Close the gap
How to ensure human rights for all

Human Rights Comments

COMMISSIONER FOR HUMAN RIGHTS
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Close the gap
How to ensure human rights for all

Compilation of Human Rights Comments
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Council of Europe

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Foreword

When I took up office as Council of Europe Commissioner for Human Rights in April 2018, I declared that I would keep member states alert to the problems that may restrict people's ability to enjoy their rights, and to help them find solutions to improve human rights protection and implementation.

One of the tools I have used to keep this promise are Human Rights Comments. They are pieces that previous Commissioners and I have published regularly because of their potential to spotlight human rights problems and contribute to influencing the agenda of national authorities.

This compilation puts together the series of articles that I have published over the past twenty-one months. They cover a variety of human rights topics that I have worked on, such as the right to peaceful assembly, the rights of minority groups, anti-discrimination, the fight against trafficking, environmental rights, , anti-terror legislation and the protection of human rights, the independence of the judiciary, national human rights institutions and human rights in the artificial intelligence era.

Despite much progress accomplished in Europe over the past seven decades, these topics remain issues of concern in many countries, especially in the current context in which human rights principles are increasingly challenged, undermined or discounted.

The aim of these articles is therefore to provide an assessment of the current standpoint, spell out the laws, standards and principles that apply to each topic, and provide actionable measures to governments and parliaments in order to better uphold their obligations in each of these fields.

The list of the topics I focus on in this compilation is not exhaustive of course. They have been selected based on the themes I chose in my country and thematic work and the events that have characterised the period covered by this publication.

These articles are intended for a wide public. From law and decision makers to human rights litigators and defenders. They have also been used by

journalists, professors and NGOs, which leads me to believe that despite the current backlash against human rights on several fronts, there is still huge support for the values and standards that European countries have been painstakingly building since the end of WWII.

I will continue writing Human Rights Comments in the future to focus on other pressing human rights topics. My hope is to continue to raise awareness of the progress made and identify the shortcomings that remain to be addressed.

Dunja Mijatović

Shrinking space for freedom of peaceful assembly

Human Rights Comment published on 9 December 2019

Over the last year, protests have multiplied across the planet, from Chile to Hong-Kong. Europe is not left out of this wave of demonstrations. Protests are taking different forms, from large and repeated demonstrations to the occupation of public places and spontaneous assemblies. The use of social media is also transforming the way assemblies are organised and managed.

The reasons for this increasing mobilisation of protesters across Europe are manifold. They include economic inequalities, decreasing trust in the traditional political elites and institutions, violations of human rights and democratic rules and, in general, the will of entire segments of our societies to be better heard.

Demonstrating is a way for citizens to engage in public debates on societal and political problems. Protecting the right to freedom of peaceful assembly is therefore crucial for the good health of democratic societies. Council of Europe member states have long acknowledged this fact and this right is therefore enshrined in many national constitutions. Moreover, the European Court of Human Rights (the Court) has over the years developed substantial case-law concerning the right to freedom of peaceful assembly, enshrined in Article 11 of the European Convention on Human Rights (ECHR).

However, faced with the multiplication of protests, the authorities in several countries have taken legal and other measures that jeopardise or tend to erode this right. These measures range from harsh policing of demonstrations, and bans on and dispersals of assemblies, to changes in legislation aimed at increasing the possibilities of sanctioning persons organising or participating in peaceful assemblies.

While the ECHR permits restrictions to freedom of peaceful assembly, these should be very limited so as not to infringe on the enjoyment of this important right: they should be prescribed by law, pursue a legitimate aim, such as the prevention of disorder or crime or the protection of the rights and freedoms of others, and be proportionate.

Protecting the right to peaceful assembly irrespective of the message of the protest: an obligation for the authorities

Restrictions to the right to peaceful assembly cannot in principle be based on the substance of the message which the participants of a protest wish to convey, even when it consists of criticism of the authorities, contestation of the established order by peaceful means or views that are unpopular, disturbing, offensive or shocking to others. The right to peaceful assembly is indeed closely connected with the right to freedom of expression. Assemblies aimed at inciting to violence or rejecting democratic principles are the only exception to this principle.

It is the authorities' obligation to safeguard the right of all persons to express their views freely in the context of public assemblies, and also to protect assemblies against those who want to deny others the right to demonstrate and to make their views heard. For example, the police should effectively protect assemblies against counter-demonstrators whose aim is to prevent or disrupt a demonstration.

A case in point are Pride marches and other demonstrations advocating for the rights of Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) persons, which have in several countries been banned on grounds of morality and public order. Unfortunately, in places where demonstrations have taken place, participants have sometimes been left unprotected while facing attacks by counter-demonstrators and have even been victims of police violence.

In June this year, I urged the Georgian authorities to ensure the safety of participants in the Pride march in Tbilisi, in a context marked by tensions, hate speech and even threats against those involved or supporting the organisation of the event. After being postponed, the event was eventually spontaneously held in July, but on a smaller scale than planned due to the lack of security guarantees. On the other hand, in September 2019,

I welcomed the holding, in a peaceful and dignified manner, of the first Pride march in Sarajevo, Bosnia and Herzegovina, despite public calls against the event, including by members of the government.

Peaceful assemblies should not be criminalised

The Court has established that a peaceful demonstration should not, in principle, be rendered subject to the threat of criminal sanctions. However, in some countries, criminal sanctions have been imposed on the organisers or participants of peaceful demonstrations. These sanctions, together with unnecessary or disproportionately harsh penalties imposed for acts committed during assemblies, constitute violations of the right to freedom of assembly.

Last August, I wrote to the Russian authorities to share my serious concerns regarding excessive interferences with the right to hold peaceful assemblies on the occasion of demonstrations held in Moscow, during which more than 1 000 persons were arrested. I note with concern that some of the persons that were arrested have been sentenced to prison terms, some of them for up to 3½ years on grounds of violence against law enforcement officers, reportedly for acts such as throwing empty plastic bottles at heavily-equipped police officers or simply dragging some of them by hand. I am also particularly worried about the imposition of criminal convictions and prison sentences on activists for repeated violations of the rules governing public events, even though they were reportedly not engaged in violent action.

The recent launching of misdemeanour proceedings against demonstrators who, in 2018, protested for several months against the lack of an effective investigation into the death of a 21-year-old man in Republika Srpska, Bosnia and Herzegovina, is another disquieting example. Prosecutions were launched on grounds of "violation of public peace and order" and demonstrations ended up being dispersed and banned.

Imposing harsh sentences on organisers and participants in assemblies can only have a chilling effect that may prevent participants from attending demonstrations in the future.

Thus, in observations I submitted to the Court in 2018, I expressed my serious concerns regarding attempts to criminalise, with retroactive effect, the large demonstrations that took place in Turkey in 2013 (known as "the Gezi events"). I stressed that proceedings launched in connection with these demonstrations were likely to create a climate of fear for the very large number of persons who peacefully participated in these demonstrations and discourage the exercise of the right to peaceful assembly in the country.

Peaceful demonstrations sometimes give rise to acts of violence and vandalism, carried out by groups which often have no link with the other protesters. It is obviously the authorities' duty to sanction such reprehensible behaviour. However, this does not mean that the demonstration as a whole should automatically be considered as violent. The organisers of these demonstrations, as well as other peaceful participants, cannot be held responsible and sanctioned for such acts of violence. Moreover, the authorities should adopt a narrow definition of behaviour that constitutes violence in the context of demonstrations.

Misuse of notification requirements and other hindrances to the right to peaceful assembly

I am concerned about the misuse, in various countries, of procedures for the notification of demonstrations, resulting in unnotified or unauthorised demonstrations being banned, and organisers and participants being sanctioned. In the Russian Federation, my predecessor deplored, in a Memorandum of 2017, that the notification procedure had become for critics of the government's policies a de facto obligation to seek authorisation for holding public events. Moreover, holding a public event without prior notification became punishable with administrative detention for up to twenty days. Similarly, I recently objected to the dispersal by the authorities of Azerbaijan of demonstrations which took place in October 2019, on grounds that they had not been authorised. I called on the authorities to apply the notification procedure in compliance with European standards and to refrain from turning it into a system of authorisation.

In France and Spain, new laws on assemblies (see remarks below) toughened the legislation for calling unnotified assemblies.

It is to be recalled that, as highlighted in the Venice Commission and OSCE/ODIHR Guidelines on freedom of peaceful assembly, it is not necessary under international human rights law for legislation to require advance notification of an assembly. Should a notification procedure be in place, it should mainly serve the purpose of facilitating assemblies. In any case, it should never be turned into a de facto authorisation procedure.

Spontaneous, unnotified assemblies, often in response to developments requiring immediate reaction, are also likely to multiply, notably because of the use of social media. They are a way for citizens to express themselves in a timely manner regarding certain events, and should therefore be regarded as a feature of democratic societies. As such, they should be protected in the same way as other assemblies, rather than dispersed and banned.

While states can legitimately impose certain restrictions as regards the use of public space, and thus the location and timing of assemblies,

such restrictions should remain proportionate. An example of a clearly disproportionate measure is the power granted to provincial governors in Turkey to indiscriminately ban public assemblies. Although this possibility was introduced during the two-year state of emergency (2016-2018), it has become part of the ordinary legislation and is used frequently and arbitrarily.

In some countries, the authorities also only allow demonstrations in remote places out of the sight of the general public, or block access to demonstrations for the public. These practices, as well as blanket bans on demonstrations in certain places, such as in front of parliaments, government buildings, city centres, etc, seriously hinder the holding of peaceful assemblies.

Additionally, access to websites or social media posts giving information about a demonstration has, in some countries, been restricted. Such practices are likely to infringe on the right to peaceful assembly. As highlighted in Committee of Ministers Recommendation (2016)5 on Internet freedom, the standards established by the Court with regard to peaceful assemblies apply both online and offline, including as regards restrictions to assemblies.

Legislating on assemblies should not restrict the right to peaceful assembly

Several member states have adopted laws that could lead to disproportionate restrictions of the right to freedom of peaceful assembly. Some of these laws turn behaviour which is commonly seen in demonstrations, such as taking pictures of police officers or peaceful resistance to police officers, into offences, for which sanctions can be imposed.

Spain for instance adopted a Law on citizens' safety in 2015 following a series of large demonstrations in 2011-2013. The law introduces the possibility of imposing administrative sanctions and fines for certain types of behaviour in the context of public assemblies. These include minor disruptions in an assembly or resisting or disobeying police officers. Large fines can also be imposed in case of public disorder occurring in the context of demonstrations carried out in the vicinity of elected bodies, even when they are not in sitting. A substantial number of fines have been imposed since the entry into force of the law. In a letter of November 2018 to the Spanish Parliament, I stressed that the law could have a chilling effect on the right to peaceful assembly.

In March 2019, France also amended its legislation as a reaction to the "yellow vests" protest movement. In my Memorandum of February 2019 on maintaining public order and freedom of assembly in the context of the "Yellow vests" movement, I expressed concerns about the then bill

(adopted as a law in April 2019), whose provisions may have a deterrent effect on the exercise of the right to peaceful assembly. The law notably provides for more severe punishments for offences already prohibited by the Criminal Code, such as intentionally hiding one's face in the context of a demonstration "without a legitimate reason". While understanding the desire of the authorities to make it possible to identify perpetrators of violence, re-categorising this offence as a more serious offence makes it possible to take persons covered by this measure into police custody, thereby possibly preventing them from participating in an assembly.

It is also important to avoid adopting legislation that can have a discriminatory impact on the enjoyment of the right to peaceful assembly by treating assemblies differently depending on their conveners. In 2016, my Office criticised amendments to the Polish legislation giving priority to gatherings organised by public authorities, churches and religious organisations, and to so-called "recurrent assemblies" – those that take place on a regular basis – as being to the possible detriment of the right of others to organise assemblies.

Moreover, legislation regulating the right to peaceful assembly sometimes uses vague and imprecise wording, thus giving a wide margin of discretion to law enforcement officials when it comes to implementation, and increasing the risks of arbitrary restrictions to this right.

The need for human rights compliant policing of demonstrations

The excessive use of force in the policing of demonstrations has been a long-standing concern of my Office. In recent months, I have raised questions about the use of force in policing of demonstrations in several countries, including Azerbaijan, France, Georgia, Russia and Spain.

While policing demonstrations is in some places an increasingly challenging task, it is the duty of the police to facilitate demonstrations, while ensuring adequate protection of demonstrators and containing possible disorders. In order to fulfil these missions, the police should apply the principles of restraint, proportionality, minimisation of damage and preservation of life.

Unfortunately, many instances of disproportionate use of force against peaceful demonstrators continue to be reported across Europe, including beating of demonstrators and using techniques of crowd containment which can put their safety at risk.

Moreover, in a large number of countries, the police are increasingly using less-lethal weapons, such as batons, tear gas, hand-held sting grenades, electroshock weapons, water cannons and rubber bullets, to control or disperse crowds of demonstrators. I believe that some of these weapons are unsuitable for the purposes of maintaining public order because of

their indiscriminate effect and the danger they present for the safety of peaceful demonstrators. The number of persons seriously wounded in demonstrations in recent years as a result of the use of rubber bullets is particularly striking. Additionally, the use of such weapons does not contribute to de-escalating tensions, which should be a major objective of policing of demonstrations.

I also find it worrying that journalists and independent human rights observers have experienced harassment and violence during demonstrations, either from demonstrators or police officers. It is crucial to guarantee the safety of journalists during demonstrations so that they can perform their duties properly.

How to safeguard freedom of peaceful assembly?

Laws and practices on assemblies need to adapt to a rapidly changing environment. However, they should always abide by international human rights standards on freedom of assembly and policing of demonstrations. Facilitating assemblies and allowing peaceful demonstrators to express their views freely are core obligations of the authorities, which should remain at the heart of any regulation of the right to peaceful assembly.

Accessible, transparent and swift remedies should be available against measures disproportionately or arbitrarily restricting freedom of assembly, such as misusing the notification procedure and imposing bans.

The policing of demonstrations should be based on communication and collaboration with the organisers and participants in demonstrations and approaches aimed at de-escalating tensions. The use in several member states of police liaison teams embedded in demonstrations in order to anticipate possible problems, maintain dialogue with demonstrators and minimise disruptions is a good example of a de-escalation approach. The authorities should ensure that police officers operating in the context of demonstrations receive specialised training both on the negotiated management of assemblies and on the proportionate use of force in this context. Human rights compliant policing of demonstrations also requires that police officers be provided with substantial human rights training.

Member states should make a thorough assessment of the dangers posed by the use of less-lethal weapons in the context of assemblies. In doing so, they can base themselves on the Venice Commission and OSCE/ODIHR Guidelines on freedom of peaceful assembly, the UN's Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and the 2019 UN Human Rights Guidance on Less-Lethal Weapons in Law Enforcement.

Impunity for excessive use of force by the police should never be tolerated. This is crucial to strengthen or restore the population's trust

in law enforcement. Therefore, all allegations of police misconduct in the context of demonstrations must be adequately investigated and sanctioned. This implies that police officers operating in demonstrations are clearly identified, through visible numbers or name tags. The setting up of independent police complaint mechanisms is a useful tool to promote accountability of law enforcement.

Last but not least, respect for the economic and social rights of law enforcement officers is a key factor in reducing the risk of misconduct and excessive use of force. They should be paid a sufficient salary and granted periods of rest and recuperation along with appropriate psychological support.

Protests of different kinds are not likely to disappear. While they can generate disorder and disruptions of public order, they also attest to the willingness of citizens to engage in public affairs and express their views through peaceful means. Repressing them means limiting democratic space and the resilience of societies to deal with problems.

Useful reference documents:

Guide on Article 11 of the European Convention on Human Rights: freedom of assembly and association, 31 August 2019

Council of Europe Venice Commission and OSCE/ODIHR Guidelines on freedom of peaceful assembly, 3rd edition, 2019

OSCE Handbook on policing of assemblies, 2016

GODIAC project ("Good practice for dialogue and communication as strategic principles for policing political manifestations in Europe").

UN Human Rights Committee: Draft General Comment No. 37 on Article 21 of the International Covenant on Civil and Political Rights: right to peaceful assembly.

Report of the UN Special Rapporteur on the rights to freedom of assembly and association to the UN Human Rights Council: on the rights to freedom of assembly and association in the digital age, 2019.

Language policies should accommodate diversity, protect minority rights and defuse tensions

Human Rights Comment published on 29 October 2019

Languages are immensely enriching. They enable us to communicate with more people, to be better understood and to better understand other perspectives. Unfortunately, however, in many countries of the Council of Europe, languages are still sometimes used as tools to pit people against each other.

Preventing people from using the language they consider their own in different settings can lead to a violation of their rights as individuals. Beyond this, entire communities are also negatively affected; and conflicts between different groups or between neighbouring countries often revolve around the use of languages.

The language one uses tends to be an essential defining element of a person's identity. In addition to its role as a communication tool, it carries an important symbolic value in defining how people are perceived by others and how they see themselves and their place in society. As such, it can be a controversial and politically charged issue. For example, using the state or official language is in many places considered as proof of one's loyalty to the state. In other contexts, the use of minority languages on signs visible to the public (such as street names, sometimes requiring the use of a different alphabet) is experienced or presented as an unwelcome physical reminder of the multi-cultural and multi-lingual fabric of society.

Particularly in contexts marked by a history of conflict along ethnic and/or linguistic lines, it is therefore paramount for everyone to recognise that sound policies on the use of languages, which acknowledge diversity and find ways of accommodating different languages and cultures, are an indispensable step on the path these societies must walk towards reconciliation and lasting social cohesion.

Laws on the use of languages can be a source of tensions

Many countries across Europe have legislated on the use of languages, often -- though not always -- with the aim of reinforcing the knowledge and use of one official or state language. While this is a perfectly legitimate goal, it has often been pursued without sufficient consultation of the speakers of minority languages and without thorough consideration for their rights and needs. Laws on the use of languages have sometimes been accompanied by forceful implementation measures. And in some cases, their main aim has been that of further reinforcing the dominant position of the majority population and curtailing the rights of persons belonging to national minorities.

These initiatives have in most cases exacerbated tensions and polarised societies even further.

Beyond its symbolic value, the language one uses has an important practical impact in different areas of life, including access to education, employment, health care or social services, and more generally, participation in society. Therefore, unbalanced or unfair laws and policies on languages can have long-lasting detrimental effects on certain groups of society and on social cohesion as a whole.

International efforts to reduce the potential for tensions around language issues

At the end of the 1990s and following the disintegration of the former Yugoslavia and former Soviet Union, mechanisms aimed at preventing a repetition of the disastrous conflicts of that decade were set up. One of their features was to take disputes around ethnic and linguistic issues out of the reserved domain of states and instead seek solutions in multilateral fora, based on international law, including human rights law.

In 1998, the Council of Europe Framework Convention for the Protection of National Minorities (FCNM) entered into force. It was designed to ensure better respect for minority rights as a tool to strengthen stability, democratic security and peace.

In 1996, the OSCE appointed its first High Commissioner for National Minorities (HCNM), whose role is to address causes of ethnic tensions, and

prevent conflicts between or within states over national minority issues, acting as an early warning mechanism.

Due to their sensitivity and potential for conflict, language-related issues have been a subject of particular attention of both the OSCE/HCNM and the Advisory Committee on the FCNM, the expert body in charge of monitoring the implementation of the FCNM.

Other instruments have contributed to the establishment of a solid international framework for the protection of the rights of national minorities, including language related rights. They include the UN Declaration on the Rights of National or Ethnic, Religious and Linguistic Minorities (1992) and the Council of Europe's European Charter for Regional or Minority Languages (1998).

This international framework provides a range of tools to regulate in a peaceful and balanced manner the use of different languages in today's increasingly diverse societies. My Office has on several occasions urged governments to adhere to those standards when dealing with tense situations related to the use of languages.

International standards provide useful general guidance for dealing with language issues in a human rights-compliant manner. This does not mean that a "one-size-fits-all" approach is workable, or even advisable. Care should be taken to tailor language policies to each unique context.

I outline below some of the key do's and don'ts for managing linguistic diversity, upholding the rights of persons belonging to national minorities and avoiding polarisation and tensions around these issues.

Promoting social cohesion through balanced policies on languages

Supporting the use of the official or state language as a tool to protect public order, consolidate national identity and reinforce social cohesion is a legitimate objective of state policy. Persons belonging to national minorities themselves benefit from proficiency in the official language, which fosters their inclusion in society and participation in public life. However, this goal should not be pursued at the expense of the rights of speakers of other languages, especially those belonging to national minorities, nor should any measures taken to that end exacerbate existing cleavages.

The Advisory Committee on the FCNM has consistently emphasised, in respect of a range of countries, including Estonia, Georgia, Latvia, Moldova, North Macedonia, Romania, Slovakia, Ukraine and the Russian Federation, that policies on the use of languages should aim to reconcile the needs of different groups of speakers, those of the state and those of society as a whole, rather than deepening gaps between different groups based on

linguistic differences. For example, in its 2018 Opinion on Russia, it noted that this country had developed a policy of strong support for the Russian language and culture while at the same time limiting effective support for minority languages and cultures, which appeared to be marginalised and perceived as a source of potential conflict. The Committee stressed that a genuinely cohesive and integrated society could only be built through embracing diversity, including linguistic diversity, and guaranteeing full respect for and protection of minority cultures and languages.

Legislating on the use of languages should meet a real need in society, such as improving the proficiency of students in the official language, easing relations with the administration for persons belonging to national minorities, improving their access to the labour market or ensuring that people speaking minority languages can preserve their language and culture and be full members of society. Regrettably, reality paints a different picture. All too often, laws and policies are introduced with a "zero-sum" mindset emphasising the importance of one ethnic and linguistic identity at the expense of others, and are motivated by nationalistic, ethnocentric or populist ideologies, or simply by a calculating self-interest in electoral times.

It is crucial to involve, in a meaningful manner, representatives of civil society, and specifically members of minorities, when reforms of language laws and policies are undertaken, in order to ensure that their needs are understood and taken into consideration. Excluding them from discussions, or carrying out only token consultations, has led to social unrest and the further alienation of minorities in different countries. In April this year, I voiced my concern about the hasty adoption by Ukraine of a new law "on ensuring the functioning of Ukrainian as a state language" shortly before the general elections and without adequate public consultation. I now look forward to the forthcoming opinion on the law by the Venice Commission, whose independent expertise will help shed more light on the impact that this law may have on the rights of persons belonging to Ukraine's numerous linguistic communities, including the Russian, Hungarian, Romanian, Tatar and other minorities.

Tackling discrimination based on language

Laws and policies that promote the use of a specific language should not result in discriminatory treatment of some groups of the population. Therefore, before introducing new measures regulating the use of languages, the authorities should carefully assess the possible disproportionate impact of such measures, especially on persons belonging to national minorities. The Advisory Committee on the FCNM has indeed highlighted that strict language requirements can constitute a disproportionate obstacle for

persons belonging to national minorities in a range of areas, such as access to employment, participation in political life, and access to health care and education. In the case of Latvia and Estonia for instance, it deplored insufficient access for persons belonging to minorities to public positions due to overly strict language requirements.

It is therefore crucial for countries to ensure that they have an effective anti-discrimination legal framework in place, which explicitly prohibits discrimination based on ethnic or national origin as well as on language, and, importantly, which foresees effective remedies for persons alleging such discrimination. For example, my Office invited the Belgian authorities, back in 2009, to set up an effective and impartial mechanism to deal with complaints regarding discrimination based on language. Such a remedy does not yet exist.

Using incentives rather than sanctions to ensure implementation

Some member states have opted for tough measures to promote the implementation of their language laws and policies. International human rights bodies have criticised the setting up of inspection systems and, in some cases, the possibility of imposing sanctions and fines, as well as rigid systems of linguistic quotas, as unnecessary and disproportionate measures. The effectiveness of such forceful approaches has also proven to be limited. In fact, they are most likely to be counter-productive and generate further polarisation of society and increased marginalisation of persons belonging to minorities. These forceful measures should be avoided. Where provisions to ensure the implementation of language laws and policies are in place, it is essential to implement them in a measured and pragmatic manner, through incentives for language learning and use, rather than coercion.

A particularly important incentive is to ensure that there are enough opportunities for learning the state or official language and that the offer is accessible and of adequate quality. This is crucial to ensure access for all to a shared and common language. I read with interest the findings of a recent audit report about the teaching of Estonian language for adults in Estonia, which showed a shortage of funding and adequately trained teachers. The report indicated for example that in 2015, the plan was to offer free language classes to 540 persons, while in fact almost 6,000 people applied for such classes. Lack of funds and/or trained teachers and the quality of teaching materials have also been issues of concern in several other countries.

Crucially, any measure to strengthen the use of the state language should also go hand in hand with solid guarantees for persons belonging to national minorities that they can effectively use their languages, including in the education system. This is unfortunately not always the case. In an Opinion of 2019, for instance, the Advisory Committee called on the Georgian

authorities to complement the policy of promotion of the use of Georgian language in all areas of public life with more vigorous measures to support the use of minority languages in relations with the administration, as well as the teaching and learning in and of those languages.

Respecting the language rights of persons belonging to minorities can actually work as an incentive for them to learn and use the state language, as doing so will be less likely to be perceived as detrimental to the preservation of their cultural and linguistic identity.

Time is also a key ingredient for a balanced and fair language policy. Law and policy reforms in the field of languages should be implemented gradually, to allow persons to acquire the necessary skills without being negatively impacted. This is especially true for reforms in the field of education, where it is of the utmost importance to avoid reforms translating into students belonging to linguistic minorities being disadvantaged.

Promoting plurilingual education

I have strongly criticised practices whereby school children are separated based on ethnic and linguistic affiliations, as in my own country Bosnia and Herzegovina, in North Macedonia, Croatia and Kosovo.* Segregation exacerbate divisions and heightens the risk of conflict. My Office has over the years urged the authorities of several countries to promote possibilities for children to take part in bilingual or plurilingual and inclusive education from an early age, especially in regions populated by persons belonging to different ethnic and linguistic groups. Bilingual or plurilingual education is beneficial both for relations between different communities and for the cognitive development of students. The extensive work of the Council of Europe on plurilingual education provides useful guidance on how to design sound education policies which take into account linguistic diversity.

Being educated together helps young people understand that individuals cannot be reduced to static and rigid identities: they can have multiple affiliations, or simply use different languages in different contexts. Monolithic conceptions of identity also do not take the diversity of situations existing within each group as regards language affiliation into account. Enabling students to understand that identities can be multifaceted is a precious tool for strengthening social cohesion and preventing future conflicts in our increasingly diverse societies.

The successful struggle of the students of one school in Jajce, Bosnia and Herzegovina, who actively opposed the transformation of their school into a segregated institution based on the existing model of "two schools under one roof",[1] shows that divisions based on real or alleged linguistic differences can be overcome.

When teaching of or in minority languages is provided, it is equally important to uphold the quality of teaching, but also to ensure continuity throughout the education system. For example, limiting the teaching in minority languages only up to a certain grade can act as a clear disincentive for minority language education. In this regard, I am worried, for instance, that the 2018 education reform in Latvia which gradually reduces the share of teaching in Russian (to a ratio of 80% Latvian and 20% Russian) in secondary schools, runs the risk of transforming the existing bilingual education system in place since 2004 into a system which offers only some language and culture classes in the minority language. I am also concerned at media reports indicating that the Latvian government is considering making Latvian the only teaching language in public schools.

Moreover, I find it disturbing that some countries (such as Latvia and Ukraine) have taken steps to establish rules for the teaching in languages of the European Union which are different from those applying to other languages, thereby establishing unjustified differences of treatment between speakers of different national minority languages.

What approach to depoliticise language issues?

What is needed are inclusive and pragmatic approaches that take into account the real needs of different groups in society and aim for balance, compromise and reconciliation rather than opposition and cleavages. Such approaches should aim for the full respect of the rights of persons belonging to national minorities, peaceful interaction of persons with different ethnic and linguistic backgrounds and opportunities for all, on an equal footing, to take part in society.

States therefore need to create environments in which diversity is not perceived as a threat, where all members of society feel safe to use their language without fearing discrimination, and where at the same time, a common language can be shared.

Fostering a common identity does not need to be based exclusively on the use of one language, it can also build on other, more inclusive values, such as common traditions, a common citizenship -beyond linguistic and ethnic differences-, a shared vision of the future and the celebration of diversity as a source of wealth, collective resilience and trust.

Promoting plurilingualism in key areas such as education, political life, the media or public administration can greatly contribute to achieving this goal.

List of additional international reference documents:

- advisory Committee on the Framework Convention for the Protection of National Minorities, Third thematic commentary on: "The language rights of persons belonging to national minorities under the Framework Convention", 2012
- Council of Europe Language Policy Portal: https://www.coe.int/en/web/language-policy/home
- OSCE High Commissioner on National Minorities, The Oslo Recommendations regarding the Linguistic Rights of National Minorities, 1998
- Council of Europe Venice Commission for Democracy through Law:
- opinion No 555/2009 on the Act on the State Language of the Slovak Republic, 2010
- opinion No 605/2010 on the draft law on languages in Ukraine, 2011
- opinion No 902/2017 on the provisions of the law on education of Ukraine of 5 September 2017 which concern the use of the state language and minority and other languages in education, 2017
- UN Special Rapporteur on minority issues, Language Rights of Linguistic Minorities, A Practical Guide for Implementation, March 2017.

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[1] The main feature of this system is that students attend two distinct schools located in one building and follow two separate curricula in the Bosnian and Croatian languages. Students use different textbooks and have different teachers. Each school has its own school administration.

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

Time to deliver on commitments to protect people on the move from human trafficking and exploitation

Human Rights Comment published on 12 September 2019

Few human rights violations are so universally condemned by Council of Europe member states as the exploitation of the most vulnerable. As a result, year on year, the fight against trafficking in human beings or the eradication of what some call modern slavery is gaining in prominence on their agendas. They are right in doing so, as these acts are a clear assault on human dignity. While anyone can fall victim to exploitation and human trafficking, certain groups are particularly vulnerable. One such group is made up of people on the move. This group contains refugees and asylum seekers, but also migrants living in Council of Europe member states as, for example, seasonal labourers or domestic workers. It also prominently features those migrating to, or staying in, Council of Europe member states irregularly. Furthermore, this group may consist of people moving to such member states from outside Europe. However, it also includes citizens of one member state moving to another.

In 2015, both my predecessor as Commissioner, Nils Muižnieks, and the Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA) warned that migrants arriving in Europe frequently faced barriers in accessing assistance, making them an easy prey for traffickers and exploiters in the countries where they seek asylum or in transit

countries. Four years later, this warning is more relevant than ever. Some actions taken by member states to combat smuggling and prevent irregular migration may be making it more difficult to fight human trafficking and to identify and protect its victims. Therefore, as improving protection against human trafficking remains crucial, now is the time to ensure that the often-pronounced commitments are delivered for people on the move specifically.

Council of Europe toolkit for tackling exploitation and human trafficking of migrants

The Council of Europe's legal toolbox for dealing with various forms of exploitation is extensive. Article 4 of the European Convention on Human Rights (ECHR) provides that no one shall be held in slavery or servitude, and that no one shall be required to perform forced or compulsory labour. In a number of key judgments, such as Rantsev v. Cyprus and Russia and Chowdury and others v. Greece, as well as several others, the Court has clarified member states' obligations with regard to migrants who fall victim to human trafficking or forced labour. Under the ECHR, member states have, among others, a positive obligation to put in place an appropriate legislative and administrative framework to tackle these violations, to take operational measures when they have credible information that a person is, or is at real and immediate risk of, becoming a victim of these actions, and to investigate such cases and prosecute the perpetrators.

Furthermore, the Council of Europe Convention on Action against Trafficking in Human Beings (Anti-Trafficking Convention) imposes obligations on states parties to prevent trafficking, protect its victims, and prosecute and punish perpetrators. The Convention has been ratified by all Council of Europe member states, except for Russia, with non-member state Belarus also being a party to it. Some of the Convention's provisions deal specifically with the situation of migrants. For example, it provides for the non-removal of a possible victim until the identification process as a victim is complete. It also deals with the provision of residence permits to victims, and ensuring that counselling and information is available in a language they understand, among many other issues particularly relevant to migrants who become victims of trafficking. GRETA, both through its country monitoring work and in its general reports, provides member states with recommendations as to their effective implementation.

Work by other Council of Europe bodies also provides useful guidance. For example, the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, also known as the Lanzarote Convention, contains a set of protective and criminal law measures that would also be applicable to child migrants subject to sexual exploitation or abuse. In 2015,

a special report by the Lanzarote Committee highlighted the urgency of action to protect children affected by the refugee crisis from such violations. Protecting children from trafficking and sexual exploitation is also a key element of the Council of Europe Action Plan on Protecting Refugee and Migrant Children (2017-2019). In addition, the Parliamentary Assembly of the Council of Europe recently adopted a set of recommendations to member states in this area.

These various standards provide member states with a framework for action in all its aspects, whether as countries of origin, transit or destination of victims of trafficking.

The Commissioner's work

As Commissioner for Human Rights, I try to help ensure that member states effectively meet these obligations. In Albania, for example, I discussed with the authorities their efforts to step up the prevention and detection of trafficking within their border control practices, especially with regard to their own nationals leaving for other Council of Europe member states. I also called for measures to ensure victims can access free legal aid. In Greece, I urged the authorities to resolutely fight against labour exploitation and to fully implement the above-mentioned Chowdury case.

In Hungary, I visited a centre where unaccompanied migrant and asylum seeking children under the age of 14 were accommodated. Whilst noting commendable efforts made to reduce the disappearance of such children, and thus their vulnerability to trafficking, I noted the need, identified by GRETA, for further action, including by training staff, legal guardians and foster families. In my report, I also highlighted the need to protect all children from sexual violence and exploitation, in particular by following the Lanzarote Committee's recommendation not to detain them in transit zones.

I have also repeatedly noted the impact of the bigger picture of European migration policy on the fight against all forms of exploitation. This, in my view, is currently one of the biggest challenges in ensuring that the protection of victims of exploitation and human trafficking is fully realised.

The impact of migration policies on victims of trafficking

Examples of migration policies impacting on the rights of victims of human trafficking are numerous. During my above-mentioned visit to Greece, it became clear how delays in asylum procedures affected the access to protection of all those in need of it. But deficiencies in the asylum procedure have particularly delayed the timely identification of victims of human trafficking. Furthermore, where reception conditions are inadequate, this creates additional risks for exploitation, in particular of women and

children. In its second evaluation report on Italy, for example, GRETA found that, despite various areas of progress, new legislation excluding asylum seekers from access to reception centres focused on social inclusion risked leaving possible victims of trafficking without assistance.

Measures to discourage people from staying irregularly in member states, and to return them, while legitimate in themselves, may risk losing sight of the most vulnerable. This is illustrated, for example, by the recent concerns that numerous victims of trafficking may have ended up in immigration detention in the United Kingdom. Preventing this requires not only the early and effective identification of victims, but also safeguarding victims from punishment for immigration-related offences. In this context, the UN Recommended Principles and Guidelines on human rights and human trafficking also usefully stress among others that states should ensure that trafficked persons are not prosecuted for violations of immigration laws as a direct consequence of their situation as trafficked persons or are not, in any circumstances, held in immigration detention or other forms of custody.

Protecting victims at Europe's external borders

The current situation at the external borders of Europe is particularly complex, with different interests overlapping and competing. Part of this rightly focuses on identifying and taking criminal action against perpetrators of human trafficking. Member states' focus also lies on the tackling of smuggling, that is, providing assistance to the irregular crossing of borders for financial gain. Furthermore, the overall framework of action is mainly concerned with preventing irregular migration in all its forms. Whilst each of these goals is legitimate, the protection of those on the move is too often neglected in their implementation.

My recent Recommendation on the situation in the Mediterranean shows how lack of access to Europe is failing victims of trafficking. It is by now well-known that many who eventually end up at sea have been subjected to serious abuse. Among them there are those that are trafficked specifically for the purpose of labour or sexual exploitation in Europe. Others fall prey to exploitation along their migration route to Europe. The images of migrants being sold in slave markets in Libya caused a particular shockwave, in Europe and beyond. Nevertheless, many remain trapped in such conditions, without any way out. Those who do escape risk drowning, and, when rescued, these extremely vulnerable victims are often left at sea for days, even weeks, without a safe port. Those helping them are increasingly criminalised and accused of collaboration in smuggling of migrants or, with cruel irony, of trafficking in human beings.

A human rights based approach to border management, which provides protection to (potential) victims of trafficking will depend, to a large extent,

on constructive co-operation and sharing responsibility, both between Council of Europe member states themselves, and with non-European countries of origin and transit, including preventive work. Currently, however, both effective responsibility sharing between member states, and transparency about and accountability for the impact of external co-operation activities on the human rights of (potential) victims of trafficking remain elusive.

Furthermore, an approach that seeks to prevent human trafficking cannot ignore the fact that the increasing closing of safe and legal routes to Europe, including refugee resettlement and family reunification, is itself providing the ground on which this abhorrent practice can flourish. In this regard, member states should especially take heed of the Anti-Trafficking Convention's connection between enabling legal migration and the prevention of human trafficking.

Time to deliver on commitments

It is essential that Council of Europe member states now deliver on their commitments to fight human trafficking and protect victims, especially people on the move. In this context, they should:

- redouble their efforts to address all forms of trafficking in human beings and exploitation of refugees, asylum seekers and migrants, by fully meeting their obligations under the ECHR and the Anti-Trafficking Convention, including by swiftly implementing recommendations made by GRETA;
- review closely how their internal and external migration policies are impacting on the prevention of trafficking, as well as the identification and protection of victims, and their access to assistance;
- expand safe and legal migration routes as a measure to prevent human trafficking;
- prioritise early identification of victims or potential victims among asylum seekers upon arrival;
- ensure adequate reception conditions for asylum seekers to reduce vulnerability to exploitation, and specifically prioritise the safe reception of unaccompanied refugee and migrant children, including through setting up and maintaining effective guardianship systems;
- make sure that victims receive appropriate assistance, including by guaranteeing access to legal aid and by ensuring that their (lack of) legal status does not in any way prevent or discourage them from lodging complaints against perpetrators.

Reference documents:

European Court of Human Rights, Guide on Article 4 of the European Convention on Human Rights – Prohibition of slavery and forced labour

Website of the Committee of Experts on Action against Trafficking in Human Beings (GRETA)

5th General Report on GRETA's Activities, covering the period from 1 October 2014 to 31 December 2015 – Chapter XII deals specifically with the identification and protection of victims of trafficking among asylum seekers, refugees and migrants

2014 Protocol to ILO Convention on Forced Labour of 1930

EU Fundamental Rights Agency, Protecting migrant workers from exploitation in the EU; workers' perspective, June 2019

OSCE, From Reception to Recognition: Identifying and Protecting Human Trafficking Victims in Mixed Migration Flows, January 2018

OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings, Policy and legislative recommendations towards the effective implementation of the non-punishment provision with regard to victims of trafficking, 2013

Website of the UN Special Rapporteur on trafficking in persons, especially women and children

OHCHR, Recommended Principles and Guidelines on Human Rights and Human Trafficking

The independence of judges and the judiciary under threat

Human Rights Comment published on 3 September 2019

The independence of the judiciary underpins the rule of law and is essential to the functioning of democracy and the observance of human rights. The fundamental right to a 'fair trial' by an 'independent and impartial tribunal established by law' is enshrined in the European Convention on Human Rights, in the EU's Charter of Fundamental Rights, and in many national and international legal texts. We have long enjoyed this right without major obstacles, and this remains the case in many Council of Europe member states. However, we are now seeing increasing and worrying attempts by the executive and legislative to use their leverage to influence and instruct the judiciary and undermine judicial independence.

I have been addressing issues relating to the rule of law and the independence of the judiciary since the beginning of my mandate. I tackled these issues in four of the nine countries I have visited so far. In my report on Hungary, after a visit last February, I highlighted concerns about the effects of a number of legislative measures taken in the 2010s on the powers and independence of the judiciary in the country. I stressed the need to observe checks and balances in the administration of the judiciary and warned against the risk of its politicisation. My key recommendation was to strengthen collective judicial self-governance.

In Poland in March, I raised the country's judicial reform, accompanied by a publicly-financed campaign to discredit judges and negative statements by officials, and concluded that it has had a major impact on the functioning and independence of the country's justice system, including its constitutional court and council for the judiciary. I also criticised the dismissal, replacement and demotion of hundreds of court presidents and prosecutors, the use of disciplinary proceedings against outspoken judges and prosecutors, and the combination of the powerful functions of Minister of Justice and of Prosecutor-General in the hands of an active politician.

In my report on Romania, published in February, in which I addressed, inter alia, the reform of the judiciary which was hastily conceived, I underlined the importance of maintaining the independence of the judiciary and urged the authorities to give effect to the recommendations of the Venice Commission and GRECO. I drew attention, among several issues of concern, to the establishing of a new section, within the Office of the Prosecutor General of Romania, for the investigation of offences committed within the judiciary, and the restrictions on magistrates' freedom of expression.

The independence and impartiality of the judiciary was one of the topics I addressed during my recent visit to Turkey. I was concerned that the independence of the Turkish judiciary was seriously eroded during the state of emergency and in its aftermath. I noted in particular constitutional changes regarding the Council of Judges and Prosecutors, which were in clear contradiction with Council of Europe standards, as well as the suspension of ordinary safeguards and procedures for the dismissal, recruitment and appointment of judges and prosecutors during the two-year state of emergency.

Instead of upholding and strengthening judicial independence, impartiality and efficiency, some governments and politicians interfere with the judiciary and even resort to threats against judges.

Most recently, the Italian Minister of Interior verbally attacked three magistrates on social media over some decisions they rendered which he thought challenged the government's increasingly restrictive immigration policy. The media reported about death threats posted on social media against these judges following the Minister's attack. Another verbal attack by the same minister against a judge concerning a different issue reportedly prompted the authorities to provide this judge with police protection due to ensuing death threats.

In Serbia, during the parliamentary debate last May on the introduction of life imprisonment without a possibility of conditional release for some of the gravest criminal offences, the Speaker of Parliament, several MPs and the Minister of Justice criticised the judge of the Belgrade Appellate Court,

Miodrag Majić, because he had warned that this legislative proposal was incompatible with the European Court of Human Rights' case-law. The judge was subject to personal attacks and his professional qualifications and the quality of his work were brought into question in the debate because he used his right to freedom of expression to state his opinion about an issue of public interest in the justice field. I also criticised the above legislative proposal for its incompatibility with the European Court's case-law on Article 3 of the European Convention on Human Rights, in a letter sent to the Serbian authorities prior to the above parliamentary debate.

Council of Europe major principles relating to the independence of the judiciary

The most relevant text relating to the independence of the judiciary is the Council of Europe Committee of Ministers' Recommendation (2010)12 to member states on judges: independence, efficiency and responsibilities.

Let me recall some of the main principles set out therein.

The independence of individual judges is safeguarded by the independence of the judiciary as a whole. As such, it is a fundamental aspect of the rule of law.

The independence of judges should be regarded as a guarantee of freedom, respect for human rights and impartial application of the law. Judges' impartiality and independence are essential to guarantee the equality of parties before the courts.

The independence of judges and of the judiciary should be enshrined in the constitution or at the highest possible legal level. The structural arrangements foreseen by those fundamental laws should demonstrate a clear division of authority between the executive, the legislature and the judiciary.

The procedures for appointing and promoting judges are key in the protection of the independence of the judiciary. The Council of Europe standards require that not less than half the members of the councils for the judiciary (which are to be established by law or under the constitution) should be judges chosen by their peers from all levels of the judiciary and with respect for pluralism inside the judiciary. Decisions about appointments and promotions should be based on objective criteria focused on professional merits and qualifications and not on the government's political considerations.

Another essential principle is that judges should have security of tenure until a mandatory retirement age – and even more crucially – that they should not have to fear dismissal for rulings which may not please those who are in power.

Each judge is responsible for promoting and protecting judicial independence. Judges and the judiciary should be consulted and involved in the preparation of legislation concerning their statute and, more generally, the functioning of the judicial system.

If commenting on judges' decisions, the executive and legislative powers should avoid both criticism that would undermine the independence of or public confidence in the judiciary and actions which may call into question their willingness to abide by judges' decisions (other than stating their intention to appeal).

Efforts at European level to protect the rule of law and judicial independence

There have been efforts at European level to address serious intrusions on judicial independence more systematically in some member states in recent years.

In 2016 the European Court rendered a judgement in the case of *Baka v. Hungary* relating to the premature removal of the applicant from the position of president of the Hungarian Supreme Court and the National Council of Justice, because in his professional capacity he criticised the legislative reform in Hungary affecting the judiciary. The Court found, inter alia, a violation of the applicant's right to freedom of expression underlining that each judge is responsible for promoting and protecting judicial independence and that judges and the judiciary should be consulted and involved in the preparation of legislation concerning their statute and, more generally, the functioning of the judicial system.

The Council of Europe Parliamentary Assembly has addressed rule of law issues, including the independence of the judiciary, in its resolutions including the 2017 resolution on New threats to the rule of law in Council of Europe member states, with a special focus on the rule of law in Bulgaria, the Republic of Moldova, Poland, Romania and Turkey. Most recently, in a 2019 resolution concerning the assassination of Daphne Caruana Galizia and the rule of law in Malta, the Assembly was concerned, inter alia, that judges and magistrates are appointed by the Prime Minister and called for a reform of the justice system which would uphold the independence of the judiciary.

In many of its opinions, the Venice Commission has assessed the compliance of member states' legislation with the relevant standards on the rule of law and the independence of the judiciary. In respect of Hungary alone, since 2011 the Venice Commission has adopted seven opinions relating to the rule of law, including judicial independence. It has also tackled these issues in its opinions on Bulgaria (2016), Poland (two in 2016 and two in 2017),

Turkey (two in 2017), Romania (2018 and 2019), Malta (2018) and Serbia (2018). The Venice Commission's opinions and its Rule of Law Checklist have been widely used and referred to in the infringement proceedings initiated by the European Commission against several member states mentioned below in this text.

The Group of States against Corruption (GRECO) has also been preoccupied with the impact of threats to the independence of the judiciary on the Council of Europe anti-corruption standards. For example, in respect of Romania, GRECO was deeply concerned about new legislation which included amendments "relating to the appointments and dismissals of senior prosecutors, functional independence of prosecutors, personal liability of judges and prosecutors, which, taken together, represent serious threats to the independence of the judiciary". GRECO reached similar conclusions in respect of Poland, finding that the cumulative effect of the various elements of the reform significantly weakened the independence of the country's judiciary, and Turkey, where it found that fundamental structural changes weakened judicial independence and led the judiciary to appear even less independent from the executive and political powers than before.

European Union institutions have also been addressing these issues and have taken some unprecedented steps in defence of the rule of law, democracy and fundamental rights. In 2018 the European Parliament, for the first time ever, called on the Council to determine a clear risk of a serious breach by Hungary of the EU's founding values. Among the Parliament's key concerns were threats to judicial independence. The Parliament has also been concerned about the situation of the rule of law and the independence of the judiciary in Romania in a resolution on the rule of law in this country adopted in November 2018. The European Commission has used infringement procedures against Hungary and Poland with reference to legislation undermining the independence of the judiciary.

The way forward

These developments show that European institutions have not been complacent in this field, however some of the aforementioned steps were long overdue.

We should be stronger, more resolute and more vocal in defending the rule of law and the independence of the judiciary. By defending these principles, we are defending human rights. As noted by the Venice Commission "the Rule of Law would just be an empty shell without permitting access to human rights".

Council of Europe member states need to fully comply with the European standards in this field and uphold the independence of the judiciary.

Scrutiny of the rule of law in Council of Europe member states against the relevant Council of Europe standards should be carried out more systematically.

Judges need to be involved and consulted in the preparation of legislation which concerns them and about the functioning of the judicial system.

Judges should enjoy security of tenure and protection from undue early removal from office or involuntary transfers.

The right of judges to express their views on matters of public interest should be safeguarded.

European citizens must hold their governments to account when the government's actions undermine the rule of law, democracy and human rights.

When the rule of law and the independence of judges are undermined, human rights are undermined.

Living in a clean environment: a neglected human rights concern for all of us

Human Rights Comment published on 4 June 2019

Tomorrow, 5 June, is World Environment Day. Initiated as an annual event by the United Nations to draw attention to pressing environmental problems, this year's theme is air pollution. The urgency of the problem cannot be overstated. According to the World Health Organization (WHO), more than 9 out of 10 people worldwide breathe polluted air, contributing to a third of all deaths by stroke, cardiovascular and respiratory diseases. The European Environment Agency estimates that polluted air causes almost half a million premature deaths each year in the European Union alone, and WHO says it decreases every European's life expectancy by almost an entire year. The thick smog blanketing European cities is one example that many of us know all too well: apart from my native Sarajevo, Katowice, Pristina and Skopje usually rank among the highest on lists of the most polluted cities in Europe or even the world. Air pollution contributes to respiratory diseases like asthma and allergies in children, as shown by research carried out in European nurseries and schools.

And this is just the air, but what about the other elements vital for our existence? Many Europeans expect drinkable water to be available at the turn of a tap. However, our water supply is recurrently strained from pollution, population growth and urbanisation. Parts of Greece, Portugal

or Spain suffer from severe droughts and violent forest fires, while cities like Barcelona or London have struggled with water scarcity, aggravated by climate change.

Our health, food safety, as well as housing, can also be negatively affected by improper disposal of waste and toxic materials, which pollute water and soil, poison crops, and potentially contribute to a higher incidence of cancer and endocrinological disorders. Disadvantaged communities tend to be disproportionally affected by this phenomenon, as shown by the situation in the Roma settlements in Pata-Rât, Romania, or in northern Mitrovica/ Mitrovicë, Kosovo* documented by my predecessors, though hazardous waste often has an impact upon the population at large, as in the case of Italy's Terra dei Fuochi. Moreover, Europe is no stranger to the galloping decline in biodiversity worldwide.

The above facts make two things clear to me: First, the environmental degradation we are exposed to in our daily lives can lead to very serious and continuing violations of our human rights, like the right to life, health, private life and home; Second, in order to protect our human rights, we must urgently get more serious about looking after the environment we live in.

Environmental degradation and human rights: States' existing obligations

The Council of Europe bodies overseeing the implementation of the European Convention of Human Rights and the European Social Charter have produced an extensive body of case law that delineates states parties' obligations in the field of the environment. Despite the absence in the Convention of a specific reference to the environment, the European Court of Human Rights has clearly established that various types of environmental degradation can result in violations of substantive human rights, such as the right to life, to private and family life, the prohibition of inhuman and degrading treatment, and the peaceful enjoyment of the home. Moreover, the European Committee of Social Rights has interpreted the right to health included in the Charter to encompass the right to a healthy environment.

The Court's jurisprudence shows that states should not only investigate violations and compensate individual victims, but that they also have an obligation to prevent such violations from occurring in the first place, including through general and precautionary measures to address environmental risks in a systemic manner.[1] This may require, for example, conducting environmental risk assessments, air and water quality control, environmental regulation and emergency planning. In certain circumstances, these obligations extend to controlling pollution caused by third parties, such as private companies.[2] The European Committee

of Social Rights, for its part, has found that states parties must strive to overcome pollution within a reasonable time and using available resources by taking concrete steps and monitoring progress.

Importantly, states must also guarantee procedures that allow concerned individuals to take action when confronted with environmental degradation. These include the rights to receive information about environmental issues, to participate in decision-making processes impacting the environment, and to have access to effective justice. These rights, which are enshrined in the 1998 Aarhus Convention,[3] have also been affirmed in the case-law of the Court.[4]

The standards articulated by the Council of Europe bodies should be considered within a broader body of international law (Stockholm Declaration of 1972, Rio Declaration of 1992, Paris Agreement of 2015), as well as other international and regional courts' decisions,[5] and guidance by various international human rights monitoring bodies. The 16 Framework Principles of Human Rights and the Environment issued by the UN Special Rapporteur on human rights and the environment in 2018 give an overview of states' obligations in this area.

Growing momentum: initiatives to assert rights related to a clean environment

I find it encouraging that the sense of an impending emergency has galvanised many people around a variety of initiatives to demand rights related to a clean and healthy environment, notably by exercising their freedom of speech and assembly. Most striking at the moment is the mobilisation of youth worldwide who, like Swedish activist Greta Thunberg, are demonstrating in great numbers at the "Fridays for Future."

Litigation in domestic courts, aimed at compelling governments and businesses to respect human rights related to a clean and healthy environment, is also starting to bring results. A well-known ongoing case is that of the Urgenda Foundation, where a Dutch appeals court found the government's current action to reduce greenhouse gas emissions to be insufficient, basing its reasoning on the state's obligations with regard to the right to life and to private and family life.

In many member states, National Human Rights Structures are working on human rights related to the environment, handling individual complaints, examining and reporting on environmental human rights violations, and injecting a rights-based approach in environmental policy-making. A Network of Ombudsmen was created in 2017 in the Balkans to foster regional cooperation on these matters.

Protecting and empowering environmental activists

Environmental human rights defenders make a critical contribution in ensuring that state policies are consistent with human rights and in defending victims. However, these activists are amongst those most at risk of oppression and intimidation. I am concerned that, across Europe, peaceful environmental activists have been blocked from attending environmental summits, subjected to house arrest and surveillance measures, violent physical attacks and legislation that effectively impedes their ability to carry out their work. All too often, they are simply ignored by policy-makers. This must stop.

States must ensure the safety of environmental human rights defenders and guarantee enabling conditions for the work, as underscored in a recent resolution adopted by the UN Human Rights Council. Political leaders must also refrain from using language about environmental defenders that stigmatises them or otherwise undermines the fundamental importance of their engagement.

Time to act now

The UN Human Rights Committee recently warned: "[e]nvironmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life". The urgency, the interdependence between human rights and the environment, as well as the standards to be respected by states, are clear. We now must turn the page on poor governance and short-sighted, careless politicking, and act to preserve our future.

States must adopt – and adhere to - ambitious, holistic policies and measures to preserve the environment and biodiversity, combat air, water and soil pollution, mitigate climate change and ensure proper waste disposal. In doing so, they should pay extra attention to protect the rights of those most vulnerable, including children, the poor and marginalised communities who tend to be disproportionally affected by environmental degradation. Rather than a piecemeal approach that merely reacts to individual complaints, what is needed is a preventive approach at national and local level grounded in the human rights standards of the Council of Europe. This also means ensuring that environmental policies are accompanied by measures to protect the rights of those they may impact, including the right to work and to an adequate standard of living of those working in mining or heavy industries, for example. It is extremely important for states to educate people from an early age of the need to preserve the environment and teach them how to do so. Further, states must ensure people's rights to

information, participation and redress, and demonstrate their commitment to doing so by ratifying the Aarhus convention.

European countries must not disregard the consequences of the pollution produced on our continent for the human rights of people living in other parts of the world. Europe should strive to set an example in acting resolutely to prevent human rights violations caused by climate change.

I see an important role for the Council of Europe in helping member states prevent further violations of the ECHR related to environmental harm. The Organisation should insist on swift execution of the Court's judgments related to environmental rights.

Finally, I encourage all member states of the Council of Europe to support current efforts to obtain explicit recognition, at the United Nations level, of the right to a healthy environment.[6] As shown above, many of the elements constitutive of this right are well-established. Over 25 member states of the Council of Europe have already included this right in their constitutions. International recognition would help clearly state the law, put a clean environment on par with other key objectives of social policy, and help raise awareness about the dramatic human rights impact of environmental pollution.

As Commissioner for Human Rights, I intend to do my part, notably by taking under scrutiny human rights violations caused by environmental degradation in my work. Environmental degradation and human suffering are flip sides of the same coin. Our efforts to protect human rights should therefore go hand in hand with protecting the environment. Let us clean up our common home together.

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[1] See, for example, Tătar v. Romania (2009).

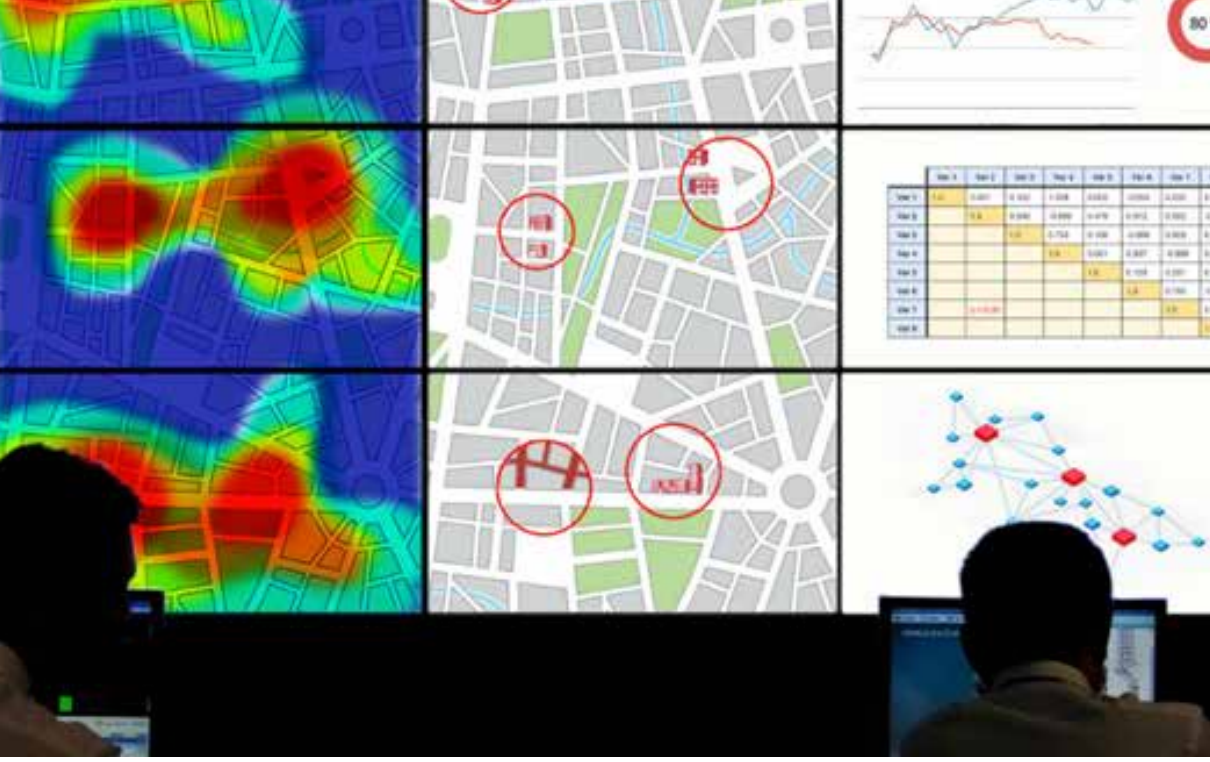
[2] See, for example, López Ostra v. Spain (1994).

[3] The UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention) has been ratified by 47 states, 41 of which are member states of the Council of Europe. Six member states (Andorra, Liechtenstein, Monaco, the Russian Federation, San Marino and Turkey) have not yet ratified it.

[4] See, for example, Guerra and Others v. Italy (1998); Giacomelli v. Italy (2006); Di Sarno v. Italy (2012); Öneryildiz v. Turkey (2004) and Fadeyeva v. Russia (2005).

[5] See, for example, Inter-American Court of Human Rights, Advisory Opinion nr 23, 2017, official summary.

[6] This could happen through various means, including a resolution adopted by the UN Human Rights Council or General Assembly, or the adoption of the Global Compact for the Environment, proposed by France, as explained by the UN Special Rapporteur on human rights and the environment.



Ethnic profiling: a persisting practice in Europe

Human Rights Comment published on 9 May 2019

Racial or ethnic profiling in policing has been defined as "the use by the police, with no objective and reasonable justification, of grounds such as race, colour, languages, religion, nationality or national or ethnic origin in control, surveillance or investigation activities".[1] Though by no means new, this phenomenon is still widespread across the Council of Europe area, despite a growing awareness of the need to confront it supported by an evolving body of case-law.

Profiling the problem

There are several areas in which ethnic profiling may manifest itself more prominently. Government policies may provide excessive discretionary powers to law enforcement authorities, who then use that discretion to target groups or individuals based on their skin colour or the language they speak. Most often, ethnic profiling is driven by unspoken biases. One of its most prevalent forms is the use of stop and search procedures vis-à-vis minority groups and foreigners. A related pattern is the performing of additional identity checks or interviews of persons or groups at border crossing points and transportation hubs such as airports, metro and railway stations and bus depots. In certain contexts, persons belonging to minority groups have been prevented from leaving the country of which

they are nationals.[2] Racial and ethnic profiling also occurs in the criminal justice system, with persons belonging to minority groups often receiving harsher criminal sentences,[3] sometimes also due to implicit bias which is increasingly being perpetuated by machine-learning algorithms.

According to the results of an EU-wide survey[4] carried out in 2015-2016 of over 25,000 respondents with different ethnic minority and immigrant backgrounds, 14% had been stopped by the police in the 12 months preceding the survey. In France, according to the results of a national survey of more than 5,000 respondents,[5] young men of Arab and African descent are twenty times more likely to be stopped and searched than any other male group. As for the UK - where police are required by law to collect and publish disaggregated data on police stop-and-search practices - Home Office statistics for 2017-2018 show that, in England and Wales, black people were nine and a half times more likely to be stopped as white people.[6]

Ethnic profiling of Roma exists throughout Europe. In addition, arbitrary identity checks of persons from the North Caucasus are reportedly common in the Russian Federation,[7] and police misconduct and harassment of suspected illegal migrants or black people has been reported in Ukraine[8] and the Republic of Moldova.[9]

A growing body of judicial decisions

National and international courts have shed a stark light on these worrying trends. In Timishev v. Russia,[10] the European Court of Human Rights held that no difference in treatment which is based exclusively or to a decisive extent on a person's ethnic origin is capable of being objectively justified in a contemporary democratic society built on the principles of pluralism and respect for different cultures. As to the burden of proof, the Court held that once an applicant has shown that there has been a difference in treatment, it is up to the government to demonstrate that such difference was justified. More recently, in Lingurar v. Romania[11], the Court found violations of Article 14 (prohibition of discrimination) of the European Convention on Human Rights (the Convention) in conjunction with Article 3 (prohibition of inhuman or degrading treatment) in a case of a racially motivated raid by police on a Roma household in Romania in 2011. In this ruling dealing with what it called "institutionalized racism" directed against Roma, the Court for the first time explicitly used the term "ethnic profiling" with regard to police action. A central finding of the judgment is that the authorities have "automatically connected ethnicity to criminal behaviour", which made their action discriminatory.

In a case involving a family of African origin who were the only people to be subjected to an identity check on a German train, the Higher Administrative Court of Rhineland-Palatinate ruled in the family's favour, arguing that police

identity checks based on a person's skin colour as a selection criterion for the control were repugnant to the principle of equality before the law.[12] In the Netherlands, the Supreme Court has questioned the discriminatory nature of a national police programme (known as the "Moelander" project) allowing the police officers to target cars with Eastern European plates when performing road checks.[13]

In Sweden, the Svea Court of Appeal examined a claim by several Roma persons concerning their inclusion in a Swedish police register solely based on their ethnic origin. The court requested the government to prove that there was another valid reason for including these individuals in the registry. As the government was unable to furnish the requested evidence, the court concluded that the persons' ethnicity was the sole reason for their inclusion in the register, which amounted to a violation of the Police Data Act and of Article 14 (prohibition of discrimination) of the Convention in conjunction with Article 8 (right to respect for private and family life).[14] In France, in a case involving 13 individuals who complained about being subjected to identity control by the police because of their physical appearance, the Cassation Court held that the burden of proof lies with the authorities when credible evidence points to the existence of discriminatory practice.[15]

Algorithmic profiling

Though still in its experimental stages, the use of machine-learning algorithms in the criminal justice systems is becoming increasingly common. The UK, the Netherlands, Germany and Switzerland are but a few European countries that have been testing the use of machine-learning algorithms, notably in the field of "predictive" policing.

Machine-learning algorithms used by the police and in the criminal justice system have sparked heated debates over their effectiveness and potentially discriminatory outcomes. The best-known examples are: PredPol, used to predict where crimes may occur and how best to allocate police resources; HART (Harm Assessment Risk Tool), which assesses the risk of reoffending for the purpose of deciding whether or not to prosecute; and COMPAS (Correctional Offender Management Profiling for Alternative Sanctions), used to forecast reoffending in the context of decisions on remand in custody, sentencing and parole. Apart from discrimination-related concerns, the right to privacy and data protection are major concerns associated with the use of algorithmic profiling. A 2018 report by the Royal United Services Institute for Defence and Security Studies, a British defence and security think tank, acknowledged the fact that machine-learning systems like HART will "inevitably reproduce the inherent biases present in the data they are provided with" and assess disproportionately targeted ethnic and religious minorities as an increased

risk.[16] A 2016 study by ProPublica questioned the neutrality of COMPAS when it found that whilst it made mistakes roughly at the same rate for both white and black individuals, it was far more likely to produce false positives (a mistaken `high risk´ prediction) for black people and more likely to produce false negatives (a mistaken `low risk´ prediction) for white people.[17]

Overcoming discriminatory profiling: prevention and remedies

Collection and publication of statistical data on policing - disaggregated by nationality, language, religion and national or ethnic background - is an essential step towards identifying any existing profiling practices and increasing the transparency and accountability of law enforcement authorities. Strategic litigation by the lawyers, NGOs and human rights structures, where relevant, would also contribute to increased awareness of the problem and compel to find appropriate solutions.

States should adopt legislation clearly defining and prohibiting discriminatory profiling and circumscribing the discretionary powers of law enforcement officials. Effective policing methods should relate to individual behaviour and concrete information. A reasonable suspicion standard should be applied in stop and search, and police should undergo continuous training in order to be able to apply it in their daily activities. Furthermore, law enforcement officials should be advised to explain the reasons for stopping a person, even without being asked, as this can help dispel perceptions of bias-based profiling and thereby boost public confidence in the police. Efforts to address discriminatory profiling should involve local communities at the grass-roots level; law enforcement agencies must engage with their communities to gain their trust and respect.

Moreover, in their communication with the media, the police should be careful not to spread and perpetuate prejudice by linking ethnicity, national origin or immigration status with criminal activity. The media, on its part, should avoid stereotyping persons belonging to minority groups, as well as migrants, refugees and asylum-seekers, as this can fuel racism and hatred and may contribute to the "normalisation" of discriminatory practices, including ethnic profiling. Instead, it should correctly reflect the positive contribution of minority groups to the communities in which they live and partner with schools, national human rights institutions and civil society to help build more inclusive and tolerant societies, including through human rights education programmes.

As long as the use of machine-learning algorithms to support police work is still at the experimental stage, governments should put in place a clear set of rules and regulations regarding the trial and subsequent application of any algorithmic tools designed to support police work. This should include

a defined trial period, human rights impact assessments by an independent authority, and enhanced transparency and disclosure obligations, combined with robust data protection legislation that addresses artificial intelligence-related concerns. Machine-learning systems should benefit from a pre-certification of conformity, issued by independent competent authorities, able to demonstrate that measures were taken to prevent human rights violations at all stages of their lifecycle, from planning and design to verification and validation, deployment, operation and end of life.

Using solid and verified data in the process of developing algorithms for the law-enforcement authorities is vital. Feeding an algorithm with data that reproduces existing biases or originates from questionable sources will lead to biased and unreliable outcomes. For police services, the prediction of commission of crimes should not be only based on statistics established by a machine against an individual, but be corroborated by other elements revealing serious or concordant facts. Legislation should include clear safeguards to ensure the protection of a person's right to be informed, notably to receive information about personal data and how it can be collected, stored or used for processing.[18]

Access to judicial and non-judicial remedies in cases of alleged ethnic profiling, including those stemming from the use of machine-learning algorithms, is also crucial. National human rights structures, including equality bodies, as well as independent police oversight authorities should play an increasingly active role in detecting and mitigating the risks associated with the use of algorithms in the criminal justice systems. They should closely co-operate with data protection authorities, making use of their technical expertise and experience in this matter. Courts and human rights structures should be equipped and empowered to deal with such cases, keeping up to date with rapidly developing technologies. Finally, governments should invest in public awareness and education programmes to enable everyone to develop the necessary skills to engage positively with machine-learning technologies and better understand their implications for their lives.

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[1] European Commission against Racism and Intolerance (ECRI), General Policy Recommendation No 11 on Combating Racism and Racial Discrimination in Policing, CRI(2007)39, 29 June 2007, page 4.

[2] "The right to leave a country", Issue Paper published by the Council of Europe Commissioner for Human Rights, 2013.

[3] In the United Kingdom, the Lammy Report (2017) found that minority ethnic individuals were more likely to receive prison sentences than defendants from the majority population.

[4] Second European Union Minorities and Discrimination Survey (EU-MIDIS II) carried out by the European Union's Fundamental Rights Agency.

[5] Enquête sur l'accès aux droits, Volume 1 – Relations police/population : le cas des contrôles d'identité, Défenseur des droits, République Française.

[6] https://www.ethnicity-facts-figures.service.gov.uk/crime-justice-and-the-law/policing/stop-and-search/latest

[7] Advisory Committee on the Framework Convention for the Protection of National Minorities, Fourth Opinion on the Russian Federation, adopted on 20 February 2018, ACFC/OP/IV(2018)001.

[8] Advisory Committee on the Framework Convention for the Protection of National Minorities, Fourth Opinion on Ukraine, adopted on 10 March 2017, ACFC/OP/IV(2017)002.

[9] European Commission against Racism and Intolerance, Report on the Republic of Moldova (fifth monitoring cycle), adopted on 20 June 2018, CRI(2018)34.

[10] Judgment of 13 December 2005, applications nos.nos. 55762/00 and 55974/00.

[11] Lingurar v Romania, judgment of 16 April 2019, application no. 48474/14.

[12] http://www.bug-ev.org/en/activities/lawsuits/public-actors/discriminatory-stop-and-search-cases/racial-profiling-on-the-regional-train-to-bonn.html

[13] https://www.fairtrials.org/news/plate-profiling-dutch-supreme-court-questions-discriminatory-police-road-checks

[14] https://crd.org/2018/03/25/historic-victory-in-the-court-of-appeal/

[15] https://www.courdecassation.fr/communiques_4309/contr_identite_discriminatoires_09.11.16_35479.html

[16] https://rusi.org/sites/default/files/20180329_rusi_newsbrief_vol.38_no.2_babuta_web.pdf

[17] https://www.propublica.org/article/machine-bias-risk-assessments-in-criminal-sentencing

[18] See the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, 1981.

European states must demonstrate resolve for lasting and concrete change for Roma people

Human Rights Comment published on 4 April 2019

On 8 April, we will celebrate International Roma Day. This is a day to celebrate Roma culture and Roma contributions to European societies, and the cultural diversity of Europe. The 8th of April, which commemorates the first World Romani Congress held in London in April 1971, should also be a reminder of the urgent need to better protect the human rights of Roma.

Across Europe, the continuation of human rights abuses targeting Roma goes against all efforts otherwise made to improve their access to education, health care and employment and prevents them from fully participating in society.

Let me illustrate with a few examples.

In early January of this year, the entire Roma community (more than 100 persons) of the village of Voivodinovo in Bulgaria had to leave their houses and move away, under the pressure of other inhabitants. This happened following a brawl in the village which resulted in a non-Roma person being injured. A few days after the Roma left the village, the local authorities started demolishing their houses on grounds of health and safety and

the persons expelled were reportedly prevented from returning to the village by the local authorities and inhabitants. They are currently living with relatives in a neighbouring town under very precarious conditions. [1] I have been informed that many children can no longer attend school and that none of the families has so far been provided with alternative accommodation. Moreover, these events triggered unacceptable levels of hate speech against Roma in the country, including at the highest level of authorities.

Unfortunately, this case is not an isolated one in Europe. I urge all national authorities to step up efforts to prevent such forced evictions from happening. Where they have happened, the authorities, and in this particular case the Bulgarian authorities, should carry out a swift and effective investigation into such events and ensure that the Roma families concerned are provided with adequate alternative accommodation without delay. At the same time, it is urgent to stop the dissemination of hate speech of the kind that was heard following the Voivodinovo events, and to condemn and adequately sanction those who incite to racial hatred.

Back in 2016, my Office had already addressed the authorities of Bulgaria, as well as those of Albania, France, Italy, Hungary, Serbia and Sweden and asked them to put an end to forced evictions of Roma without due process and without provision of adequate alternative housing. Instead of evictions, it called for investing more in finding durable housing solutions for Roma families.

In 2018, we witnessed another kind of forcible evictions of Roma communities from their settlements, this time in Ukraine. Roma were chased away from their houses by far-right extremist groups in five different locations. In one of those cases, in Western Ukraine, a group of masked men attacked a Roma camp, killing a young man and injuring four others, including a child. While the investigations are still ongoing for all these cases, it is unclear whether the prosecution authorities have relied on hate crime legislation in all of them.

Limited impact of national strategies on the social integration of Roma

There is a striking contradiction between such cases of human rights abuses, which run counter to efforts to improve Roma's access to adequate housing or education, and the authorities' intention to improve the living conditions of the Roma through national strategies and projects.

The same question arises in several Council of Europe member states, where policies to improve social integration of the Roma have been adopted and, at the same time, many Roma have been subjected to repeated forced evictions without adequate alternative accommodation, in contradiction

with international human rights standards. In a 2018 report the European Committee of Social Rights of the Council of Europe found that, for failing to put an end to forced evictions, Belgium, Bulgaria, France, Greece and Italy had not complied with their obligations under the European Social Charter.[2]

As the EU Framework for National Roma Integration Strategies draws to an end in 2020 and four years have passed since the completion of the Decade of Roma Inclusion (2005-2015), various evaluations show that the national strategies have unfortunately not led to the expected substantial and lasting changes in the daily lives of Roma across Europe. The results of a 2017 survey carried out by the EU Fundamental Rights Agency (FRA) in nine EU member states illustrate this gap. It indicates that 30% of Roma children live in a household that has faced hunger at least once in the month before the survey, and that in seven of the countries concerned, between 9% and 68% of the Roma surveyed did not have tap water inside their dwelling. It also shows alarming figures regarding school segregation.

Another study covering the Western Balkan countries, published in March 2019 by the World Bank, also shows the persistence of long-standing problems across the region, such as significant rates of school segregation, a lack of affordability of health care insurance which restricts access to health care and a persistent lack of identity documents, limiting access to social protection.

Anti-Gypsyism as a major obstacle to the social inclusion of Roma

While several reasons can explain the lack of substantial progress in advancing the rights of Roma over the last decade, I would like to highlight one crucial element missing from strategies deployed to date: the need for a meaningful commitment to combating racism and discrimination against Roma and to preventing egregious human rights violations affecting them.

Repeated forced housing evictions as mentioned above and other violations, such as school and housing segregation, segregation in maternity wards, ethnic profiling by the police, and undue separation of children from their families, are all manifestations of the many forms that pervasive anti-Gypsyism can take throughout Europe. Several European institutions, including the Council of Europe and the European Commission, have acknowledged that the lack of efforts to tackle anti-Gypsyism is an obstacle to social integration of Roma.[3]

Anti-Gypsyism has been defined by the Council of Europe Commission against Racism and Intolerance (ECRI) as "a specific form of racism, an ideology founded on racial superiority, a form of dehumanisation and institutional racism nurtured by historical discrimination, which is expressed,

among others, by violence, hate speech, exploitation, stigmatisation and the most blatant kind of discrimination."[4]

For all its topicality, anti-Gypsyism is nevertheless not a new phenomenon; it is deeply rooted in centuries of exclusion and violence against Roma across the continent, which culminated with the Roma Holocaust during the Second World War.

Recent mob attacks against Roma in the region of Paris, which followed the dissemination on social networks of false information concerning alleged kidnappings of children by Roma, are a blatant manifestation of harmful, age-old prejudice against Roma. It also shows how easily they can be reactivated. I welcome the prompt reaction of the French authorities who took swift measures to cut short the dissemination of false information and the spreading of violence and arrest perpetrators of violence.

Anti-Gypsyism forms the bedrock for the repetition of serious human rights violations. It can take various forms, ranging from hate crimes and hate speech against Roma -which is nowadays increasingly used online and offline by mainstream politicians and government officials- to more indirect forms of discrimination. These include among others widespread institutional discrimination, the recurrence of patterns of social exclusion and poverty, patronising policies and an overall lack of consideration for the views of the Roma themselves.

All too often, anti-Gypsyism also results in people considering Roma as a monolithic group of people that have similar "problems". This in turn translates into policies and practices that apply to Roma as a group, without any consideration for the diversity in the Roma communities and for the specific needs and aspirations of the individuals concerned, which in turn seriously limits these measures' effectiveness. It is therefore crucial to promote the involvement of Roma in decision-making concerning them and to design policies that really seek to match the needs of those concerned.

What can we do to tackle anti-Gypsyism more effectively?

Firstly, it is paramount to recognise anti-Gypsyism as a major obstacle on the way to improving the human rights of Roma. Anti-Gypsyism needs to be tackled far more vigorously and to do so, authorities at the highest level should demonstrate the required political will and commitment.

To tackle anti-Gypsyism, policies and programmes to improve the situation of Roma, at national and European level, should place anti-discrimination measures front and centre. In parallel, the authorities should mainstream measures to tackle anti-Gypsyism across the board in policies which target society as a whole.

Concrete actions should include:

- firmly and immediately condemning and adequately sanctioning all instances of hate speech against Roma, including when it comes from high-level politicians;
- increasing the training of civil servants, police officers and members of the judiciary, on anti-Gypsyism and its consequences;
- reinforcing the capacity of equality bodies to deal with discrimination against Roma;
- improving Roma's access to justice, in line with the 2017 Recommendation of the Council of Europe Committee of Ministers on improving access to justice for Roma and Travellers in Europe;
- improving Roma's access to national human rights institutions as these institutions can play an important role in protecting their human rights and in raising-awareness about anti-Gypsyism;
- establishing truth and reconciliation mechanisms to explore past abuses against Roma, raise awareness of society and promote trust and reconciliation;
- providing meaningful and sustainable support to Roma civil society organisations and ensuring that they are fully consulted and involved in all measures to combat anti-Gypsyism;
- ensuring the effective involvement of Roma civil society organisations in the preparation, implementation and monitoring of programmes and policies concerning them, while paying attention to the diversity prevailing within Roma communities and to the significant impact of intersectional discrimination. For that matter, member states could take inspiration from projects carried out as part of the Council of Europe/ European Union Joint Programmes Romed, Romact and Romacted, which were set up to promote Roma empowerment at the local level and to develop partnerships with local authorities;
- stepping up action to eliminate obstacles to the participation of Roma in political, cultural and socio-economic life;[5]
- implementing desegregation strategies to put an end to long-standing policies of exclusion of Roma, especially in areas such as education, housing or health care.

These recommendations are not groundbreaking. Yet, the fact that so many Roma in Europe continue to face serious human rights violations on a regular basis makes them topical and calls for their prompt implementation. It is time for European states to demonstrate resolve for lasting and concrete change for Roma people.

[1] See Bulgarian Helsinki Committee, Appeal to help 17 Roma families in danger of losing their only homes in Voivodinovo, 14 February 2019.

[2] European Committee of Social Rights, Follow-up to decisions on the merits of collective complaints, Findings 2018, December 2018.

[3] Council of Europe, Thematic Action Plan on the Inclusion of Roma and Travellers (2016-2019); European Commission, Communication from the Commission to the European Parliament and the Council: Report on the evaluation of the EU Framework for Roma National Integration Strategies up to 2020, Brussels, 04/12/2018.

[4] ECRI General Policy Recommendation N°13 on combating anti-Gypsyism and discrimination against Roma, 24 June 2011. See also, European Parliament Resolution on fundamental rights aspects in Roma integration in the EU: combating anti-Gypsyism, 2017. And Alliance against antigypsyism.

[5] The Council of Europe is also implementing a programme of Roma political schools set up to provide mentoring and training to promote a more effective participation in political processes.

Paris Principles at 25: strong National Human Rights Institutions needed more than ever

Human Rights Comment published on 18 December 2018

25 years after the international community first formally embraced the idea of creating national institutions for the promotion and protection of human rights through the endorsement of the Paris Principles, it is obvious that independent and effective national human rights institutions are every bit as important and relevant today.

On 20 December 1993, the UN General Assembly adopted resolution 48/134 on "National Institutions for the Promotion and Protection of Human Rights", with an annex containing the Principles relating to the Status of National Institutions, better known as Paris Principles, in which it encouraged all states in the world to set up independent national human rights institutions (NHRIs). NHRIs are non-judicial, independent institutions created by states through their constitution or law, with the mandate to promote and protect human rights. States are free to decide the best type of NHRI for their domestic purposes. In Europe, the most common models are ombudsman institutions, human rights commissions, hybrid institutions (which combine several mandates, including that of equality body), and human rights institutes and centres.

The *Paris Principles* constitute a set of internationally recognised standards to assess the credibility, independence and effectiveness of NHRIs. To be

fully effective, NHRIs should have a broad mandate to deal with all human rights; an inclusive and transparent selection and appointment process for their leadership; be independent both in law and in practice; have access to sufficient resources and staff; and co-operate effectively with national and international stakeholders.

NHRIs are uniquely placed to hold governments to account and advance human rights. As state-created and state-funded institutions, they enjoy special legitimacy and access to policy makers. At the same time, they are mandated to co-operate closely with civil society. They can thus act as a bridge between civil society and the authorities, while at the same time, being independent from both. As local actors, NHRIs have a deep understanding of the domestic context and can conduct persistent advocacy for change.

Not all NHRIs are fully effective and independent, but those that comply with the *Paris Principles* have become increasingly recognised as crucial actors within the global human rights framework.

Expansion and contribution of NHRIs in Europe

At the beginning of the 90's, there were only a handful of NHRIs in Europe. The endorsement of the Paris Principles led to an impressive growth in the number of NHRIs. In 2018, there were 27 European NHRIs accredited by the Global Alliance of NHRIs (GANHRI) with an A status (fully compliant with the Paris Principles) and 11 with a B status (partially compliant).[1] While a large majority of European countries have an NHRI nowadays, a few still do not, such as Italy, Malta and Switzerland. Another significant step was the establishment of networks that enable peer-exchange and the representation of NHRIs, such as the European Network of NHRIs (ENNHRI) in 2013.

Regional and international organisations have actively encouraged and supported the establishment of NHRIs. In 1997, for example, the Committee of Ministers of the Council of Europe adopted Recommendation R(97)14 and Resolution R(97)11, inviting member states to establish effective NHRIs, and the Council of Europe to develop co-operation activities with them. Last month, the Committee of Ministers adopted Recommendation CM/Rec(2018)11 on "The need to strengthen the protection and promotion of the civil society space in Europe", which recognises both the role of NHRIs in promoting and protecting an enabling environment for human rights, and the threats they face. The mandate of the Commissioner for Human Rights of the Council of Europe also foresees close co-operation with NHRIs, which I intend to continue, as demonstrated through the multiple consultations I held with NHRIs around country visits this year. I consider NHRIs as my natural counterparts at the national level, and as precious partners to

monitor and promote human rights.

There is no doubt that strong, independent, and effective NHRIs are a pillar of democracy, the rule of law and respect for human rights. Their contribution to the promotion and protection of human rights in Europe over the past two decades has been immense, from encouraging the ratification of international treaties, to monitoring their daily implementation and encouraging states to address systemic violations.

NHRIs as backstop against attacks on democracy, rule of law and human rights

As Europe is going through a worrying backlash against human rights, with populism and nationalism on the rise, and attempts to weaken other watchdogs such as the judiciary and civil society, it is heartening to see that many NHRIs are rising to the challenge as champions for human rights.

NHRIs have provided critical assessments of policies and laws that undermine human rights, and explored innovative strategies in their work. The French Commission Nationale Consultative des Droits de l'Homme (CNCDH), for example, denounced abuses in the context of the state of emergency that followed terrorist attacks in France in 2015, in a difficult political environment and in the absence of public support. The Polish Ombudsman has actively defended freedom of assembly and has been a vocal critic of laws that increased political control over courts and key judicial institutions. The Croatian Ombudswoman has investigated the situation of migrants at the border with Bosnia and Herzegovina, and repeatedly notified the Croatian authorities of serious human rights violations committed by law enforcement officers. In Armenia, as protestors filled the streets in April 2018, the Human Rights Defender and his office worked around the clock to protect the right to liberty and security by visiting police stations and places of detention. The NHRIs in Scotland and Latvia have devoted significant attention to economic, cultural and social rights, including on the need to fight poverty and access to decent and affordable housing for all.

Realising the need to regain support from the public for human rights, NHRIs have started putting more emphasis on their awareness-raising mandate, using new methods of communication. The Scottish human rights commission, for example, has strived to reach new groups of people, notably through social media campaigns involving famous artists and producing videos, for example on the right to housing. The Georgian and Polish Ombudspersons conduct regular "town hall" meetings with inhabitants of regions located away from the capital cities. The Finnish NHRI was instrumental in promoting and enhancing human rights education in the regular school curriculum.

Several NHRIs have also stepped up their strategic litigation work before national courts, as well as regional courts and international mechanisms. For example, ENNHRI and NHRIs' third party interventions at the European Court of Human Rights (ECtHR) can bring forward a national perspective and lead to impactful case-law. ENNHRI and individual NHRIs can also provide up-to-date information to the Committee of Ministers about the execution of the Court's judgments.

NHRIs under threat

Despite these positive examples, I observe with concern that several NHRIs in Europe have experienced blows to their independence and effective operations over the past few years. These attacks have taken several forms, from head-on criticism and threats, to more subtle damaging tactics.

In some cases, NHRIs have experienced drastic downsizing of their budgets or the addition of new functions without additional resources, with serious consequences for their ability to carry out their work effectively. While I understand that reducing the financial resources of public bodies is sometimes unavoidable in times of austerity, unjustified cuts targeting NHRIs can also reveal retaliation by the authorities. For instance, the budget of the Polish Ombudsman has been significantly reduced in recent years in spite of an increasing caseload. Similarly, unjustified changes of mandates that weaken an NHRI should raise alarm. Another way to weaken NHRIs is to deprive them of their very "raison-d'être", that is access to policy makers and policy-making processes. In Croatia, the border police recently denied the Ombudswoman access to its files, in a clear violation of her investigative powers. In some countries, such as Serbia and Georgia, politicians have in the past made public statements criticising the heads of NHRIs.

The leadership of a NHRI is particularly important to protect its independence and ensure the relevance of its work. Nominating a weak head of institution can quickly and irremediably compromise its performance.

Maintaining independence and working on unpopular issues takes great strength and courage. The independent NHRIs that come under threat because of their human rights work can be considered as human rights defenders and should have access to effective protection mechanisms. ENNHRI has adopted a policy on NHRIs under threat, and I am determined to speak up to defend them whenever it can be helpful.

What is at stake with these attacks is the weakening of effective human rights protection for all in democratic societies. It is only when NHRIs are able to operate independently and efficiently that they can also offer adequate protection to individuals and other human rights defenders.

Recommendations:

To all Council of Europe member states:

- establish NHRIs when they do not exist, and strengthen those that exist in full compliance with the *Paris Principles,* including through asking for technical assistance, as relevant, from UN OHCHR and ENNHRI;
- ensure that the selection and nomination process of NHRIs' leadership is meritbased, transparent and participatory, and scrupulously respect the independence of NHRIs;
- provide the NHRIs with sufficient resources and staffing to ensure that they can effectively carry out their mandate;
- ensure that NHRIs enjoy adequate access to policy makers, including timely consultations on draft legislation and policy strategies with human rights implications;
- implement NHRIs' recommendations in a timely fashion and provide regular reports on this implementation;

To European NHRIs:

- seek accreditation with GANHRI and continuously work on strengthening compliance with the *Paris Principles*, including by ensuring strong independence and working on all relevant human rights issues*;*
- continue to improve the GANHRI accreditation process to ensure that it adequately reflects the credibility of NHRIs and provides guidance for their strengthening;
- resort to available protection mechanisms when facing pressure, including ENNHRI's policy on NHRIs under threat, and assistance from the Council of Europe Commissioner for human rights;
- closely cooperate with other national human rights bodies, civil society and human rights defenders, as well as regional and international human rights mechanisms.

Independent and effective NHRIs are a jewel of the human rights system. They bring international human rights obligations home to make them a reality in people's daily lives, and act as checks and balances to guard democracy and the rule of law. We need to protect NHRIs so that they can be strong and protect us all.

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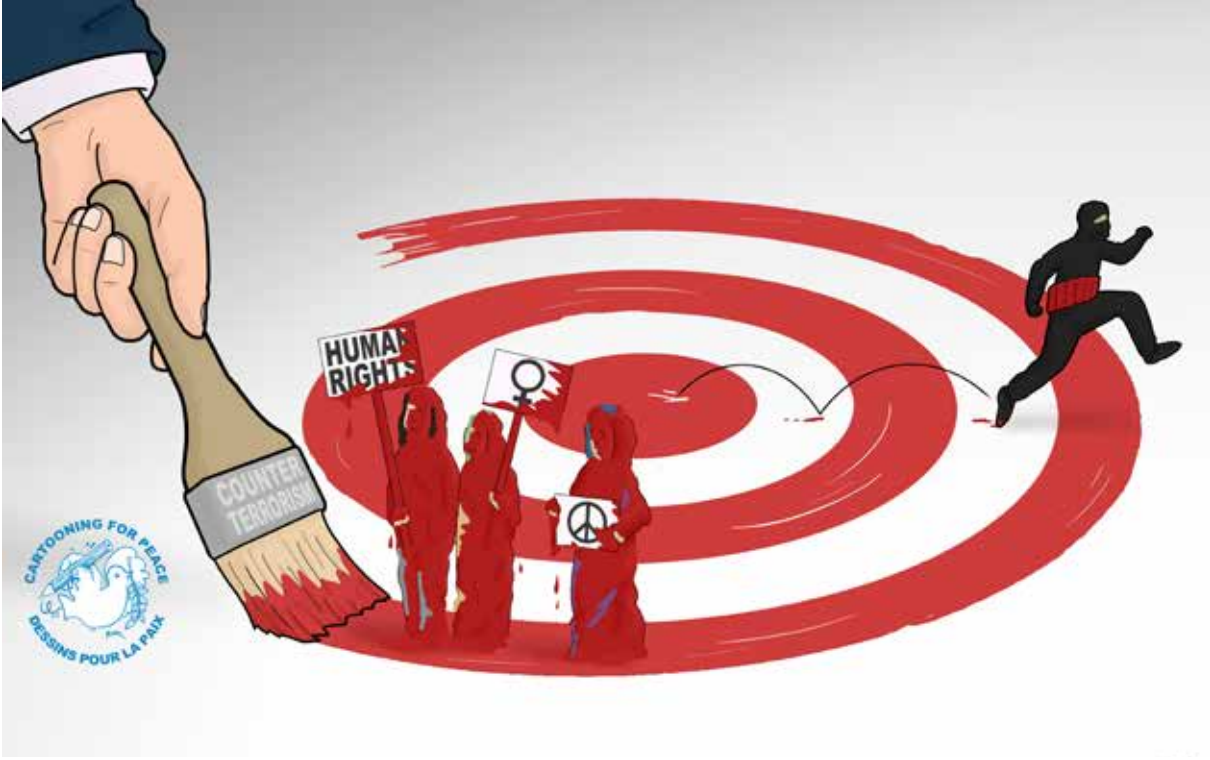
[1] See Global Alliance of National Human Rights Institutions, Accreditation status as of 8 August 2018, available at: https://nhri.ohchr.org/EN/Documents/Status%20Accreditation%20Chart%20%288%20August%202018.pdf



Misuse of anti-terror legislation threatens freedom of expression

Human Rights Comment published on 4 December 2018

When terrorism spreads, states are often tempted to restrict fundamental freedoms for the sake of fighting it and preventing further attacks. Terrorism constitutes a serious threat to human rights and democracy and action by states is necessary to prevent and effectively sanction terrorist acts. However, the misuse of anti-terrorism legislation has become one of the most widespread threats to freedom of expression, including media freedom, in Europe.

A disturbing trend in Europe

The issue is not new. Since the nineteenth century, Europe has been hit by terrorist attacks perpetrated in the name of anarchist, revolutionary, autonomist or reactionary ideologies. Despite this long history, governments usually give little consideration to past experiences when designing counter-terrorism policies. Hasty reactions often results in the absence of any human rights impact assessment of counter-terrorism measures implemented in the past, thus ignoring the lessons of history, including the fact that restrictions to freedom of expression have never demonstrated their efficiency in fighting terrorism.

Laws criminalising offences such as "encouragement of terrorism" and "extremist activities" as well as offences of "praising", "glorifying", or "justifying" terrorism have proliferated in Council of Europe member states. Apology of terrorism is widespread, especially online, and must be combatted. But counter-terrorism legislation may become a dangerous tool for freedom of expression when it is used to limit or silence legitimate reporting or criticism. It can also be problematic when the offences are not clearly defined or too wide and may lead to unnecessary or disproportionate restrictions to the right to freedom of expression.

The danger of abuses of anti-terrorism laws

My predecessors have for instance repeatedly warned against the dangers, arbitrariness and abuses of anti-terrorism laws to stifle freedom of expression in Turkey, where several provisions of the Turkish Criminal Code relating to terrorism and the Anti-Terrorism Law continue to generate some of the most serious violations of freedom of expression in the country. They had notably observed that in many instances the legitimate exercise of freedom of expression had been criminalised as propaganda for terrorism or as proof of membership of terrorist organisations, notably in cases where no other material evidence exists of any link with a terrorist organisation and in the absence of any call or apology for violence. For example, a petition signed by academics calling for the end of violence in south-eastern Turkey continues to result in many terrorism-related sentences being handed down by Turkish courts. In a Memorandum on freedom of expression and media freedom in Turkey published last year, my predecessor expressed once more concerns at the extensive use of crimes relating to terrorism and the concept of "incitement to violence", which was systematically interpreted in a non human-rights-compliant manner.

The risk of catch-all label

In France, a provision criminalising the "apology of terrorism" was first introduced in the press law of 1881. Under its current version resulting from the counter-terrorism law of 2014, it is punishable by up to five years in prison and a fine of up to 75.000 Euros, increased to seven years in prison and a fine of up to 100.000 Euros if the offence is made online. According to the Ministry of Justice, the number of persons sentenced for apology of terrorism has risen exponentially, from 3 persons in 2014 to 230 in 2015 and 306 in 2016, with a one-year prison sentence on average. This provision has been used in a wide variety of cases, including to sentence convinced supporters of ISIS calling to further terrorist attacks, as well as to prosecute a vegan activist, who was handed a seven-month suspended sentence, following a Facebook post celebrating the death of a butcher in a terrorist attack.

Violence and the threat to use violence with the intention to spread fear and provoke terror is the defining component of the concept of "terrorism". The variety of cases dealt with under provisions criminalising apology of terrorism highlights one potential danger of the use of catch-all label to punish statements that do not contain these elements but incite to other forms of violence or simply are non-consensual, shocking or politically embarrassing.

Lack of clear concepts

In recent months I could witness how problematic the implementation of counter-terrorism legislation was. Firstly, the terms used are often vague or unduly broad and fail to clearly define notions such as glorification or propaganda.

Spain is a case in point. The conviction for glorifying terrorism of several twitter users and rappers following provocative statements or lyrics have recently sparked controversy. Sentences were based among others on Article 578 of the Spanish Criminal Code which foresees penalties for "glorifying terrorism" or "humiliating the victims of terrorism or their relatives." This provision was broadened in 2015, with a view to increasing sanctions when such conducts occur via the internet. At that time, five UN experts had raised concerns about these amendments to the Criminal Code as they "could criminalise behaviours that would not otherwise constitute terrorism and could result in disproportionate restrictions on the exercise of freedom of expression, amongst other limitations", noting that the definition of terrorist offenses were too broad and vague. Article 578 has increasingly been used since 2015, with a reported chilling effect on freedom of expression. According to Amnesty International, 84 persons have been convicted in application of this Article between 2015 and 2017, while only 23 persons had been convicted between 2011 and 2013 based on this provision.

The Russian Federation is another country where the use of counter-terrorism and anti-extremism legislation has affected freedom of expression over the last few years, and in particular media freedom and access to information. In June 2012, the Venice Commission established that the Russian law on combating extremist activity, which also lists the "public justification of terrorism and other terrorist activity" among the actions that are deemed to constitute "extremist activity" or "extremism", had been flawed by broad and imprecise wording granting too wide discretion in its interpretation and application, thus leading to arbitrariness. Since then, its scope has been extended even further. According to data from the Supreme Court of the Russian Federation, in 2017 there were at least 650 criminal prosecutions and sentences against individuals who expressed views deemed to contain

a terrorist or extremist element. In parallel, civil society has been ringing alarm bells about the constant increase in administrative sanctions affecting thousands of individuals, bloggers and media outlets for using materials that the authorities consider to be extremist. Against this background, the Supreme Court's amendments to its Ruling on "Judicial Practice in Criminal Cases on Crimes of an Extremist Nature" adopted on 20 September 2018 is a step in the right direction as they narrow down criminal liability and set further requirements for an act to be considered as a crime.

The United Kingdom also belongs to the numerous states that have taken or are about to take measures criminalising expression in the name of national security. In a recent alert submitted to the Council of Europe Platform, media freedom advocates raised alarm over the Counter-Terrorism and Border Security Bill arguing that it will have a significant negative impact on media freedom in addition to other freedoms. The Bill would notably criminalise watching online content that is likely to be helpful for terrorism, without a terrorist intent being required, a provision which might impede the work of investigative journalists and academics. The UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism has also criticised portions of the Bill as disproportionately broad or invasive.

Secondly, legislation aimed at countering terrorism and extremist violence is frequently adopted following accelerated procedures and/or in the direct aftermath of terrorist attacks marked by shock, anxiety, a sense of emergency and of a necessary united front against the threat, leaving little space for thorough and peaceful discussions on the human rights impact and safeguards. This also increases the risks of misuse either for political or for what could be called 'populist' reasons, to send a signal to the population that the authorities are strong on the counterterrorism front and do their utmost to prevent terrorist attacks. Finally, by curtailing legitimate political debate, this response plays into the hands of the terrorists by installing an atmosphere of fear among society.

Another approach needed: protecting freedom of expression

Before adopting any new counter-terrorism measures, member states should pay attention to existing human rights standards and notably ensure that these measures are compatible with Article 19 of the International Covenant on Civil and Political Rights and Article 10 of the European Convention on Human Rights, which guarantee the right to freedom of expression.

In its General Comment No. 34 published in 2011, the UN Human Rights Committee underlined in that respect that "such offences as 'encouragement of terrorism' and 'extremist activity' as well as offences of 'praising', 'glorifying',

or 'justifying' terrorism, should be clearly defined to ensure that they do not lead to unnecessary or disproportionate interference with freedom of expression. Excessive restrictions on access to information must also be avoided. The media plays a crucial role in informing the public about acts of terrorism and its capacity to operate should not be unduly restricted. In this regard, journalists should not be penalized for carrying out their legitimate activities." It echoes the 2007 Guidelines of the Committee of Ministers of the Council of Europe on protecting freedom of expression and information in times of crisis, according to which "Member states should not use vague terms when imposing restrictions of freedom of expression and information in times of crisis."

The Joint Declaration on Freedom of Expression and Responses to Conflict Situations adopted in 2015 also insisted on the need for States to "refrain from applying restrictions relating to 'terrorism' in an unduly broad manner. Criminal responsibility for expression relating to terrorism should be limited to those who incite others to terrorism; vague concepts such as 'glorifying', 'justifying' or 'encouraging' terrorism should not be used." In addition, the Joint Declaration on Freedom of Expression and Countering Violent Extremism adopted in 2016 stressed that "everyone has the right to seek, receive and impart information and ideas of all kinds, especially on matters of public concern, including issues relating to violence and terrorism, as well as to comment on and criticise the manner in which States and politicians respond to these phenomena" and that the concepts of "violent extremism" and "extremism" should not be used as the basis for restricting freedom of expression unless they are defined clearly and appropriately narrowly. Similar recommendations were made by the OSCE Representative on Freedom of the Media in two Communiqués on the impact of laws countering extremism on freedom of expression and freedom of the media (2014) and on free expression and the fight against terrorism (2016).

While taking into account the particular problems linked to the prevention of terrorism, the European Court of Human Rights has clearly stressed in its case-law, including in the cases of Association Ekin v. France (2001) and of Belek and Velioğlu v. Turkey (2015), that views expressed which cannot be read as an incitement to violence or be construed as liable to incite to violence should be covered by freedom of expression.

Four steps to counter misuses of anti-terrorist laws to restrict freedom of expression

Terrorism poses a real and serious threat to people's lives and is a menace for human rights and democracy. States have therefore a duty to protect society against terrorists and to take measures to prevent and punish terrorist activities effectively. However, this duty is counterbalanced by the

obligation to uphold human rights in the fight against terrorism. A number of steps are needed to achieve that difficult balance:

The relevant national law must be formulated with sufficient precision to enable media actors and others to foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail. Existing legislation must thus be reviewed and the notions used should be clearly defined.

Any restriction on freedom of expression must be strictly necessary to protect national security and proportionate to the legitimate aim pursued. Anti-terror legislation should only apply to content or activities which necessarily and directly imply the use or threat of violence with the intention to spread fear and provoke terror. Any other type of content or activities should be addressed in the context of the duties and responsibilities that the exercise of freedom of expression carries with it, as defined by Article 10 paragraph 2 of the European Convention on Human Rights.

Anti-terror and security laws should not unduly interfere with the right of the media to impart information of public interest and the right of people to receive it.

All persons imprisoned because of the legitimate criticism they have expressed should be freed and the criminal records of those who have been convicted for such reports should be cleared.

The idea according to which restrictions to freedom of expression may be an efficient tool to combat terrorism results in an overly wide application of concepts such as terrorist propaganda, glorification or apology of terrorism, including to contents that clearly do not incite to violence. This misconception should be eliminated as undermining human rights is precisely one of the aims pursued by terrorism, which can in no way be eradicated by sacrificing the very principles and values of our democratic societies. On the contrary, pluralistic and democratic debates are of utmost importance, as a free society can thrive only through free expression and the exchange of ideas.

Open minds are needed to improve the protection of LGBTI asylum seekers in Europe

Human Rights Comment published on 11 October 2018

In many states around the world, lesbian, gay, bisexual, transgender and intersex (LGBTI) persons face serious violations of their human rights on account of their sexual orientation, gender identity or sex characteristics. These include killings, violence, the criminalisation of same-sex relations, and severe discrimination. Such violations also occur within the Council of Europe area. In my statement for the International Day Against Homophobia, Transphobia and Biphobia (IDAHOT) 2018, I particularly highlighted the shocking reports of targeted persecution of LGBTI persons by law enforcement officers, including in Chechnya in the Russian Federation and in Azerbaijan. I also commented on the disturbingly widespread problem of homophobia and transphobia, including daily violent incidents, in other European states.

Whilst we must work tirelessly for better protection of the human rights of LGBTI persons, we also need to be mindful and understanding of the fact that sometimes they have no other choice but to flee and seek safety outside their own states. In many Council of Europe member states, however, LGBTI asylum seekers face a number of challenges to seeking such safety, which require urgent attention.

Sexual orientation and gender identity in domestic asylum laws

Firstly, the way that international standards are interpreted and applied in different Council of Europe member states may prevent LGBTI asylum seekers from being granted the protection they need. The 1951 Refugee Convention, to which all Council of Europe member states are parties, sets the main framework for providing international protection. It defines a refugee as a person who is unable or unwilling to return to his or her country of origin because he or she will be persecuted, that is, be subjected to serious human rights violations. Furthermore, to be recognised as a refugee, such persecution must take place on the basis of one of five grounds: race, nationality, religion, political opinion, or membership of a particular social group. The Guidelines on International Protection No.9 of the United Nations High Commissioner for Refugees (UNHCR) make clear that sexual orientation and gender identity fall under the Convention grounds, especially under the notion of membership of a particular social group. Similarly, the Committee of Ministers of the Council of Europe, in Recommendation CM/Rec(2010)5 noted that member states "should recognise that a well-founded fear of persecution based on sexual orientation or gender identity may be a valid ground for the granting of refugee status and asylum under national law." The recast European Union (EU) Qualification Directive (2011/95) also requires EU member states to pay specific attention to sexual orientation and gender identity.

Explicit recognition in states' domestic laws that sexual orientation and gender identity fall within the grounds set out in the Refugee Convention adds an important layer of legal protection for LGBTI asylum seekers. Despite this, not all Council of Europe member states have explicitly recognised sexual orientation, gender identity, and/or sex characteristics in their asylum laws.

Other important elements of UNHCR's Guidelines also need proper implementation when making asylum decisions. This includes recognising specific forms of treatment or discrimination as persecution within the meaning of the Refugee Convention. The Guidelines highlight a number of factors that should be taken into consideration when assessing whether an LGBTI person would be subjected to persecution if returned to the country of origin. These include attempts to change the applicant's sexual orientation or gender identity by coercion, the existence of laws criminalising same-sex relationships, and specific actions by so-called non-state actors, such as family members or extremists groups.

A particular concern is the notion that LGBTI persons could be expected to conceal their sexual orientation or gender identity to escape human rights violations if returned to their countries of origin. This approach

was firmly rejected by the The Court of Justice of the EU (CJEU) in 2013. Earlier this year, the European Court of Human Rights, in its decision in the case of *I.K. v. Switzerland*, also emphasised that sexual orientation was a fundamental facet of an individual's identity and awareness and that, in consequence, individuals submitting a request for international protection based on their sexual orientation could not be required to hide it.

Stereotyping and disbelief in the asylum procedure

Apart from the proper application of international standards, LGBTI persons may also encounter problems in convincing European states' asylum authorities of their sexual orientation or gender identity. Asylum decisions rely to a large extent on the authorities' assessment of whether the claim made by the asylum seeker can be considered credible. Asylum interviews play a central role in assessing this credibility. As documented by a recent report by the EU Fundamental Rights Agency (FRA), the way these interviews are conducted with LGBTI asylum seekers is too often inadequate. Interviewers often base their questions on stereotypes and unfounded assumptions about their countries of origin.

Authorities may also fail to recognise that in many LGBTI persons' countries of origin sexual orientation, gender identity and sex characteristics are taboo topics, often invoking feelings of shame and fear in the person. The presence of an interpreter coming from the community of origin of the asylum seekers can be unsettling. This may hamper the asylum applicant's ability to provide information in the way that the interviewer expects. A common problem is also that asylum seekers are afraid to mention their sexual orientation or gender identity immediately at the beginning of the asylum procedure. They may then face bureaucratic barriers, or even rejections of their claim, when putting forward such information at a later stage. It may also lead to the late identification of specific protection and needs, such as medical care for trans and intersex people.

Particularly problematic is the practice of applying humiliating tests or questioning to ascertain the sexual orientation of an asylum applicant. In 2010, FRA raised alarm over the then-used practice of 'phallometric testing' in the Czech Republic, noting that such tests were in contradiction with the prohibition of torture and inhuman or degrading treatment, as well as the right to private life. In such tests, applicants who claimed asylum based on their homosexual orientation had their physical reactions to heterosexual pornographic material measured. In 2014, in a case concerning the Netherlands, the CJEU found that detailed questioning about a person's sexual practices infringed on the right to privacy and family life, and that the need to protect human dignity prohibited asylum authorities from requiring "evidence such as the performance by the applicant for asylum

concerned of homosexual acts, his submission to 'tests' with a view to establishing his homosexuality or … the production by him of films of such acts." This also extends to the use of psychological personality testing to verify a person's sexual orientation, the CJEU found.

Identification and safe reception

Early identification of vulnerabilities is essential. This should take into account the fact that LGBTI persons may have already had very traumatic experiences in their countries of origin and on their way to the country of asylum, such as sexual violence, trafficking or other physical or psychological abuse. Authorities should thus ensure that specific needs, such as health care or psychosocial assistance, can be identified as quickly as possible. The European Asylum Support Office (EASO) has developed a tool to assess asylum seekers' special procedural and reception needs, which includes factors related to sexual orientation and gender identity.

In the context of assessing vulnerabilities and risks, authorities should also be aware that even within the country of asylum, LGBTI persons' safety may not be assured. For example, LGBTI persons may face harassment, isolation and discrimination by other asylum seekers in reception centres. Such problems may force them to avoid reception centres and therefore miss out on access to basic services. In this situation, LGBTI persons may again become particularly vulnerable to falling victim to exploitation and trafficking.

The above-mentioned Recommendation of the Committee of Ministers calls on states to protect LGBTI asylum seekers, including by taking appropriate measures "to prevent risks of physical violence, including sexual abuse, verbal aggression or other forms of harassment against asylum seekers deprived of their liberty". In the case of O.M. v. Hungary, the European Court of Human Rights also emphasised that "authorities should exercise particular care in order to avoid situations which may reproduce the plight that forced these persons to flee in the first place." This, in my view, implies a broad obligation on state authorities to ensure that LGBTI asylum seekers who are in their care are protected from harassment, discrimination and violence, including in reception centres. There may not be a single 'best model' to do so, but training for staff of reception centres, providing clear information to residents about the inclusion of LGBTI people, and establishing a safe environment for LGBTI asylum seekers are all crucial. Some important initiatives, such as Berlin's Model for the Support of LGBTI Refugees, which includes counselling, training and the provision of a specific shelter for at-risk LGBTI asylum seekers, may lead the way in further developing good practices.

Key steps moving forward

As a first key step to improve the protection of LGBTI asylum seekers, European states should ensure that their laws explicitly recognise a well-founded fear of persecution on the basis of sexual orientation, gender identity and sex characteristics as valid grounds for recognition as a refugee.

Secondly, the application of those laws should take into account the authoritative guidance provided by UNHCR, including on the specific forms of persecution LGBTI people may face, the existence of criminal laws related to sexual orientation or gender identity, and the importance of recognising the role of persecution of LGBTI persons by non-state actors.

Thirdly, there is an urgent need for practical guidance and training for all those involved in the asylum procedure, including interviewers, decision-makers and interpreters. Authorities should make full use of resources already available, such as those produced by the International Commission of Jurists and ILGA-Europe, and co-operate with civil society groups to develop trainings, including those aimed at avoiding stereotyping. This is crucial to ensure claims for asylum by LGBTI persons are approached with an open mind, and handled in a respectful, informed and sensitive way during the asylum procedure. Intrusive questioning or physical or psychological tests should never be part of the asylum procedure and should be urgently banned in all countries where they are still applied.

Finally, Council of Europe member states should look at the national application of existing tools for assessing vulnerabilities of LGBTI asylum seekers, such as those developed by EASO, and engage in further research and exchange about how to ensure safe reception conditions, as well as the specific care they may need.

The need to take these steps is especially pressing at a time when I see the institution of asylum under pressure across Europe. LGBTI asylum seekers are particularly at risk of becoming victims of the rolling back of protection, with potentially disastrous consequences for their safety and dignity.

Keeping the promise: ending poverty and inequality

Human Rights Comment published on 24 July 2018

Poverty and inequality are closely interlinked. People living in poverty are much more likely to be relegated to low-income work, poor housing, and inadequate health care, as well as to experience unemployment and face barriers to lifelong learning. Being born into a low-income household often limits one's opportunities in life, leading to inferior-quality education and precarious jobs. This can be compounded by other circumstances affecting socio-economic status and future prospects, such as gender, age, and the place a person lives. The societal impact of inequality - perpetuated with each new generation - is considerable and potentially explosive, with trust in public institutions reaching record lows as tensions and polarisation rise. A global survey commissioned by Oxfam found that nearly two-thirds of all respondents think that the existing gap between the rich and the poor needs to be addressed urgently.

Inequality on the rise in Europe

There is no room for complacency even in Europe, a comparatively wealthy continent. Inequality has been on the rise here as well, both among countries and within individual countries. According to the thematic series of papers on inequality in Europe, published by the Council of Europe Development Bank, Europeans in the top 20% of the income distribution have five times

more of national income than those in the bottom 20%, with Southern and Central-Eastern Europe being the most unequal regions. While some Central and Eastern European countries have recently started reversing rises in inequality, in Southern Europe equality continues to deteriorate. Moreover, income mobility has declined, with those in the bottom 40% less likely to move out of their socio-economic group than they were in 2008. Those at the bottom have less access to quality education, making it harder to perform in a competitive education-based labour market, and are often more likely to be overburdened with housing costs.

The European Committee of Social Rights underlined in its 2017 Conclusions that the poverty level in Europe is far too high and the measures taken to remedy this fundamental problem are insufficient. In particular, social security benefits (notably in respect of unemployment and old age) are well below the poverty level, even when taking into account social assistance, which remains too low.

Impact of poverty on children and other vulnerable groups

According to the Organisation for Economic Co-operation and Development (OECD), social background continues to determine the life chances of people in many countries. Every third child in low-income families lives in an overcrowded household troubled by housing costs, and youth from poorer backgrounds have only an 18% chance of pursuing a career in science. Income inequality for those born in the 1980s is higher than among their parents at the same age, which in turn was higher than for their parents.[1]

Children experience poverty differently than adults. By undermining their development and learning, and increasing their risk of exposure to abuse or neglect, poverty has strong and potentially life-long effects on today's children. As a result of the economic crisis and austerity measures, the percentage of children at risk of poverty in the European Union increased to 26,9% in 2015. While that figure has decreased in some countries with the subsequent economic recovery, in others it remains very high.

During my recent visit to Albania, I saw a social care institution in Shkodra where children were placed because of their parents' poverty. This situation is not unique: according to UNICEF, placement of children in institutions, including on grounds of their families' socio-economic situation, remains high in Central and Eastern European countries.

Poverty also disproportionately affects members of the Roma community. A 2016 European Union Agency for Fundamental Rights survey found that 80% of Roma surveyed were at risk of poverty (compared with an EU average of 17% among the wider population). According to the Regional Roma Survey 2017[2], although both Roma and their non-Roma neighbors

living in close proximity face high levels of severe material deprivation in several non-EU Balkan countries, the gap between these groups remains significant.

In Estonia, I visited a social care home for older persons in Kohtla-Järve where many of the residents did not have the means to live independently elsewhere. I was also told that poverty and social exclusion among older people could prevent them from receiving necessary long-term care at home. While in Greece, I discussed the impact of the economic crisis and austerity measures on access to healthcare and education. Austerity-related measures and policies have not only exacerbated the already severe human consequences of the economic crisis, but have also hit hardest exactly those groups of people who were already vulnerable or marginalised.

Fighting poverty and inequality should be at the heart of all state policies

To counter these nefarious trends, Council of Europe member states should take some decisive steps. First of all, they should collect accurate and reliable data, disaggregated by age and gender, about the impact of poverty on individuals, as a prerequisite for designing, implementing, monitoring and evaluating effective policies. There should be a drive to encourage and empower more people, notably those representing the most marginalised low-income groups, to participate in the relevant policy discussions. Comprehensive, effective and adequately-funded policies should exist at national level to support and promote access to quality healthcare, education, childcare, housing and public infrastructure, as well as access to justice. Governments should give a clear priority to investing in people and areas that have been left behind. There should be an unequivocal commitment to promoting sustainable and inclusive economic growth, not only by governments, but also by other national and international actors. In addition, I strongly encourage those Council of Europe member states which have not yet done so to ratify the revised European Social Charter, the most comprehensive legal instrument in Europe for the protection of social rights.

In recent years, there has been a resurgence of debates related to the idea of a universal basic income, which entails that every member of society should unconditionally receive an income sufficient to provide for their basic needs. Such a basic income may either replace or supplement the existing social protection system. The universal basic income approach has never been implemented fully in any country and has yet to be sufficiently tested. In Europe, Finland has tested a supplemental basic income scheme, similar pilots have been carried out elsewhere on a more limited scale, and debates are on-going in several Council of Europe member states.

In his March 2017 report, the UN Special Rapporteur on extreme poverty and human rights stated that the universal basic income concept "should not be rejected out of hand on the grounds that it is utopian",[3] and encouraged further discussion of the policy as a means to alleviate economic insecurity and promote human rights and social justice. He additionally stressed the importance of bringing together the debates on basic income and social protection floors[4]. While acknowledging the practical difficulties attached to such a radical change in social policy, a report of the Parliamentary Assembly of the Council of Europe suggested that introducing a basic income could guarantee equal opportunities for all more effectively than the existing patchwork of social benefits, service and programmes. As the Commissioner for Human Rights, I intend to contribute to the on-going debates by focusing on their human rights aspects and possible implications of the solutions being considered.

Ending poverty in all its forms everywhere and reducing inequality within and among countries are two of the Sustainable Development Goals set out in the 2030 Development Agenda Transforming our world: the 2030 Agenda for Sustainable Development adopted by the UN General Assembly on 25 September 2015. By adopting this document, global leaders pledged to address these issues as a matter of urgency, so that the promise of "no one left behind" holds true already for the living generation. This year, as we celebrate the 70th anniversary of the Universal Declaration of Human Rights, we must keep our sights on an ambitious but attainable vision: dignity, equality, and well-being for everyone.

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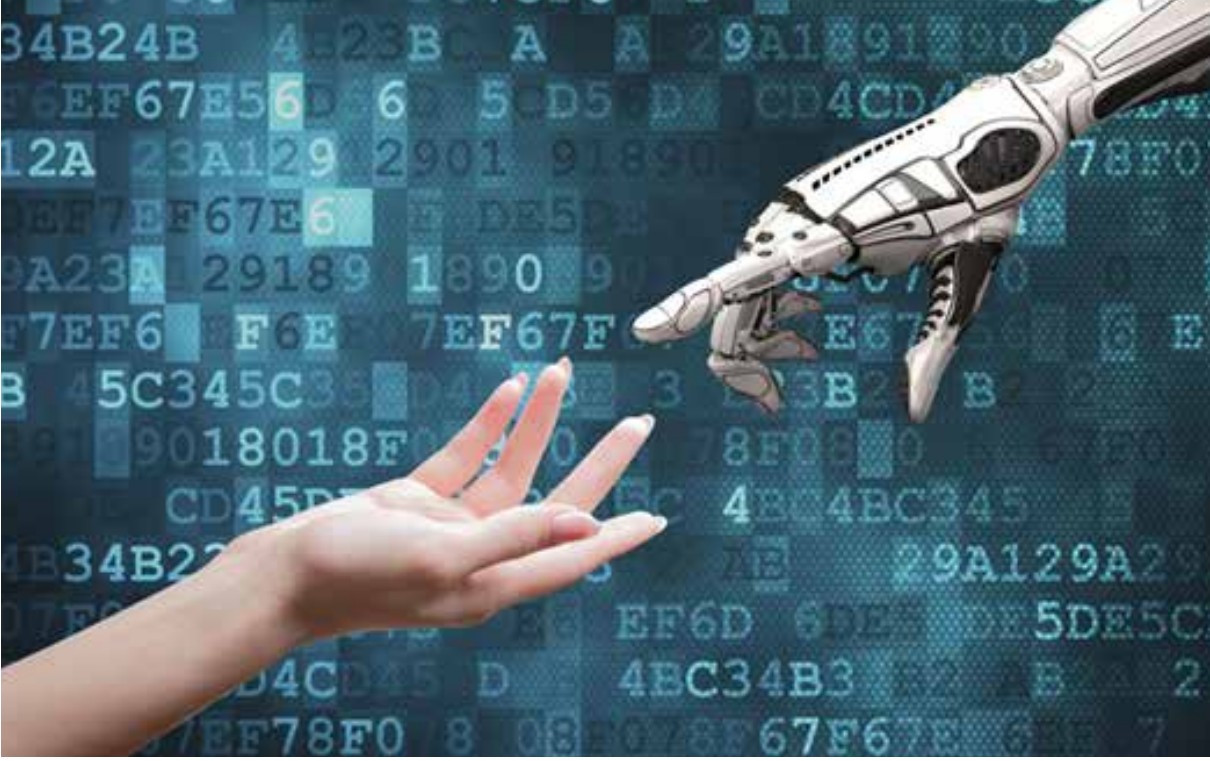
[1] The Framework for Policy Action on Inclusive Growth, May 2018, page 22, §44.

[2] The survey was carried out by the United Nations Development Programme (UNDP), the World Bank (WB) and the European Commission (EC).

[3] Report of the Special Rapporteur on extreme poverty and human rights, A/HRC/35/26, page 17, §61.

[4] Social protection floors are nationally defined sets of basic social security guarantees that should ensure - as a minimum - that, over the life cycle, all in need have access to essential health care and to basic income security which together secure effective access to goods and services defined as necessary at the national level. The International Labour Organization issued in 2012 its Social Protection Floors Recommendation.



Safeguarding human rights in the era of artificial intelligence

Human Rights Comment published on 3 July 2018

The use of artificial intelligence in our everyday lives is on the increase, and it now covers many fields of activity. Something as seemingly banal as avoiding a traffic jam through the use of a smart navigation system, or receiving targeted offers from a trusted retailer is the result of big data analysis that AI systems may use. While these particular examples have obvious benefits, the ethical and legal implications of the data science behind them often go unnoticed by the public at large.

Artificial intelligence, and in particular its subfields of machine learning and deep learning, may only be neutral in appearance, if at all. Underneath the surface, it can become extremely personal. The benefits of grounding decisions on mathematical calculations can be enormous in many sectors of life, but relying too heavily on AI which inherently involves determining patterns beyond these calculations can also turn against users, perpetrate injustices and restrict people's rights.

The way I see it, AI in fact touches on many aspects of my mandate, as its use can negatively affect a wide range of our human rights. The problem is compounded by the fact that decisions are taken on the basis of these systems, while there is no transparency, accountability or safeguards in how they are designed, how they work and how they may change over time.

Encroaching on the right to privacy and the right to equality

The tension between advantages of AI technology and risks for our human rights becomes most evident in the field of privacy. Privacy is a fundamental human right, essential in order to live in dignity and security. But in the digital environment, including when we use apps and social media platforms, large amounts of personal data are collected - with or without our knowledge - and can be used to profile us, and produce predictions of our behaviours. We provide data on our health, political ideas and family life without knowing who is going to use this data, for what purposes and how.

Machines function on the basis of what humans tell them. If a system is fed with human biases (conscious or unconscious), the result will inevitably be biased. The lack of diversity and inclusion in the design of AI systems is therefore a key concern: instead of making our decisions more objective, they could reinforce discrimination and prejudices by giving them an appearance of objectivity. There is increasing evidence that women, ethnic minorities, people with disabilities and LGBTI persons particularly suffer from discrimination by biased algorithms.

Studies have shown, for example, that Google was more likely to display adverts for highly paid jobs to male job seekers than female. Last May, a study by the EU Fundamental Rights Agency also highlighted how AI can amplify discrimination. When data-based decision making reflects societal prejudices, it reproduces – and even reinforces – the biases of that society. This problem has often been raised by academia and NGOs too, who recently adopted the Toronto Declaration, calling for safeguards to prevent machine learning systems from contributing to discriminatory practices.

Decisions made without questioning the results of a flawed algorithm can have serious repercussions for human rights. For example, software used to inform decisions about healthcare and disability benefits has wrongfully excluded people who were entitled to them, with dire consequences for the individuals concerned. In the justice system too, AI can be a driver for improvement or an evil force. From policing to the prediction of crimes and recidivism, criminal justice systems around the world are increasingly looking into the opportunities that AI provides to prevent crime. At the same time, many experts are raising concerns about the objectivity of such models. To address this issue, the European Commission for the efficiency of justice (CEPEJ) of the Council of Europe has put together a team of multidisciplinary experts who will "lead the drafting of guidelines for the ethical use of algorithms within justice systems, including predictive justice".

Stifling freedom of expression and freedom of assembly

Another right at stake is freedom of expression. A recent Council of Europe publication on Algorithms and Human Rights noted for instance that Facebook and YouTube have adopted a filtering mechanism to detect violent extremist content. However, no information is available about the process or criteria adopted to establish which videos show "clearly illegal content". Although one cannot but salute the initiative to stop the dissemination of such material, the lack of transparency around the content moderation raises concerns because it may be used to restrict legitimate free speech and to encroach on people's ability to express themselves. Similar concerns have been raised with regard to automatic filtering of user-generated content, at the point of upload, supposedly infringing intellectual property rights, which came to the forefront with the proposed Directive on Copyright of the EU. In certain circumstances, the use of automated technologies for the dissemination of content can also have a significant impact on the right to freedom of expression and of privacy, when bots, troll armies, targeted spam or ads are used, in addition to algorithms defining the display of content.

The tension between technology and human rights also manifests itself in the field of facial recognition. While this can be a powerful tool for law enforcement officials for finding suspected terrorists, it can also turn into a weapon to control people. Today, it is all too easy for governments to permanently watch you and restrict the rights to privacy, freedom of assembly, freedom of movement and press freedom.

What can governments and the private sector do?

AI has the potential to help human beings maximise their time, freedom and happiness. At the same time, it can lead us towards a dystopian society. Finding the right balance between technological development and human rights protection is therefore an urgent matter – one on which the future of the society we want to live in depends.

To get it right, we need stronger co-operation between state actors – governments, parliaments, the judiciary, law enforcement agencies – private companies, academia, NGOs, international organisations and also the public at large. The task is daunting, but not impossible.

A number of standards already exist and should serve as a starting point. For example, the case-law of the European Court of Human Rights sets clear boundaries for the respect for private life, liberty and security. It also underscores states' obligations to provide an effective remedy to challenge intrusions into private life and to protect individuals from unlawful surveillance. In addition, the modernised Council of Europe Convention for

the Protection of Individuals with regard to Automatic Processing of Personal Data adopted this year addresses the challenges to privacy resulting from the use of new information and communication technologies.

States should also make sure that the private sector, which bears the responsibility for AI design, programing and implementation, upholds human rights standards. The Council of Europe Recommendations on human rights and business and on the roles and responsibilities of internet intermediaries, the UN guiding principles on business and human rights, and the report on content regulation by the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, should all feed the efforts to develop AI technology which is able to improve our lives. There needs to be more transparency in the decision-making processes using algorithms, in order to understand the reasoning behind them, to ensure accountability and to be able to challenge these decisions in effective ways.

A third field of action should be to increase people's "AI literacy". States should invest more in public awareness and education initiatives to develop the competencies of all citizens, and in particular of the younger generations, to engage positively with AI technologies and better understand their implications for our lives. Finally, national human rights structures should be equipped to deal with new types of discrimination stemming from the use of AI.

It is encouraging to see that the private sector is ready to cooperate with the Council of Europe on these issues. As Commissioner for Human Rights, I intend to focus on AI during my mandate, to bring the core issues to the forefront and help member states to tackle them while respecting human rights. Recently, during my visit to Estonia, I had a promising discussion on issues related to artificial intelligence and human rights with the Prime Minister.

Artificial intelligence can greatly enhance our abilities to live the life we desire. But it can also destroy them. It therefore requires strict regulations to avoid morphing in a modern Frankenstein's monster.

Europe's duty to internally displaced persons

Human Rights Comment published on 29 May 2018

People are forced to leave their homes for different reasons, ranging from war and violence to natural disasters and climate change. However, this does not always entail the crossing of an internationally recognised border. Even if they do not leave their country, people who flee their homes are still very much in need of protection. This year marks the 20th anniversary of the United Nations Guiding Principles on Internal Displacement, a comprehensive set of international standards addressing the rights of internally displaced persons (IDPs). The anniversary should prompt states to give serious attention to their needs.

At the time of the launch of the UN Guiding Principles, the number of IDPs worldwide stood at 25 million; by the end of 2017, it had increased to about 40 million people[1]. While some progress has been achieved in recognising the magnitude of the issue and in developing appropriate solutions and response mechanisms, many internally displaced persons live in precarious conditions and are among the most vulnerable people, including in our own continent of Europe.

The population of IDPs worldwide is nearly double the population of refugees. However, the situation of IDPs has somewhat slipped off international agendas as attention was mainly focused on the situation

of migrants, asylum-seekers and refugees who have left their countries. In order to address this, on 17 April 2018, a multi-stakeholder Plan of Action for Advancing Prevention, Protection and Solutions for Internally Displaced People was launched, following a collaborative process involving the UN Special Rapporteur on the Human Rights of IDPs, UNHCR, OCHA, governments and NGOs. The Plan focuses on the following four priority areas for the next three years: participation of IDPs; national laws and policies on internal displacement; data and analysis on internal displacement; and addressing protracted displacement and supporting durable solutions.

Current displacement in Europe

By the end of 2017, there were close to 4 million IDPs in Europe, mostly in Ukraine, Turkey, Azerbaijan, Cyprus, Serbia and Bosnia and Herzegovina. While the current patterns of internal displacement in Europe have mainly resulted from conflicts – some of which date back to the 1990s – and instability, some cases of displacement have emanated from the impact of natural disasters and climate change, for example in Italy following the earthquakes in 2016, and in Bosnia and Herzegovina due to floods in 2014. Many IDPs whose displacement has been protracted feel that they are spending their lives "in transit". Often marginalised, with limited possibilities to enjoy their human rights in reality, and with no durable solutions in sight, it is scarcely surprising that their experience is one devoid of hope. Some of Europe's IDPs have already remained in this situation for decades.

State responsibilities to address internal displacement and to guarantee the human rights of IDPs

One of the key Guiding Principles is that displacement shall last no longer than required by the circumstances[2]. However, we have seen many situations where "the circumstances" – as in the case of unresolved conflicts or turmoil - turn out to be protracted. Historically, many governments in Europe have designed their policies addressing internal displacement on the assumption that the situation that led to the displacement would not last, and that the displaced persons would be able and willing to return to their places of origin rather soon. However, over time it became clear that the very nature of the conflicts or disasters at the origin of displacement also required the consideration of other durable solutions and options.

European governments can and should do much more to end the plight of IDPs. For one, they should put in place comprehensive strategies for preventing and addressing internal displacement in line with existing European and international standards. Council of Europe Committee of Ministers Recommendation Rec(2006)6 to member states on internally displaced persons specifies that "…[c]onditions for proper and sustainable integration of internally displaced persons following their displacement

should be ensured", and that national authorities bear the primary responsibility for providing protection and assistance to IDPs. The obligation of states to recognise and enforce the human rights of IDPs in accordance with the European Convention on Human Rights and other international treaties, while responding to their humanitarian and social needs, was also emphasised in a recent PACE Report on the humanitarian needs and rights of internally displaced persons in Europe.

The Framework on Durable Solutions for Internally Displaced Persons underscores that internally displaced people achieve a durable solution when they no longer have specific assistance and protection needs that are linked to their displacement, and can enjoy their human rights without discrimination on account of their displacement. A durable solution can be achieved – on the basis of an informed and voluntary decision by IDPs themselves - through their voluntary return and reintegration at places of origin, local integration (typically, in host communities), or settlement elsewhere in the country. These options are not mutually exclusive. Local integration or settlement in another part of the country should neither be regarded as a measure of last resort, nor perceived as negating the right of the individuals to return to their places of origin, once the requisite conditions are in place and make it possible for them to return.

The rights, needs and legitimate interests of IDPs should be at the centre of all IDP-related policies and decisions. This cannot be achieved without their meaningful participation and involvement in all decision-making processes which are relevant to their situation. As was highlighted by the UN Special Rapporteur on the Human Rights of internally displaced persons in her July 2017 report, a participation "revolution" is required to ensure that the right of internally displaced persons to participate in decisions affecting them is not only guaranteed in theory, but upheld in practice and given higher priority as part of national human rights and good governance obligations.

Implementation is key, both at national and local levels

Addressing the needs of IDPs requires a comprehensive approach. Strategies, laws and policies to support IDPs do exist in several member states of the Council of Europe. In Azerbaijan, where a policy to address internal displacement has been in place since 1993, the government introduced changes in early 2017 aimed at making the IDP assistance policy based on the actual needs of IDPs - rather than their status as IDPs - and moving from in-kind to cash-based assistance. In Georgia, the State Strategy for IDPs dates back to 2007, and legislation strengthening the protection of IDPs entered into force in 2014; currently, the government is looking into options allowing them to shift assistance from status-based to needs-based. In Serbia, where the unemployment rate among IDPs

was twice as high as that of the local population, the National Strategy for Resolving the Issues of Refugees and Internally Displaced Persons for the period 2015–2020 was adopted to improve IDPs' living conditions and social inclusion.

In Bosnia and Herzegovina and in Ukraine – the latter country having the most recent, large-scale internal displacement in Europe – strategies have been adopted to address displacement-related issues, but their implementation has been hampered by insufficient financial resources. Other common obstacles to effectively solving protracted displacement are inadequacies in terms of housing options, livelihood opportunities, as well as access to healthcare and quality education for IDP children. Around 15% of Europe's protracted IDPs still live in makeshift shelters or informal settlements with little access to basic services[3].

Property disputes, which are common in post-conflict situations, make it more difficult for IDPs and returnees to pursue desirable options. As the European Court of Human Rights[4] has emphasised, national authorities are under obligation to put in place effective legal mechanisms to resolve property disputes. Moreover, it is key that judgments by that Court are properly executed at national level so that IDPs can be placed in a position where they can fully enjoy their rights.

National human rights institutions (NHRIs) play a fundamental role not only in the protection of the rights of internally displaced persons, but also in raising awareness about their situation. Recently, the European Network of National Human Rights Institutions (ENNHRI) issued a Statement on the Role of NHRIs to promote and protect the human rights of IDPs in (post) conflict situations, affirming the role of those bodies in advising governments, parliaments and other authorities on the rights of IDPs, as well as monitoring and reporting on their situation. Also, the importance of civil society representatives - who frequently find themselves in the forefront of providing assistance to those in need, including IDPs – cannot be overstated.

The way forward

The plight of internally displaced people in Europe demands approaches that are more human rights-based. A human-rights based approach to addressing displacement is one that places the individual internally displaced person at the centre. That approach empowers IDPs to make free and informed decisions as to their preferred course of action, while also bearing in mind that those preferences may change over time. Moreover, instead of being driven by available options such as return, local integration and settlement elsewhere in the country, durable solutions to protracted displacement should be designed in such a way as to prioritise

the enjoyment of the human rights of IDPs, including freedom to choose their residence, freedom of movement and non-discrimination. Securing a truly durable solution is often a long-term process, which involves gradually diminishing displacement-specific needs, and at the same time ensures that IDPs enjoy their rights without discrimination related to their displacement.

It is imperative that member states ensure full participation of IDPs in decision-making processes, and involve host communities to address broader concerns related to the inclusion policies. IDPs should be in a position to make a voluntary and informed choice as to which durable solutions they would like to pursue, and be able to participate in the planning and management of their preferred options. Special attention should be given to any particularly vulnerable individuals or groups, which may include older persons, those with disabilities, pregnant women, Roma, LGBTI and others. They, too, should be fully involved in the consultation processes and dedicated efforts should be undertaken to protect them from discrimination or stigmatisation of any kind. Poverty reduction programmes implemented by national, regional and local authorities should address aspects specific to internal displacement, and be well-coordinated and adequately resourced.

Effective participation also implies the right of the IDPs to vote and stand for elections, especially at the local level, as local authorities play a key role in promoting and sustaining their inclusion into the host communities. Governments should also make certain that internally displaced children have access to quality education through comprehensive, inclusive educational policies. Whenever relevant, the internally displaced persons should be included in transitional justice processes and related policy discussions. Ensuring justice for IDPs is an essential component of long-term peace and stability.

As Commissioner for Human Rights, I intend to devote close attention to addressing protracted displacement in Europe, both through my dialogue with authorities and in co-operation with national human rights structures and civil society.

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[1] Global Report on Internal Displacement 2018, published by Internal Displacement Monitoring Centre and the Norwegian Refugee Council, 15 May 2018, page 1.

[2] Principle 6(3) of the Guiding Principles on Internal Displacement.

[3] Global Report on Internal Displacement 2018, page 46.

[4] ECtHR judgment, Xenides-Arestis v. Turkey, application no. 46347/99, 22 December 2005.

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- country visits and dialogue with national authorities and civil society,
- thematic studies and advice on systematic human rights work, and
- awareness-raising activities.

The current Commissioner, Dunja Mijatović, took up her functions in April 2018. She succeeded Nils Muižnieks (2012-2018), Thomas Hammarberg (2006-2012) and Álvaro Gil-Robles (1999-2006).

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