareness and education programmes on the lessons of the Holocaust. This was necessary to prevent the recurrence of genocide and serious human rights violations, and to preserve the commonly agreed values and human rights principles. He also called for effective measures to sanction hate speech and hate crimes affecting persons or communities on the basis of their ethnic origin, religion, sexual orientation or gender.

In September, the Commissioner contributed an introductory video to a course on hate crime produced by the European Programme for Human Rights Education for Legal Professionals of the Council of Europe (HELP) and OSCE/ODIHR. As hate speech and hate crimes are growing problems in Europe, it is crucial for legal professionals to be better equipped to tackle them.

## **2.10 Trafficking in human beings**

In a Human Rights Comment published on 12 November on improving protection for victims of forced labour and human trafficking, the Commissioner recalled that there were still persons in Europe who fell victim to forced sexual exploitation, forced labour exploitation and other emerging forms of exploitation such as forced begging or forced committing of petty offences. Women, children and certain minority groups such as Roma are particularly vulnerable to trafficking. The Commissioner called for the ratification of the 2005 Council of Europe Convention on Action against Trafficking in Human Beings and the 2014 Protocol to the ILO Forced Labour Convention. He also stressed the importance, particularly in the context of current refugee movements across Europe, of not confusing smuggling of migrants and trafficking for the purpose of exploitation in order to ensure that measures taken against smuggling do not impact negatively on actions against human trafficking.

On 18 November, the Commissioner had an exchange of views with the Group of Experts on Action against Trafficking in Human Beings (GRETA). He updated GRETA on his thematic and country work related to human trafficking, including the promotion of the ratification and implementation of the Council of Europe Convention on Action against Trafficking in Human Beings. The discussions, which also explored possibilities for closer co-operation, focused on several subjects: action against human trafficking in the context of the refugee crisis in Europe; the particular vulnerability of children, including unaccompanied migrant minors, to human trafficking; the need for protection and assistance for all victims of trafficking; and the work of national human rights structures related to action against human trafficking.



In his Human Rights Comment on the basic rights of irregular migrants published in August, the Commissioner stressed that states have an obligation to sanction employers exploiting irregular migrants who are particularly vulnerable to trafficking.

### **2.11 Systematic implementation of human rights**

The Commissioner continued to promote the systematic implementation of human rights at national, regional and local levels in 2015. On 28 May, he made a keynote address at the International Implementation Forum for Local and Regional Authorities “Focusing on Human Rights”, organised by the Congress of Local and Regional Authorities in Graz. He pointed out that all levels of governance were responsible for the implementation of human rights. Shared human rights duties between the authorities at national, regional and local level necessitated close co-operation and coordination which can be achieved through the development of national action plans for human rights. Such action plans have become commonplace in Europe but they cannot be effective without the active participation of local and regional authorities.

In his keynote, the Commissioner also noted that many municipalities and regions in Europe have expressed their determination to become exemplary in the realisation of human rights. He said that human rights cities and regions can become focal points for encouraging good and innovative practices. Their European networks play an important part in pooling expertise on human rights. The Commissioner stressed that local and regional authorities had a unique opportunity to coordinate the broad range of services provided to their residents in a rights-based and person-centred way. In this way, municipalities and regions bring human rights into people’s everyday lives and ensure that their residents’ rights are not only respected but also fulfilled.

In 2015, the Commissioner highlighted the systematic implementation of human rights through national action plans and strategies during his visits to the Slovak Republic and Ukraine. In December, he referred to Scotland’s National Action Plan for Human Rights in a video message to a conference on social justice organised by the Scottish Human Rights Commission in Edinburgh. In December, a representative of the Office made a presentation about recent progress in the implementation of national human rights action plans in Europe at a conference on equality and social inclusion organised by the Council of Europe and the Finnish Parliamentary Ombudsman and Human Rights Centre in Helsinki.

### **2.12 Statelessness**

The Commissioner advocated the eradication of statelessness in Europe during several country visits in 2015. In Serbia, he raised concerns about the persisting lack of birth registration and personal documentation of Roma who were forcibly displaced from Kosovo and urged the authorities to intensify their efforts in resolving these serious, longstanding issues. In Ukraine, the Commissioner warned against the risks of statelessness facing new-born children in non-government controlled areas in the absence of legislation defining the procedure for the acquisition of birth certificates and passports and its effective implementation. During his visit to Cyprus in December, the Commissioner expressed concerns about difficulties in accessing nationality and the risks of statelessness among certain groups of migrants.

On 21 September, the Commissioner gave a keynote speech in Strasbourg at the launching conference of a new report on statelessness among children in Europe entitled “No child should be stateless”, published by the European Network on Statelessness with UNHCR’s support. He urged member states to safeguard the right of every child to obtain a nationality, notably by granting children who would otherwise be stateless the nationality of their country of birth. He also highlighted the need to improve birth registration and to pay specific attention to statelessness among children born to refugees arriving in Europe, in particular Syrian refugees. Furthermore, he called on member states which have not yet done so to accede to the relevant UN and Council of Europe conventions on nationality and the avoidance of statelessness.

The Commissioner supported UNHCR’s campaign to eradicate statelessness worldwide and the Stateless Kids Campaign launched last year by the European Network on Statelessness.

### **2.13 Transitional justice and missing persons**

In 2015, the Commissioner pursued his work on issues pertaining to transitional justice. He gave particular emphasis to the fight against impunity for serious human rights violations and the rights of the victims of those crimes, missing persons, the human rights of forcibly displaced persons and institutional reforms to ensure non-repetition. These issues were addressed in the Commissioner's reports on Serbia and Ukraine.

In July, the Commissioner published an Opinion article entitled "Addressing the needs of the victims of the Srebrenica genocide must be the priority", in which he pointed out that the Srebrenica genocide had been one of the vilest episodes of Europe's contemporary history. Twenty years on, the victims of that genocide were still haunted by the political failures which have left them without redress. The Commissioner underlined that while the important process of establishing accountability and bringing war criminals to trial must continue, other needs of the victims must not be forgotten. He was particularly concerned by the longstanding issue of the survivors' and the victims' relatives' lack of access to social and economic rights and the political discourse in Serbia and in the Republika Srpska aimed to demean or blatantly deny the Srebrenica genocide.

The Commissioner highlighted the need to establish accountability for serious human rights violations and to provide the victims with the necessary support and legal assistance, and to speed up the identification of all genocide victims and the clarification of the fate of those who remain missing. He also stressed that education must be more inclusive and that the education system must promote a genuine knowledge of history in order to facilitate understanding, tolerance and trust between individuals, especially the younger generations. The Commissioner concluded that Bosnia and Herzegovina and Serbia must overcome the politicisation of the Srebrenica genocide, take a step back and refocus their energies on the victims' needs for justice, decent living conditions, and recognition.

In August, the Commissioner published a statement in view of the International Day of the Victims of Enforced Disappearance on 30 August in which he stressed the need to remember the victims of enforced disappearance and reflect on the harsh reality that thousands of families of victims are faced with, waiting and hoping to find out the truth about their loved ones. He underlined that on-going conflicts in Europe increased the number of victims and recalled that enforced disappearance was a crime under international law and a violation of multiple human rights that all states are obliged to redress. The Commissioner called on all European states to become parties to the International Convention for the Protection of All Persons from Enforced Disappearance and effectively act upon all cases of missing persons and victims of enforced disappearance.

In February, the Commissioner convened a brainstorming meeting of five prominent experts on issues related to missing persons and enforced disappearances, with a view to publishing an issue paper on this subject in 2016. In March, the Office participated in the Stakeholders' Conference on Transitional Justice organised by the Directorate General of Human Rights and the Rule of Law of the Council of Europe. The aim of the conference was to develop a training course for judges and prosecutors in Bosnia and Herzegovina and in Serbia on transitional justice issues in the context of the European Programme on Human Rights Education for Legal Professionals (HELP).

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

In the course of the year, the Commissioner expressed concerns on several occasions about national legislative developments on counter-terrorism measures and their impact on human rights. In May, he addressed a letter to the members of the French Senate Law Committee which was discussing a draft bill on surveillance urging human rights compliant responses. In September, the Commissioner addressed letters to Mr Ueli Maurer, Swiss Federal Councillor and Head of the Federal Department of Defence, Civil Protection and Sport, as well as the Presidents of the two houses of the Federal Assembly to raise concerns regarding draft laws on intelligence and correspondence surveillance.

The Commissioner gave a series of interviews and published several opinion editorials inviting governments and legislators to pause and consider the damage provoked by measures taken in the context of the so-called “war on terrorism”, and urging great care in the drafting and adopting new anti-terrorist measures to ensure respect for human rights. He pointed out that the measures must stem from an open and democratic debate. There was a particular need to strengthen democratic oversight of security services and to ensure access to effective remedies for those targeted by anti-terrorist measures.

On 5 June, the Commissioner published the Issue Paper “Democratic and effective oversight of national security services” which aims to provide guidance for strengthening human rights protection in the field of security service operations. It identifies the impact of security service activities on a variety of human rights including the right to life, the prohibition of torture, the right to liberty and security, the right to a fair trial, the right to privacy and family life as well as the freedoms of expression, association and assembly.

The Issue Paper analyses the diverse approaches to oversight taken by Council of Europe member states, which include parliamentary committees, independent oversight bodies, judicial bodies and institutions with broader jurisdictions such as ombudspersons and data commissioners. Drawing upon international and European standards and national practices, the paper sets out the most significant objectives and overriding principles that can enable more effective oversight of security services. It sets forth a number of measures necessary to make national oversight systems more effective and the security services accountable and fully compliant with human rights standards. Such measures include the involvement of parliaments in the oversight process, prior independent authorisation of the most intrusive measures, and the establishment of a body which can issue legally binding decisions over complaints by individuals affected by security activities and access all intelligence-related information.

In June, the Commissioner also published a position paper summarising the successive Commissioners’ positions, conclusions and recommendations concerning counter-terrorism and human rights based primarily on country monitoring and thematic documents. In addition, he launched a new thematic webpage on counter-terrorism and human rights protection.

### **3. Human Rights Defenders**

In 2015, the Commissioner continued to actively raise issues related to the situation of human rights defenders, their work and the work environment in which they operate. As part of his country monitoring, the Commissioner frequently expressed concern regarding threats and attacks on human rights defenders in several member states. As regards the worsening situation of human rights defenders in Azerbaijan, the Commissioner intervened in five cases before the Court, namely *Hilal Mammadov v. Azerbaijan*, *Intigam Aliyev v. Azerbaijan*, *Rasul Jafarov v. Azerbaijan*, *Anar Mammadli v. Azerbaijan*, and *Leyla Yunusova and Arif Yunusov v. Azerbaijan* (see the chapter on the European Court of Human Rights in this report).

In July, the Commissioner published an Update to his Opinion on the Legislation and Practice in the Russian Federation on Non-Commercial Organisations in Light of Council of Europe Standard in which he pointed out that a growing number of NGOs in the Russian Federation had faced serious negative consequences as a result of the enforcement of the so-called Foreign Agents Law. On 5 November, the Commissioner met with a group of Russian human rights defenders in Strasbourg to discuss issues related to their work environment, including the effects of the implementation of NGO legislation on civil society activities.

#### **3.1 Round-table on women’s rights and gender equality in Europe**

On 6 and 7 July, the Commissioner’s Office organised a round-table with human rights defenders on women’s rights and gender equality in Europe in Vilnius, Lithuania. Over 20 human rights defenders from European countries participated in the event. The goal of the round-table was to address and explore a number of specific issues related to gender equality and the enjoyment of human rights by women, and to

assess the situation of women's rights defenders working in the Council of Europe area. The discussions aimed to identify ways to improve the protection of women's rights and gender equality in Council of Europe member states and the working environment of women's rights defenders. The information obtained during the round-table helped the Commissioner to develop his country and thematic work on women's rights and gender equality and enhanced the capacity of his Office to support the work of women's rights defenders.

The participants discussed issues related to violence against women and access to justice for victims. The round-table shed light on the diverse forms of violence against women and the effectiveness of policy, legal and institutional frameworks in place at the national level in this area. Discussions also tackled issues related to the ratification and implementation of the Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention) and its impact in the countries which have already ratified this instrument. Another key aspect of the discussions was the effective access to justice by women victims of violence, and specifically the work of the police, prosecutors, judges and lawyers to this end.

The second major topic of the round-table concerned gender-based discrimination and stereotypes in the education system. Discussions focused on the link between gender stereotypes, gender inequality and violence against women. Participants discussed effective ways of combating harmful and wrongful gender stereotyping. A central issue remains the elimination of persisting gender stereotyping in the education system (school programmes, textbooks and teaching methods) as this is a major source of discrimination. Discussions also touched upon the issue of sexual education as a way of enhancing the protection of women's sexual and reproductive rights.

Thirdly, the round-table concentrated on the situation of human rights defenders promoting women's rights and gender equality. The participants assessed the main hindrances women's rights defenders face in their work and in particular the forms of abuse and intimidation they experience on the part of state and non-state actors. On the basis of this discussion, the Commissioner published a Human Rights Comment on the topic (see below).

The report of the round-table was published on 19 January 2016.

### **3.2 Human Rights Comment on women's rights defenders**

On 22 September, the Commissioner published a Human Rights Comment entitled "Remove obstacles to the work of women's rights defenders". Recalling the essential role that women's rights defenders play in Europe, the Commissioner underlined the serious obstacles that they face in their work. Restrictive legislation and repressive practices against civil society have also had an impact on those who work to protect the human rights of women and promote gender equality. The latter face specific obstacles when they challenge patriarchal values, sexist stereotypes and the traditional perception of gender roles. Women's rights defenders experience intimidation, pressure, threats, attacks, defamation, cyber-attacks and disruption of victims' hotlines. Women's rights defenders are sometimes portrayed as destroyers of family values and national traditions or as agents of what has pejoratively been labelled "gender ideology". Those working on sexual and reproductive rights or advocating the rights of women victims of domestic violence have often been targeted.

Women human rights defenders are at high risk of experiencing gender-based violence, rape and other forms of sexual violence, harassment and verbal abuse as well as attacks on their reputation both online and offline. A worrying phenomenon is the increasing use of hate speech targeting women human rights defenders. National authorities often fail to consult or listen to women's rights defenders on relevant policies and laws. Another disturbing element is that women's rights defenders are not considered as equals by some fellow human rights defenders. The Commissioner urged member states to implement their national and international obligations to end discrimination and human rights violations based on sex and gender. He stressed that member states should implement national laws prohibiting discrimination on the basis of sex and gender and adopt legal provisions to combat gender-based hate crimes and hate speech specifically. He called on all member states to ratify and implement the Istanbul Convention.

The Commissioner pointed out that states must also meet their obligations to protect human rights defenders and ensure an enabling environment for their work, free from intimidation and pressure. States should notably refrain from putting in place policies, legislation and practices which run contrary to the freedoms of association, assembly and expression. Expressions of support from the government and state institutions for the work of women's rights defenders and their effective inclusion in official consultations on relevant issues are of great importance. It is also essential for the wider community of human rights defenders and national human rights structures to support women's rights defenders and fully cooperate with them.

### **3.3 Inter-institutional co-operation on human rights defenders**

The Commissioner and his Office pursued their regular co-operation on the protection of human rights defenders with the UN, regional institutional partners, and with other parts of the Council of Europe, such as the Parliamentary Assembly and the INGO Conference.

On 15 June, a representative of the Office participated in the 6th inter-mechanisms meeting on the protection of human rights defenders in Paris. The meeting was hosted by the International Organisation of La Francophonie (OIF) and organised by the Observatory for the protection of human rights defenders, a joint initiative of the International Federation for Human Rights (FIDH) and the World Organisation against Torture (OMCT). Participants included 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 Peoples' Rights, the Rapporteur on the rights of human rights defenders of the Inter-American Commission on Human Rights, and representatives of the OSCE/ODIHR Human Rights Department, the European Union and INGOs. The meeting had a specific focus on ways to address persisting impunity for violations against human rights defenders and the reprisals they face for performing legitimate human rights work.

On 16 June, during the 29th UN Human Rights Council session in Geneva, a representative of the Office participated in a public side event on "Attacks and reprisals against human rights defenders: enhancing accountability for violations". At the event UN and regional inter-governmental mechanisms assessed the situation of human rights defenders and explained how they addressed obstacles to the defenders' work, also through joint initiatives. The representative of the Office introduced the Commissioner's work in this field with particular reference to his on-going dialogue with the authorities, the organisation of regular events with human rights defenders and the submission of third party interventions to the Court. UN and regional mechanisms noted with concern the shrinking space for the work of human rights activists and the persisting impunity for violations targeting human rights defenders.

## **4. Co-operation with national human rights structures**

National human rights structures (NHRs – e.g. ombudsman institutions, human rights commissions and equality bodies) are essential partners in the Commissioner's dialogue with member states as spelled out in the Commissioner's mandate. The Commissioner meets with representatives of NHRs during his country visits and in Strasbourg to identify human rights concerns. Information provided by NHRs is regularly used in the preparation of country visits and referred to in the reports following them. The Commissioner also promotes the independence and effectiveness of NHRs.

In 2015, the Commissioner's Office participated in the work of thematic co-operation platforms with NHRs and their European networks together with other sectors of the Council of Europe and the EU Agency for Fundamental Rights. The co-operation platforms cover the following major themes: migration and asylum; hate crime; economic and social rights; and Roma. The European Network of National Human Rights Institutions (ENNHRI) and the European Network of Equality Bodies (Equinet) participate in the platforms' activities. In addition to timely information exchanges, the platforms aim to coordinate

responses to shared problems, connect national and European human rights agendas, and support the work of NHRs.

On 30 November and 1 December, the Commissioner participated in the general assembly meeting of ENNHRI in Utrecht. He made a keynote address on the refugee and migration situation in Europe and referred to the useful work carried out by NHRs in this area. During the general assembly, the Commissioner held several bilateral meetings with representatives of NHRs.

On 23 March, the Commissioner's Office participated in the 2<sup>nd</sup> meeting of the Independent Police Complaints Authorities' Network (IPCAN). The discussions focused on national approaches to maintaining public order during public assemblies and gatherings and on sharing experience in oversight of police activities.

## **5. Co-operation with European and international organisations**

### **5.1 European Union**

The Commissioner met with the EU Commissioner for European Neighbourhood Policy and Enlargement Negotiations, Johannes Hahn, in March and November. The discussions focused on current refugee movements across Europe and the human rights situation in EU enlargement and European neighbourhood policy countries. In November the Commissioner also met with the EU Commissioner for Justice, Consumers and Gender Equality, Věra Jourová. The Commissioners discussed EU action against discrimination, combating hate speech on the Internet and data protection. Frequent contacts were maintained with the European Ombudsman, Emily O'Reilly, and the EU Special Representative for Human Rights, Stavros Lambrinidis.

In March, the Commissioner participated in a hearing on the situation of fundamental rights in the European Union, organised by the European Parliament's Committee on Civil Liberties, Justice and Home Affairs. He spoke about human rights questions related to migration and asylum, Roma, people with disabilities, children and the rule of law on the Internet. In March, the Commissioner also addressed the EU Council Working Group on OSCE and the Council of Europe (COSCE). His speech focused on freedom of expression and media freedoms, the situation of human rights defenders and the human rights of immigrants and refugees.

The Commissioner visited the European Agency for the Management of Cooperation at the External Borders of the Member States of the European Union (FRONTEX) in Warsaw in December. He met with the Director, Fabrice Leggeri, and highlighted the human rights of immigrants and refugees in their discussions.

Information on human rights was regularly exchanged with relevant Commission services, the European External Action Service and the EU Agency for Fundamental Rights. Major themes covered included the asylum system, surveillance by security services, the human rights of vulnerable groups and the situation of human rights defenders.

### **5.2 Organization for Security and Co-operation in Europe**

In April, the Commissioner met with the Director of the OSCE Office for Democratic Institutions and Human Rights (ODIHR), Michael Georg Link. The discussion focused on human rights defenders and the human rights situation in Ukraine and countries in the South Caucasus region.

The Commissioner maintained regular contacts with the OSCE Special Representative on Freedom of the Media, Dunja Mijatović, with whom he published a joint statement in September condemning the

sentencing of Azerbaijani journalist Khadija Ismayilova. In October, the Commissioner met with the Personal Representative of the OSCE Chairperson-in-Office on Combating Anti-Semitism, Andrew Baker. The discussion covered the fight against antisemitism in Europe, notably issues relating to the safety of Jewish communities and the problem of the use of social media to propagate antisemitism.

The Commissioner held an exchange of views with the OSCE High Commissioner on National Minorities, Astrid Thors, in November. They shared information on their respective country work, with a particular emphasis on Ukraine.

The Commissioner met with representatives of OSCE field missions during his country visits. Co-operation in the field was particularly intensive during his visit to Ukraine in June and July.

### **5.3 United Nations**

During a visit to UN institutions in New York in October, the Commissioner met with the UN High Commissioner for Human Rights, Zeid Ra'ad Al Hussein. The discussions focused on their respective country work, refugee movements in Europe, the risks of weakening the protection system of the European Convention on Human Rights, and the different human rights crisis situations in Europe. The Commissioner also met the UN Special Representative of the Secretary-General on Violence against Children, Marta Santos Pais, to exchange information on their work in the field of the rights of the child.

In November, the Commissioner visited the UNHCR Bureau for Europe in Brussels. He maintained regular contacts with UN Special Rapporteurs and the UNHCR Representation in Strasbourg. Co-operation with UN institutions focused in particular on migration and refugees, the implementation of the Convention on the Rights of Persons with Disabilities, the protection of human rights defenders and the human rights of LGBTI people.

During country visits the Commissioner frequently met with representatives of UN country offices. Co-operation in the field was especially intense in Ukraine in the context of the Commissioner's visit to the country in June and July.

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

In 2015, the Commissioner made extensive use of his right to submit written comments in cases before the European Court of Human Rights, pursuant to Article 36, paragraph 3 of the ECHR. He did so in six cases against Azerbaijan relating to the situation of human rights defenders, journalists and others expressing critical voices in the country and in two cases against Spain, relating to alleged push-backs of migrants from the Spanish city of Melilla to Morocco. In addition, the Commissioner submitted comments in two cases against Austria at the request of the Court, under Article 36 of the ECHR. These cases concern the transfer of the applicants from Austria to Hungary under the Dublin III Regulation. All interventions were published on the Commissioner's website in 2015, except for the one relating to Azerbaijani investigative journalist and human rights defender Khadija Ismayilova and the one regarding the Dublin transfers from Austria to Hungary, which were published in January 2016.

The six third-party interventions of the Commissioner on Azerbaijan relate to the cases of Hilal Mammadov (Application No. 81553/12, Commissioner's comments published on 24 February), Intigam Aliyev (Application No. 68762/14, Commissioner's comments published on 18 March), Rasul Jafarov (Application No. 69981/14, Commissioner's comments published on 1 April), Anar Mammadli (Application No. 47145/14, Commissioner's comments published on 1 April), Leyla and Arif Yunus (Application No. 68817/14, Commissioner's comments published on 20 April) and Khadija Ismayilova (Application No. 30778/15, Commissioner's comments published on 21 January 2016). Prominent human rights defenders or journalists, the applicants are all long-standing civil society partners of the Commissioner's Office, who were detained as a result of their work.

The Commissioner's comments in these cases underline serious and systematic deficiencies in the area of freedom of expression and association in Azerbaijan, including judicial harassment of those expressing critical voices and a pattern of retaliatory measures against those who co-operate with international organisations to expose human rights violations in the country. The Commissioner emphasises that the cases of the applicants, whom he had met several times, including while they were detained, are emblematic of the reprisals that human rights defenders and journalists face in Azerbaijan because of their work. They are often targeted with unjustified or selective criminal prosecutions on charges that defy credibility, a problem which not only affects the human rights of the persons concerned but also obstructs the functioning of international human rights mechanisms. With regard to freedom of association in particular, the Commissioner stresses that a number of the arrests and detentions of Azerbaijani human rights defenders are related to shortcomings in the NGO legislation and the way it is implemented. This restrictive legal framework constitutes in his view an integral part of the pattern of judicial harassment and reprisals against human rights defenders currently prevailing in the country.

On 12 November 2015, the Commissioner published the written comments he submitted to the Court on two cases against Spain (N.D. and N.T., Applications No. 8675/15 and No. 8697/15) relating to alleged pushbacks of migrants from the Spanish city of Melilla to Morocco. Based inter alia on his visit to Melilla and Madrid from 13 to 16 January 2015 (see Country visits, above), the Commissioner points to the existence of a practice whereby migrants who attempt to enter Melilla in groups by climbing the fence surrounding the city are summarily returned by Spain's border guards to Morocco. The Commissioner underlines that these returns take place outside of any formal procedure and without identification of the persons concerned or assessment of their individual situation, a circumstance which prevents them from effectively exercising their right to seek international protection in Spain. Additionally, he stresses that migrants summarily returned from Melilla have no access to an effective remedy which would enable them to challenge their removal or seek redress for any ill-treatment they may have been subjected to during such operations.

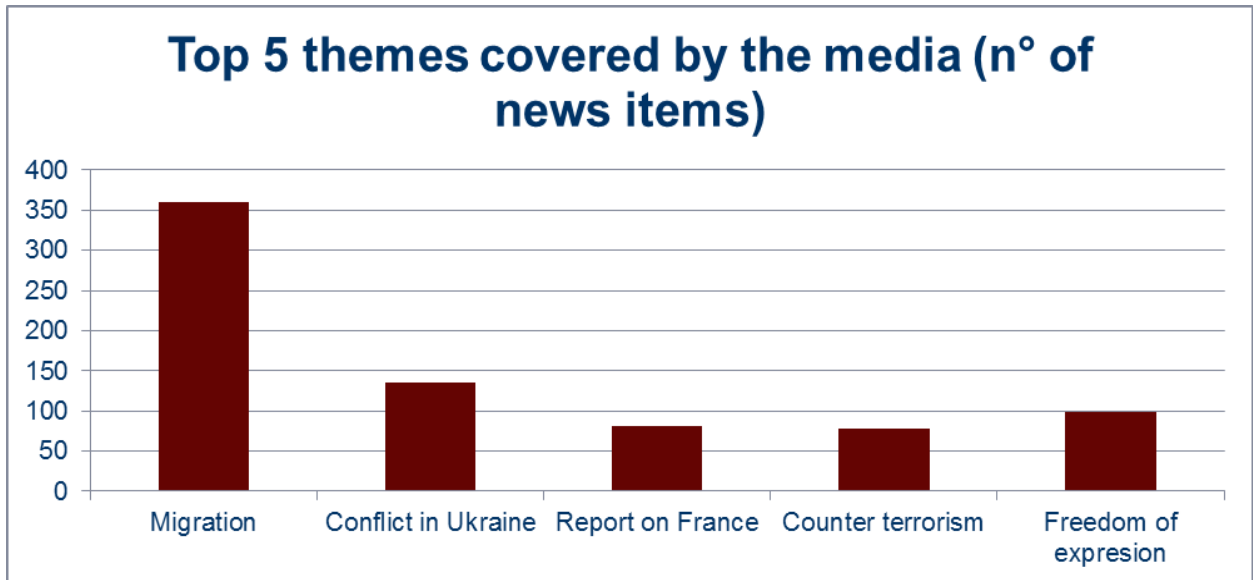
Responding to a request of the Court, on 17 December the Commissioner submitted written comments on two cases against Austria (S.O. and A.A., Applications No. 44825/15 and No.44944/15), which concerned the transfer of the applicants from Austria to Hungary under the Dublin III Regulation. Building on the findings of the Commissioner's visit to Hungary in November (see Country visits, above), the comments focus on Hungary's asylum law and practice, especially since the introduction of sweeping changes in this area in the summer of 2015. The comments also address two specific questions relating to the situation of persons returned to Hungary from other countries under the Dublin III Regulation: their conditions of reception and their exposure to possible violations of the principle of *non-refoulement* as a result of their asylum application not being examined on the merits in Hungary.

## 7. Communication and information work

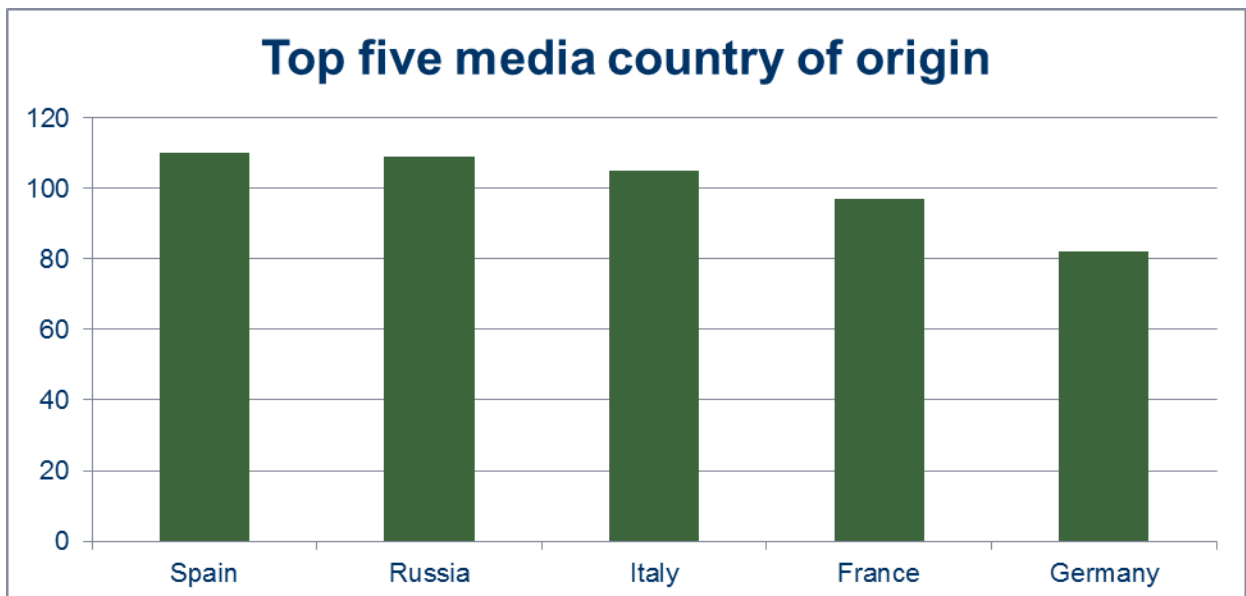
2015 was a record year in terms of communication output and visibility. Almost 1,300 news pieces have been published by the media of over 50 countries (an increase of 23% compared to 2014). This result was largely influenced by the over 150 interviews given by the Commissioner and the 13 opinion editorials placed in more than 20 leading national and international media outlets. 37 press releases, 9 human rights comments, 2 issue papers, 39 statements and more than 400 tweets also contributed to generate media attention and social media interaction.

The main themes covered by the media concerned the Commissioner's work on migration, his engagement in Ukraine, his report on France and his positions on counterterrorism and freedom of expression.





The main national media of many Member States covered the Commissioner's activities that were also featured repeatedly on leading media with an international outreach.

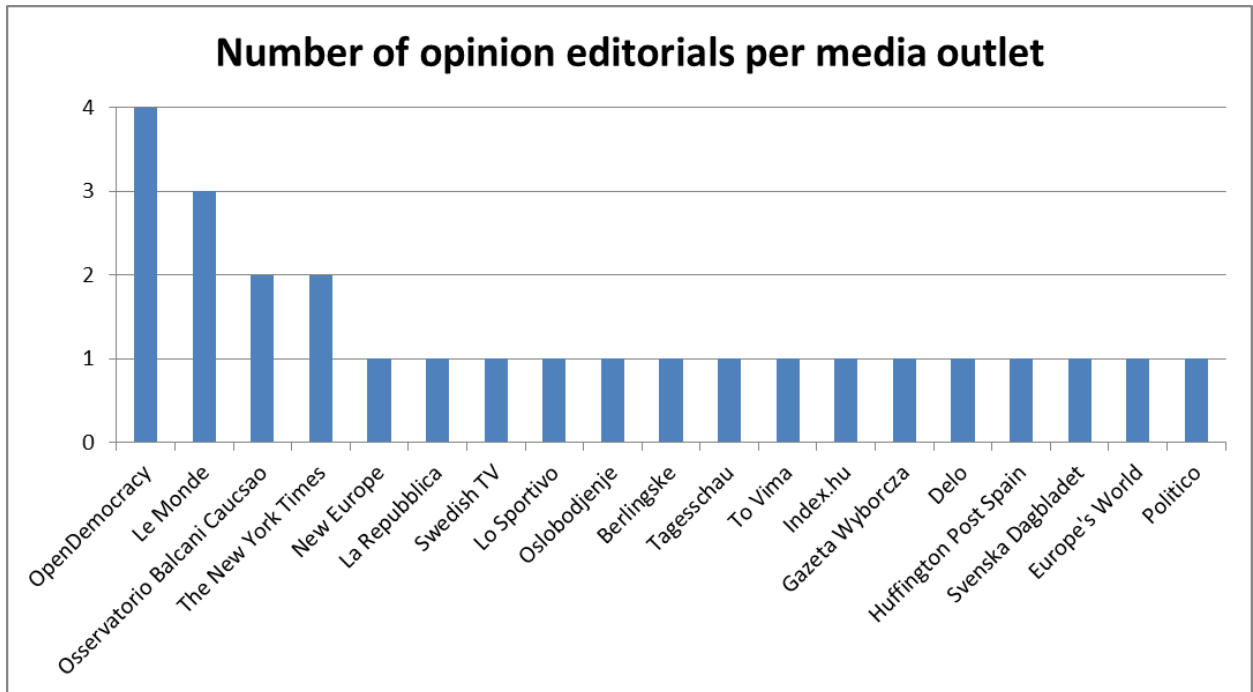


#### Opinion Editorials

The 13 opinion editorials were:

- Stopping the deterioration of press freedom (*New Europe*, 4 January)
- Ending Roma segregation in Italy (*La Repubblica*, 8 April)
- Renseignement : « Le projet de loi porte gravement atteinte aux libertés » (*Le Monde*, 13 April)
- Crisis in the Mediterranean: Europe must change course (*OpenDemocracy*, 22 April)
- Sport cannot ignore human rights (*OpenDemocracy*, Swedish TV, *Lo Sportivo*, *Osservatorio Balcani Caucaso*, 4 June)

- Security services should not have "carte blanche" (*OpenDemocracy*, 5 June)
- A Bakou, les athlètes doivent parler des droits humains (*Le Monde*, 9 June)
- You're Better Than This, Europe (*The New York Times*, 29 June)
- The Srebrenica genocide: addressing the needs of the victims must be the priority (*Oslobodjenje*, *Open Democracy*, *Osservatorio Balcani Caucaso*, 10 July)
- Europe can do more to protect refugees (*Berlingske*, *La Libre Belgique* *Le Monde*, *Tagesschau*, *To Vima*, *Index*, *Gazeta Wyborcza*, *Delo*, *HuffPost Spain*, *Svenska Dagbladet*, 2 September)
- A 'to do list' for the refugee crisis (*Europe's World*, 28 October)
- Azerbaijan: an area of darkness (*Politico*, 28 October)
- Europe is spying on you (*The International New York Times*, 28 October)



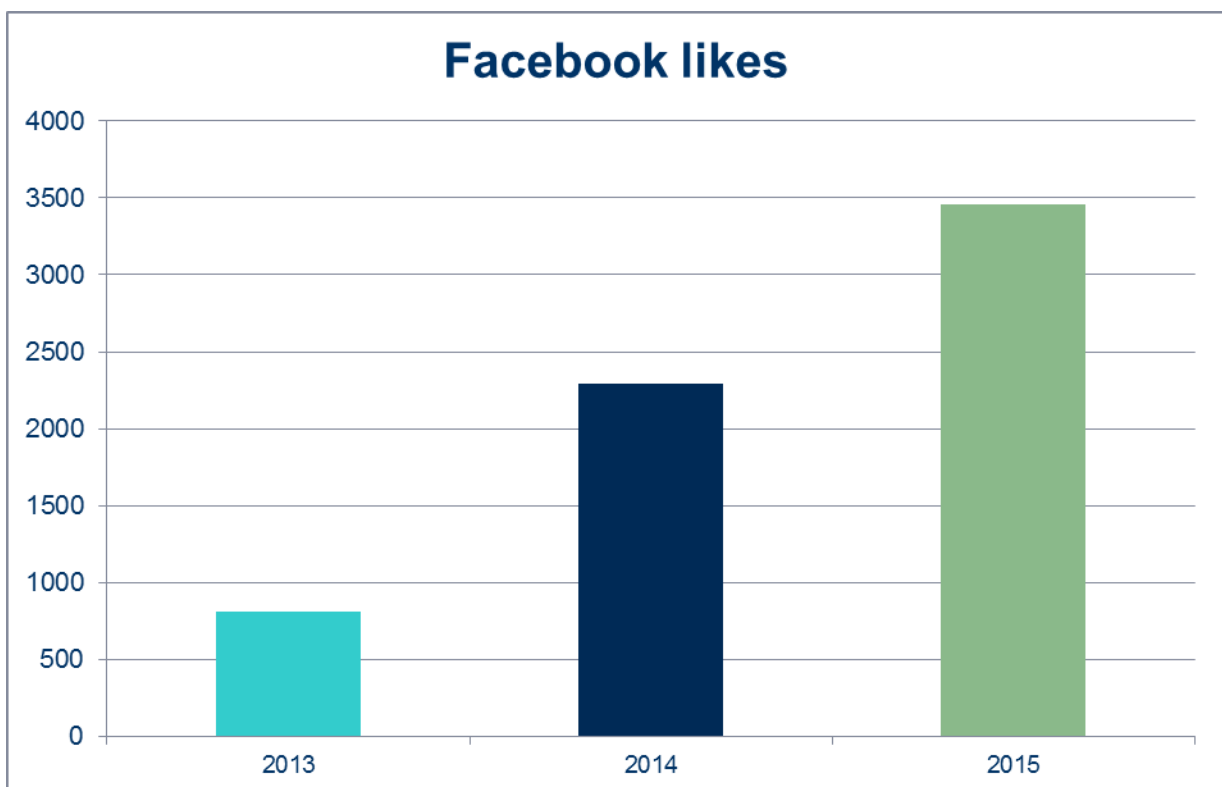
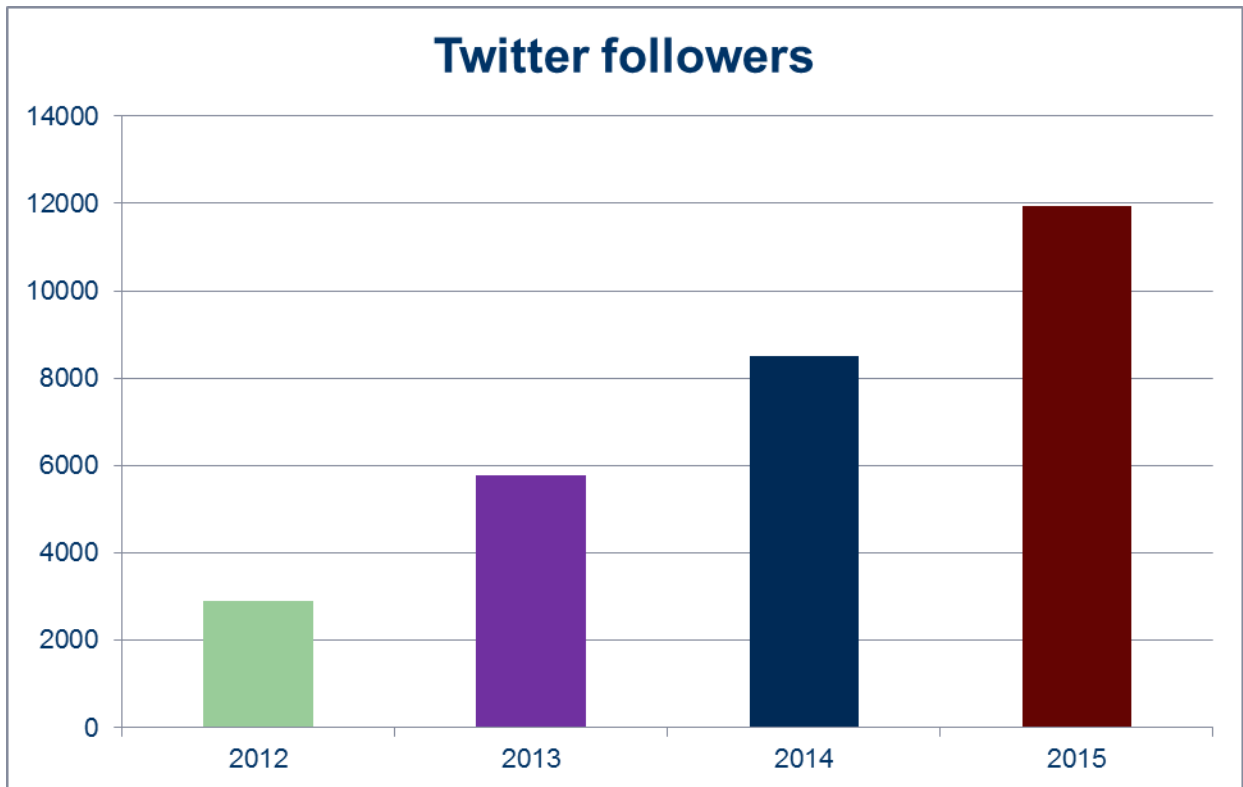
### Human Rights Comments

The following Human Rights Comments were published in 2015:

- Improving protection for victims of forced labour and human trafficking (12 November)
- The new development agenda should fulfil human rights (14 October)
- Remove obstacles to the work of women's rights defenders (22 September)
- Without papers but not without rights: the basic social rights of irregular migrants (20 August)
- Time to cure amnesia about the history of Roma in Europe (30 July)
- Time to debunk myths and prejudices about Roma migrants in Europe (16 July)
- Inclusive education vital for social cohesion in diverse societies (05 May)
- Armenian-Turkish Reconnections and Human Rights (17 April)
- Syrian refugees: 'Reset' needed in Europe's approach (3 February)

### Web site and social media

The number of visits, unique visitors and page views has almost doubled compared to 2014. The Commissioner's presence and interaction on social media continued to be strengthened. The number of Twitter followers increased by 40%, reaching 11939 people by the end of the year. The Facebook page also continued its increase in popularity, with a 50% increase of likes compared to 2014.



## **8. Staff and Budget**

In 2015, the total number of permanent posts in the Commissioner's office amounts to 22 posts (14 A-grade posts and 8 B-grade posts) and 3 fixed-term positions. The Office employed two temporary staff. The ordinary overall budget appropriations were of €3,194,600.

In 2015, the Commissioner benefited from a total amount of € 39,947 in voluntary contributions from the government of Switzerland. The Commissioner expresses his sincere gratitude for the voluntary contribution given by this member state.

The budget of the Commissioner for Human Rights covers the basic structure necessary for the implementation of the mandatory activities which should be assured by permanent means from the ordinary budget of the Council of Europe.

The Office of the Commissioner for Human rights has been granted for the biennium 2016-17 two additional A-grade Human Rights Adviser posts and we would like to thank the Committee of Ministers for responding positively to the need for additional resources expressed by Commissioner Muižnieks and the previous Commissioners.

However, the outstanding request of the Commissioner to dispose of an Office which counts 30 permanent posts and the corresponding operational budget remains topical and will be brought forward in the budgetary discussions for the future bienniums. We wish to underline once more that the Commissioner is also of the opinion that once this level has been reached, it will constitute a maximum not to be exceeded in order that the Office may maintain the fluidity and flexibility of its functioning.

## Appendix 1

### List of Office Activities in 2015

#### A. Visits and reports

In 2015 the following country visits, missions and contact visits were carried out:

13 to 16 January	Spain
19 to 23 January	Norway
9 to 11 February	Bulgaria
17 February	France (Paris)
16 to 20 March	Serbia
24 April and 4 to 8 May	Germany
1 to 3 June	Norway (Oslo)
9 to 10 June	San Marino
15 to 19 June	Slovak Republic
29 June to 3 July	Ukraine
14 to 18 September	Belgium
1 to 2 October	Germany (Berlin)
9 to 12 November	Georgia
24 to 27 November	Hungary
7 to 11 December	Cyprus

In 2015, the following country reports and letters were published:

#### *Armenia*

- Report by the CoE Commissioner for Human Rights following his visit to Armenia from 5 to 9 October 2014. Issues reviewed: administration of justice and the protection of human rights in the justice system, the rights of women and gender equality (published on 10 March with reference CommDH(2015)2).

#### *Bulgaria*

- Report by the CoE Commissioner for Human Rights following his visit to Bulgaria from 9 to 11 February 2015. Issues reviewed: the human rights of persons in institutions, the human rights of immigrants, asylum seekers and refugees, and media freedom (published on 22 June with reference CommDH(2015)12).

#### *Czech Republic*

- Letter from the CoE Commissioner for Human Rights to Mr Bohuslav Sobotka, Prime Minister of the Czech Republic concerning the bill on reparations for involuntary sterilisation of Roma women (dated 6 October and published on 22 October with reference CommDH(2015)25).

#### *France*

- Report by the CoE Commissioner for Human Rights following his visit to France from 22 to 26 September 2014. Issues reviewed: the fight against intolerance and racism, and to the protection of the human rights of migrants, Travellers, Roma and persons with disabilities (published on 17 February with reference CommDH(2015)1).
- Letter from the CoE Commissioner for Human Rights to the members of the French Senate Commission discussing the surveillance bill (dated 18 May and published on 20 May with reference CommDH(2015)13).

*Germany*

- Report by the CoE Commissioner for Human Rights following his visit to Germany on 24 April and from 4 to 8 May 2015. Issues reviewed: the legal and institutional framework for the protection and promotion of human rights, the human rights of asylum seekers, refugees and immigrants and the fight against racism and intolerance (published on 1 October with reference CommDH(2015)20).

*Norway*

- Report by the CoE Commissioner for Human Rights following his visit to Norway from 19 to 23 January 2015. Issues reviewed: the human rights of people with disabilities, the situation of Romani people/Taters (Norwegian Travellers), Roma and Roma immigrants, and the human rights protection system (published on 18 May with reference CommDH(2015)9).

*San Marino*

- Report by the CoE Commissioner for Human Rights following his visit to San Marino from 9 to 10 June 2015. Issues reviewed: on freedom of expression and media freedom and on the fight against discrimination, including women's rights and gender equality, the human rights of persons with disabilities and the human rights of LGBTI persons (published on 15 October with reference CommDH(2015)22).

*Serbia*

- Letter from the CoE Commissioner for Human Rights to Mr Aleksandar Vučić, Prime Minister of Serbia, concerning the national ombudsman (dated 18 May and published on 1 June with reference CommDH(2015)15).
- Report by the CoE Commissioner for Human Rights following his visit to Serbia from 16 to 20 March 2015. Issues reviewed: transitional justice and reconciliation, action against discrimination and freedom of the media (published on 8 July with reference CommDH(2015)14).

*Slovak Republic*

- Report by the CoE Commissioner for Human Rights following his visit to the Slovak Republic from 15 to 19 June 2015. Issues reviewed: systematic work for the implementation of human rights, and action against discrimination (published on 13 October with reference CommDH(2015)21).

*Switzerland*

- Letter from the CoE Commissioner for Human Rights to Mr Ueli Maurer, Federal Councillor, Head of the Federal Department of Defence, Civil Protection and Sport concerning Switzerland's draft law on intelligence (dated 23 September and published on 16 October with reference CommDH(2015)24).

*Ukraine*

- Report by the CoE Commissioner for Human Rights following his visit to Ukraine from 29 June to 3 July 2015. Issues reviewed: the humanitarian situation in the areas affected by the conflict in the east of the country, as well as the situation of internally displaced persons (IDPs), human rights of children, freedom of movement and access of humanitarian organisations (published on 3 November with reference CommDH(2015)23).

## B. Issue Papers, Opinions and other publications

The Commissioner publishes a variety of documents on human rights themes. Their aim is to raise awareness and to give advice to member states on the protection of human rights.

- Issue Paper on *Human rights and intersex people*, May 2015.
- Issue Paper on *Democratic and effective oversight of national security services*, June 2015.
- Opinion of the Commissioner for Human Rights *on the legislation and practice in the Russian Federation on non-commercial organisations in light of Council of Europe standards: an update*, July 2015.
- Comments of the Council of Europe Commissioner for Human Rights *on the “Working document concerning the protection of human rights and dignity of persons with mental disorder with regard to involuntary placement and involuntary treatment”*, November 2015.

## C. Third Party Interventions before the European Court of Human Rights

The Commissioner fosters the effective observance of human rights by assisting member states in the implementation of Council of Europe human rights instruments, in particular the European Convention on Human Rights. The Commissioner submitted written observations concerning the following Court cases:

- Third party intervention by the CoE Commissioner for Human Rights: Application No. 81553/12 - *Hilal MAMMADOV v. Azerbaijan* (published on 24 February with reference CommDH(2015)5).
- Third party intervention by the CoE Commissioner for Human Rights: Application No. 68762/14 - *Intigam ALIYEV v. Azerbaijan* (published on 18 March with reference CommDH(2015)6).
- Third party intervention by the CoE Commissioner for Human Rights: Application no. 47145/14 - *Anar MAMMADLI v. Azerbaijan* (published on 1 April with reference CommDH(2015)7).
- Third party intervention by the CoE Commissioner for Human Rights: Application no. 69981/14 - *Rasul JAFAROV v. Azerbaijan* (published on 1 April with reference CommDH(2015)8).
- Third party intervention by the CoE Commissioner for Human Rights: Application No. 68817/14, *Leyla YUNUSOVA and Arif YUNUSOV v. Azerbaijan* (published on 20 April with reference CommDH(2015)10).
- Third party intervention by the CoE Commissioner for Human Rights: Applications No. 8675/15 and No. 8697/15, *N.D. v. Spain* and *N.T. v. Spain* (published on 12 November with reference CommDH(2015)27).
- Third Party Intervention by the CoE Commissioner for Human Rights: Applications No. 44825/15 and No. 44944/15, *S.O. v. Austria* and *A.A. v. Austria* (submitted on 17 December and published on 13 January 2016 with reference CommDH(2016)3).

#### **D. Events organised by the Office**

With the aim of promoting awareness of human rights and exploring specific concerns, the Commissioner organises workshops and conferences on topical questions. The Commissioner and his Office also contribute to debates on human rights through their participation in major conferences.

In 2015, the Commissioner's Office organised or co-organised the following events:

- Round-table on "Women's rights and gender equality" (Vilnius, 6 and 7 July);
- Meetings with Russian human rights defenders and experts (Strasbourg, 5 and 6 November).

#### **E. Events in which the Commissioner or his Office took part**

The Commissioner or his Office participated in the following major events during 2015:

- PACE debate on the humanitarian situation of Ukrainian refugees and displaced persons (Strasbourg, 27 January).
- Special screening and debate on the « Les Héritiers » film, (Strasbourg, 3 February).
- Presentation of the Commissioner's report on France to the University of Strasbourg's Law Faculty (Strasbourg, 20 February).
- European Youth Forum's annual coordination meeting with the Council of Europe (Strasbourg, 24 February).
- Centre for European Policy Studies Ideas Lab "More or less Europe?" in partnership with the Latvian Presidency of the Council of the European Union (Brussels, 26-27 January).
- Meeting with the European Federation of Journalists (Brussels, 26 February).
- EEAS Training on the CoE (Brussels, 3 March).
- *Folketinget* (Danish Parliament) European Affairs Committee debate on "Safeguarding the fundamental values of the European Union" (Copenhagen, 12 March).
- 2<sup>nd</sup> meeting of the Independent Police Complaints Authorities' Network – IPCAN (Paris, 23 March).
- High-level Conference on the "Implementation of the European Convention on Human Rights, our shared responsibility", organised by the Belgian Chairmanship of the Council of Europe's Committee of Ministers (Brussels, 26 March).
- EU Council Working Group on OSCE and the Council of Europe – COSCE (Brussels, 27 March).
- European Parliament Committee on Civil Liberties, Justice and Home Affairs public hearing on "The situation of fundamental rights in the European Union" (Brussels, 30 March).
- 1<sup>st</sup> meeting of the co-operation platform between the Council of Europe, the EU Fundamental Rights Agency (FRA), the European Network of Equality Bodies (Equinet) and the European Network of National Human Rights Institutions (ENNHRI) in the field of hate crime (Riga, 30-31 March).



- University of Strasbourg's Law Faculty round table "La circulation internationale des mineurs" (Strasbourg, 10 April).
- Video message to the Brussels Platform for Journalism on the occasion of World Press Freedom Day (3 May).
- Conference "European Data Protection Law: Recent Developments" organised by the Academy of European Law Trier (Brussels, 10-12 May).
- High-level meeting "From Inclusive Education to Inclusive Employment for People with Disabilities", hosted by the Latvian Presidency of the Council of the European Union (Riga, 11 May).
- Conference on "Mobility, Migration, Diaspora" hosted by the Latvian Presidency of the Council of the European Union (Riga, 11 May).
- IDAHO 2015 Forum "Ending hate crime and violence" (Budva, 11 May).
- 125<sup>th</sup> Session of the Committee of Ministers (Brussels, 19 May).
- 1<sup>st</sup> Eastern Partnership Media Conference, organised by the Latvian Presidency of the Council of the European Union (Riga, 20 May).
- International Implementation Forum for Local and Regional Authorities "Focusing on Human Rights", organised by the Congress of Local and Regional Authorities in (Graz, 28 May).
- Conference presenting the results of the work of the Norwegian Tater/Romani Commission (Oslo, 1-2 June).
- Video message for conference "None of Europe's Children Should be Stateless", organised by the European Network on Statelessness (Budapest, 2 June).
- 35<sup>th</sup> German Protestant *Kirchentag* Panel Series on Migration and Human Rights (Stuttgart, 6 June).
- Inter-mechanisms meeting hosted by the International Organisation of la Francophonie - OIF and organised by the Observatory for the protection of human rights defenders, a joint initiative of the International Federation for Human Rights - FIDH and the World Organisation against Torture – OMCT (Paris, 15 June).
- Public side event on "Attacks and reprisals against human rights defenders: enhancing accountability for violations" organised during the 29<sup>th</sup> UN Human Rights Council session (Geneva, 16 June).
- Video message for the International Conference "Freedom of speech and freedom of assembly: world perspective" organised by MOZAIKA to celebrate EuroPride 2015 (Riga, 19 June).
- Celebrations of the 60th anniversary of the Europe Prize (Strasbourg, 22 June).
- Video message to the European Intersex Forum (Douarnenez, 29 June).
- Introductory video for the course on hate crime produced by the European Programme for Human Rights Education for Legal Professionals of the Council of Europe (HELP) and OSCE/ODIHR (Strasbourg, September).

- Event on the human rights of intersex people organised by the LGBTI Intergroup of the European Parliament (Strasbourg, 8 September).
- Video message commemorating the 20<sup>th</sup> anniversary of the European Youth Centre Budapest (15 September).
- Expert meeting on the human rights of intersex people organised by the Office of the High Commissioner For Human Rights (Geneva, 16-17 September).
- Conference for the launch of a report on child statelessness in Europe “No child should be stateless” published by the European Network on Statelessness with UNHCR’s support (Strasbourg, 21 September).
- *Dialogues de Strasbourg*, public lecture on migration and asylum (Strasbourg, 13 October).
- CoE Conference “Freedom of expression: still a precondition for democracy?” (Strasbourg, 13 October).
- CoE Conference "Towards guaranteeing equal access of women to justice" (Bern, 15-16 October).
- Lecture on “Human Rights Challenges in Europe” at the Center for Strategic and International Studies - CSIS (Washington DC, 20 October).
- Lecture at Columbia University, Harriman Institute (New York, 21 October).
- Conference “Towards Dystopian Democracies in Europe and the USA? From prejudice in immigration policies to mass surveillance in counterterrorism operations” organised by the Center for International Research in the Humanities and Social Sciences of New York University (New York, 22 October).
- Video message for conference "Transgender issues in medical and social context" organised by *Insight* NGO in collaboration with Ukrainian Ombudsman’s office (Kyiv, 22 October).
- Academy of European Law (ERA) Annual Conference on European Asylum Law 2015 (Trier, 22-23 October).
- ILGA Europe Annual Conference “Many voices, One movement - Together, mobilised for a just society” (Athens, 29-31 October).
- Speak Up! 3 Conference: “Freedom of Expression and Media in the Western Balkans and Turkey”, organised by the EU Commissioner for European Neighbourhood Policy and Enlargement Negotiations (Brussels, 3 November).
- Conference on "Gender, Diversity and Social Inclusion", organised by KAOS GL Association and supported by UNFPA, EU and the Swedish International Development Cooperation Agency (Ankara, 5-6 November).
- Swiss Centre of Expertise in Human Rights conference « *Le CSDH a cinq ans – bilan et perspectives pour une institution nationale des droits humains en Suisse* » (Berne, 9 November)
- Video message the first European day on the Protection of Children against Sexual Exploitation and Sexual Abuse (18 November).

- Exchange of view with the Council of Europe’s Group of Experts on Action against Trafficking in Human Beings – GRETA (Strasbourg, 18 November).
- World Forum for Democracy (Strasbourg, 19 November).
- 15<sup>th</sup> Roundtable European Governmental LGBT Focal Points Network (Geneva, 19-20 November).
- Conference “Ombudsman/National Human Rights Institutions: Human Rights Challenges in Refugee/Migrant Crisis” (Belgrade, 23-24 November).
- General assembly meeting of the European Network of National Human Rights Institutions - ENNHRI (Utrecht, 30 November-1 December).
- Conference “Council of Europe, National Human Rights Institutions, Equality Bodies and Ombudsman Offices Promoting Equality and Social Inclusion”, organised by the Council of Europe and the Finnish Parliamentary Ombudsman and Human Rights Centre in (Helsinki, 10-11 December).
- Video message for the conference “Putting the justice into social justice: how international human rights and deliver progressive change in Scotland”, organised by the Scottish Human Rights Commission (Edinburgh, 9 December).