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Strengthening the protection and role of human rights defenders in Council of Europe member States

Reply to Recommendation¹: Recommendation 2085 (2016)
Committee of Ministers

1. The Committee of Ministers welcomes Parliamentary Assembly Recommendation 2085 (2016) on “Strengthening the protection and role of human rights defenders in Council of Europe member States”, which it has transmitted to the Steering Committee for Human Rights (CDDH), the Steering Committee on Media and Information Society (CDMSI) and the Conference of INGOs, for information and possible comments. The Committee has also communicated the recommendation to the Council of Europe Commissioner for Human Rights for information. The Commissioner has made the comments contained in the appendix.

2. The Committee of Ministers underlined in its Declaration on Council of Europe action to improve the protection of human rights defenders and promote their activities adopted on 6 February 2008,² that whereas the prime responsibility and duty to promote and protect human rights defenders lie with States, the Council of Europe shall also contribute to creating an enabling environment for human rights defenders and protect them and their work in defending human rights. With this in mind, the Committee called on all Council of Europe bodies and institutions to pay special attention to issues concerning human rights defenders in their respective work. It noted that this should include providing information and documentation, including on relevant case law and other European standards, as well as encouraging co-operation and awareness-raising activities with civil society organisations and encouraging human rights defenders’ participation in Council of Europe activities.

3. The Committee of Ministers also notes that domestic law, consistent with and applied in accordance with the European Convention on Human Rights and other international obligations of States in the field of human rights, is the legal framework within which activities of human rights defenders should be conducted.

4. The Committee of Ministers agrees with the Parliamentary Assembly about the need for an enhanced dialogue with human rights defenders (paragraph 1.1 of the Assembly recommendation). In its above-mentioned declaration, it also invited the Council of Europe Commissioner for Human Rights “to strengthen the role and capacity of his Office in order to provide strong and effective protection to human rights defenders by [...] continuing to act upon information received from human rights defenders and other relevant sources, including ombudsmen or national human rights institutions; [...] continuing to meet with a broad range of defenders during his country visits and to report publicly on the situation of human rights defenders; [...] working in close co-operation with other intergovernmental organisations and institutions, in particular the OSCE/ODIHR focal point for human rights defenders, the European Union, the United Nations Secretary General’s Special Representative on Human Rights Defenders and other existing mechanisms”. The Committee refers to the Commissioner’s comments on the Assembly recommendation contained in the appendix and emphasises the increasingly important role played by him in his dialogue with human rights defenders. The Committee receives regular and detailed information from the Commissioner through his reports and during the regular exchanges of views to which he is invited.

1. Adopted at the 1283rd meeting of the Ministers’ Deputies (5 April 2017).
2. The Russian Federation made a statement at the time of the adoption of this Declaration.



5. The Parliamentary Assembly calls for enhanced co-ordination between the various Council of Europe actors on the protection of human rights defenders (paragraph 1.2). The Committee of Ministers is willing to give further consideration to how this can be best achieved. In this respect, it notes *inter alia* that the protection of human rights defenders is one of the priorities of the Conference of INGOs' Action Plan for 2015-2018 and that it has set up a working group on human rights defenders operating within the Human Rights Committee with the aim of promoting "inspirational" standards and practices and strengthening mechanisms for protecting human rights defenders.

6. With respect to the Assembly's recommendation that the Committee of Ministers establish a platform, similar to that created for journalists, for the protection of human rights defenders (paragraph 1.3), the Committee refers to its recent reply to Parliamentary Assembly Recommendation 2086 (2016) "How can inappropriate restrictions on NGO activities in Europe be prevented?" (paragraph 6), in which it notes that the Secretary General will shortly put forward proposals in relation to the feasibility of a mechanism for protecting human rights defenders, taking account of the financial implications in the Programme and Budget and the need to avoid any duplications with existing initiatives. As stated in that reply, the Committee will keep the Assembly informed of any follow-up action.

7. In this context, the Committee of Ministers wishes to stress the important watchdog function of journalism to further the protection of human rights. It draws the Assembly's attention to its Recommendation CM/Rec(2016)4 to member States on the protection of journalism and safety of journalists and other media actors adopted on 13 April 2016.

8. The Committee of Ministers notes that the Parliamentary Assembly would like it to report publicly and regularly, at least once a year, to the Assembly on cases of intimidation of human rights defenders co-operating with Council of Europe bodies (paragraph 1.4). The Committee intends to consider this proposal in the context of its examination of the proposals to be made by the Secretary General in relation to the feasibility of a mechanism for protecting human rights defenders (see paragraph 5 above).

9. The Parliamentary Assembly also asks the Committee of Ministers to reflect on other ways and means of strengthening the protection of human rights defenders against acts of intimidation and reprisals coming from State and non-State actors (paragraph 1.5). In this respect, the Committee of Ministers recalls that it has given the CDDH the task of conducting a study on the impact of current national legislation, policies and practices on the activities of, notably, human rights defenders, and to identify the best examples thereof. On this basis, the CDDH will submit proposals to ensure that member States, through their legislation, policies and practices, effectively protect and promote the space of human rights defenders and other actors of civil society.

10. The Committee of Ministers agrees with the Assembly about the importance of close co-operation on the protection of human rights defenders with other international organisations (paragraph 1.6) and refers *inter alia* to the Commissioner's activities (see the appended opinion). The Committee will continue to consider how to enhance co-operation in this field.

11. With respect to the Parliamentary Assembly's request that the Committee of Ministers consider revising the mandate of the Commissioner for Human Rights by giving powers to deal with individual cases of persecution of human rights defenders in member States (paragraph 1.7), the Committee again refers to the Commissioner's opinion appended to this reply. He considers "that it is not necessary to change the mandate of his institution at this stage as it already allows him to conduct important actions for the protection of human rights defenders that he deems appropriate, including intervening on individual cases". The Commissioner indicated that he will continue to pursue his action in support of human rights defenders as a matter of priority.

12. Finally, in reply to the Assembly's request that the Committee of Ministers conduct a comprehensive evaluation of the implementation by member States of its Declaration on Council of Europe action to improve the protection of human rights defenders and promote their activities (paragraph 1.8), the Committee again recalls the mandate given to the CDDH (see paragraph 8 above).

Appendix – Comments by the Council of Europe Commissioner for Human Rights (see also [DD\(2016\)670](#))

The Commissioner's mandate

1. The Commissioner underlines that his mandate enables him to interact with human rights defenders, to support their work and to take action to improve their protection. In particular, Resolution Res (99) 50 on the Council of Europe Commissioner for Human Rights, adopted on 7 May 1999 stipulates that “the Commissioner may act on any information relevant to the Commissioner's functions. This will notably include information addressed to the Commissioner by governments, national parliaments, national ombudsmen or similar institutions in the field of human rights, individuals and organisations” (Article 5).
2. The Commissioner's specific duty to work on issues related to human rights defenders is further highlighted in the Declaration of the Committee of Ministers on Council of Europe action to improve the protection of human rights defenders and promote their activities, adopted on 6 February 2008. The Declaration “[i]nvites the Commissioner for Human Rights to strengthen the role and capacity of his Office in order to provide strong and effective protection to human rights defenders by [...] continuing to act upon information received from human rights defenders and other relevant sources, including ombudsmen or national human rights institutions; [...] continuing to meet with a broad range of defenders during his country visits and to report publicly on the situation of human rights defenders; [...] working in close co-operation with other intergovernmental organisations and institutions, in particular the OSCE/ODIHR focal point for human rights defenders, the European Union, the United Nations Secretary General's Special Representative on Human Rights Defenders and other existing mechanisms”. The Declaration also calls on Council of Europe member States to “co-operate with the Council of Europe human rights mechanisms and in particular [...] with the Commissioner for Human Rights by facilitating his/her visits, providing adequate responses and entering into dialogue with him/her about the situation of human rights defenders when so requested.”
3. Although Article 1 of Resolution Res (99) 50 provides that the Commissioner shall not take up individual complaints, this does not prevent him to raise individual cases of human rights defenders who are facing difficulties. Indeed, the 2008 Declaration invites the Commissioner for Human Rights to strengthen the role and capacity of his Office in order to provide strong and effective protection to human rights defenders by “[i]ntervening, in a manner the Commissioner deems appropriate, with the competent authorities, in order to assist them in looking for solutions, in accordance with their obligations, to the problems human rights defenders may face, especially in serious situations where there is a need for urgent action” (paragraph 4.iii).
4. Throughout the years, the Commissioner and his predecessors have used various tools in the framework of their mandate with the aim of improving the situation of human rights defenders, assist them when they are at risk and promote their work.

Cases of human rights defenders at risk

5. The Commissioner regularly intervenes on individual cases of human rights defenders facing difficulties, especially those who are at risk, and encourages concerned member States to adopt adequate measures in accordance with their obligations, so that human rights defenders are adequately protected and that they work in a safe and enabling environment.
6. The Commissioner notably uses third party interventions in cases before the European Court of Human Rights, according to Article 36, paragraph 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms. In particular, the Commissioner submitted written observations concerning the following cases of human rights defenders in Azerbaijan related to the institution of criminal proceedings against them and their remand in custody: Hilal Mammadov v. Azerbaijan (Application No. 81553/12), Intigam Aliyev v. Azerbaijan (Application No. 68762/14), Anar Mammadli v. Azerbaijan (Application no. 47145/14), Rasul Jafarov v. Azerbaijan (Application No. 69981/14), Leyla Yunusova and Arif Yunusov v. Azerbaijan (Application No. 68817/14) and Khadija Ismayilova v. Azerbaijan (Application No. 30778/15).
7. The Commissioner also submitted written observations in the case of Svetlana Estemirova v. the Russian Federation (Application No. 42705/11) concerning the abduction and murder of Ms Natalia Estemirova (the applicant's sister), a prominent human rights defender in the Russian Federation who worked in the North Caucasus, and the criminal investigation into those events.
8. Besides third party interventions, the Commissioner is also raising cases of human rights defenders in the framework of his dialogue with Council of Europe member States. This can be done publicly or in a confidential manner. For example, the Commissioner discussed the wave of threats and attacks targeting

women's rights defenders in Armenia, in particular members of the Women's Resource Centre NGO, during his visit to the country in 2014.³ The Commissioner's 2014 report and 2015 observations on Georgia made reference to violence against human rights defenders protecting the rights of LGBTI persons, most notably on 17 May 2013.⁴ The Commissioner and his predecessor repeatedly raised the shortcomings in the investigation into the murder of the journalist and writer Hrant Dink in Turkey, in particular relating to instances of police misconduct and the absence of victim involvement.⁵ The Commissioner also raised concerns about the issue of reprisals in particular against certain professional groups in connection with non-violent involvement in the Gezi events.⁶ During his recent visit to Turkey, he discussed instances of stigmatising rhetoric, smear campaigns and ongoing investigations against human rights defenders and lawyers.⁷ On a number of occasions, the Commissioner publicly raised through social media cases of human rights defenders facing difficulties.

Enabling environment for the work of human rights defenders

9. The Commissioner also assists member States in developing a safe and enabling work environment for human rights defenders. On various occasions, the Commissioner assessed policies, laws and practices pertaining to the freedoms of association, peaceful assembly and expression which affect the working environment of civil society actors, as well as the effectiveness of law enforcement and judicial bodies when it comes to protecting human rights defenders at risk.

10. In 2013, the Commissioner published an [Opinion](#) on the legislation in the Russian Federation on non-commercial organisations – including the Law on Foreign Agents – in light of Council of Europe standards. The Commissioner's second [Opinion](#) released in 2015 assessed the legal provisions adopted subsequently as well as the implementation of the Law on Foreign Agents in the Russian Federation, in particular the practical consequences for non-commercial organisations.

11. In the framework of his country work on Azerbaijan, the Commissioner expressed serious concern on various occasions regarding the extremely restrictive legal framework governing the work of NGOs and its implementation, as well as the legislation and practice concerning the freedoms of expression and peaceful assembly.⁸ Another case where the Commissioner highlighted the importance of developing an enabling environment for the work of NGOs is Hungary. In this context, the Commissioner expressed concern about the stigmatising rhetoric used against NGOs which were beneficiaries of the Norwegian Civil Fund and which had been subjected to audits carried out by the Hungarian Government Control Office.⁹

12. An enabling environment for the work of NGOs and human rights defenders is not only defined by the absence of restrictions and threats. It also implies that human rights defenders and NGOs are able to participate meaningfully in consultation and decision-making processes, in order for them to fulfil their role of watchdogs in democratic societies. On a number of occasions, the Commissioner recalled the importance of involving human rights organisations and defenders in dialogue and consultation with the authorities and other actors on policies, legislation and practices affecting the human rights situation.

3. [Report](#) by Mr Nils Muižnieks, Council of Europe Commissioner for Human Rights, following his visit to Armenia from 5 to 9 October 2014, [CommDH\(2015\)2](#), paragraphs 164 to 167.

4. [Report](#) by Mr Nils Muižnieks, Council of Europe Commissioner for Human Rights, following his visit to Georgia from 20 to 25 January 2014, [CommDH\(2014\)9](#), paragraphs 69 to 71. [Observations](#) by Mr Nils Muižnieks, Council of Europe Commissioner for Human Rights, on the human rights situation in Georgia, [CommDH\(2016\)2](#), paragraph 17.

5. [Report](#) by Mr Nils Muižnieks, Council of Europe Commissioner for Human Rights, following his visit to Turkey from 1 to 5 July 2013, [CommDH\(2013\)24](#), paragraph 77. [Report](#) by Mr Thomas Hammarberg, Council of Europe Commissioner for Human Rights, following his visit to Turkey from 10 to 14 October 2011, [CommDH\(2012\)2](#), paragraphs 50 to 52.

6. [Report](#) by Mr Nils Muižnieks, Council of Europe Commissioner for Human Rights, following his visit to Turkey from 1 to 5 July 2013, [CommDH\(2013\)24](#), paragraph 117 to 128.

7. "Turkey: security trumping human rights, free expression under threat", [press release](#) following the Commissioner's visit to Turkey from 6 to 14 April 2016.

8. [Observations](#) by Mr Nils Muižnieks on the human rights situation in Azerbaijan: An update on freedom of expression, freedom of association, freedom of assembly, and the right to property, [CommDH\(2014\)10](#) and "Azerbaijan: Stop reprisals against human rights defenders", press release 24/10/2014.

9. [Letter](#) to the Minister of Prime Minister's Office of Hungary, Mr Janos Lazar, [CommDH\(2014\)16](#).

Regular interactions with human rights defenders and reporting on their situation

13. The Commissioner regularly meets and consults with human rights defenders in the course of his work. Human rights defenders provide crucial information during country visits and for the Commissioner's country reports on specific human rights issues. The Commissioner also draws upon the expertise of human rights defenders for the purpose of his thematic work, notably in the process of preparing Issue Papers.

14. Regular consultations with human rights defenders have been taking place since 2008, with a view to discussing the situation of human rights defenders in the Council of Europe area as well as specific themes of importance for the Commissioner's work.¹⁰ The current Commissioner hosted the following round-tables with human rights defenders since the beginning of his mandate in 2012: The protection of migrant rights in Europe (2012), Human rights and the security sector (2013), and Women's rights and gender equality in Europe (2015). Those events helped the Commissioner and his Office to further develop their country and thematic work on the areas discussed and to better support human rights defenders and their work.

Co-operation with international partners

15. Co-operation with Council of Europe bodies and relevant intergovernmental partners is essential to improve the working environment and protection of human rights defenders. At the level of the Council of Europe, the Commissioner maintains good working relations with the Parliamentary Assembly Rapporteur on human rights defenders and the Conference of international non-governmental organisations. As noted previously, he also has intervened as a third party by making written comments in cases concerning human rights defenders before the European Court of Human Rights.

16. The UN Special Rapporteur on the situation of human rights defenders, the OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR) and the European Union feature as important partners of the Commissioner on issues related to human rights defenders. They regularly exchange information and meet, including in the framework of the so-called inter-mechanisms process – the Commissioner hosted the last inter-mechanisms meeting in Strasbourg on 25 and 26 February 2016.¹¹ The Commissioner, the UN Special Rapporteur and the OSCE Representative on Freedom of the Media issued a joint statement in June 2015 on the situation of human rights defenders in Azerbaijan.¹² Another example of co-operation relates to the participation of the Commissioner and his Office in the preparation (2013) and the launch (2014) of the OSCE [Guidelines](#) on the protection of human rights defenders.

17. Finally, the Commissioner maintains good working relations with international NGOs who are key actors in the protection of human rights defenders and in ensuring that they can work in a favourable environment.

Conclusion

18. Over the years, the Commissioner was able to develop his action in favour of human rights defenders thanks to the independence, the freedom and the flexibility of his mandate. The Commissioner is of the opinion that it is not necessary to change the mandate of his institution at this stage as it already allows him to conduct important actions for the protection of human rights defenders that he deems appropriate, including intervening on individual cases. The Commissioner will continue to pursue his action in support of human rights defenders as a matter of priority.

10. [Human rights defenders in the Council of Europe area](#), Round-table organised by the Office of the Council of Europe Commissioner for Human Rights, 27-28 October 2011, [CommDH\(2012\)21](#), paragraphs 58-82.

11. Since 2008, the Observatory for the protection of human rights defenders, a joint programme of the International Federation for Human Rights (FIDH) and the World Organisation against Torture (OMCT), is organising meetings of inter-governmental mechanisms and programmes having a mandate on human rights defenders (UN Special Rapporteur on the situation of human rights defenders, Inter-American Commission for Human Rights Rapporteur on human rights defenders, Special Rapporteur on human rights defenders of the of the African Commission for Human and People's Rights, OSCE/ODIHR Human, European Union, International Organisation of *La Francophonie*) and international NGOs.

12. [Sport cannot ignore human rights](#), joint op-ed, June 2015.