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## **REPORT**

### **FOR THE GENERAL COMMITTEE ON DEMOCRACY, HUMAN RIGHTS AND HUMANITARIAN QUESTIONS**

#### **"Thirty Years since Helsinki: Challenges Ahead"**

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# **REPORT FOR THE GENERAL COMMITTEE ON DEMOCRACY, HUMAN RIGHTS AND HUMANITARIAN QUESTIONS**

## **Thirty Years since Helsinki: Challenges Ahead**

### **Introduction**

The thirtieth anniversary of the signing of the Helsinki Final Act (1 August 1975) provides us with an opportunity to examine the great challenges that the OSCE must confront in the area of human rights and fundamental freedoms.

Effective protection of public freedoms can be guaranteed only through co-operation among all State authorities, whether legislative, executive or judicial. These are the institutions that have made it possible for our founding documents to be adopted and that are partly responsible for the implementation of the resolutions that we pass. These authorities, which are in the “forefront” of political action, have their hand on the daily pulse of the citizenry and have to deal with their expectations, their concerns and their grievances.

The draft resolution submitted to the Parliamentary Assembly is built upon three major considerations which in fact constitute an equal number of challenges facing the OSCE thirty years after the Helsinki Final Act, namely the safeguarding of fundamental rights from an *individual*, *international* and *collective* perspective.

### **The safeguarding of fundamental rights from an individual perspective**

Every human being, simply by virtue of belonging to the human race, is endowed under various international, universal or regional instruments with certain inalienable rights, the safeguarding of which is the responsibility of all the authorities in whatever territory that human being may find himself.

The recognition of fundamental rights implies the legal equality of those who are entitled to them, which in fact represents the first of these rights. This *de jure* equality must not, however, hide the *de facto* inequalities that remain and all too frequently hinder full enjoyment of the freedoms in actual practice. I shall deal here primarily with two areas of action.

First, the participating States, like the OSCE itself, have been called upon through the adoption of the “2004 Action Plan for the Promotion of Gender Equality” at the Ministerial Council meeting in Sofia (Decision No. 14/04) to pay particular attention to the representation of women in collective decision-making processes and to their involvement in senior executive positions. Given that the division between men and women is a foundation stone of humankind, this objective cannot be overemphasized. The advancement of women’s right to equality is a major element of security policy and the battle against extremist views.

Second, in 1975 the Helsinki Final Act (Article VII, paragraph 2, of the Declaration of the States Parties) had already elevated social rights to the level of those which the CSCE, then in its infancy, had set itself the objective of preserving. There is a need today to maintain our focus on this aspect of the right to respect for human dignity, since the fact is that under precarious social conditions the enjoyment of other fundamental rights tends to suffer.

The Parliamentary Assembly also has the responsibility of emphasizing the need to put into place special arrangements to protect children's fundamental rights in view of their vulnerability.

Given its universal scope, the Convention on the Rights of the Child (New York, 20 November 1989) should serve as a guide for the OSCE and its participating States in this area. The principles laid down in the Convention are intended both to guarantee children the enjoyment of the same fundamental rights as are accorded to adults and to provide them with the additional protection required by their age. The Convention also regards education as a fundamental right to which special attention must be paid by ensuring the greatest possible access to educational establishments (Article 28).

The right to live one's life in dignity presupposes first of all the legal recognition of such a life. It is therefore essential that all States put into place, without the slightest hint of discrimination, a reliable system for the recording of civil status information. The smallest omission in the recording of this information can lead to the gravest of consequences, with the victims placed virtually in a situation of "civil death" — something that is outlawed under Article 6 of the Universal Declaration of Human Rights — so that they can more easily fall prey to networks of human traffickers.

The importance of this human dimension task facing State authorities — the responsibility for which is frequently entrusted to decentralized agencies — prompts me to propose to the OSCE that it undertake to harmonize the basic guidelines governing methods of recording civil status information on the populations of participating States.

As far as elections are concerned, a complete and reliable population census is essential if there is to be respect for the universal and equal nature of the right to vote and, accordingly, for the principles of democracy and global security.

It is further up to States to ensure, by organizing honest elections that offer the full range of democratic guarantees, that the choice given to the voter can be exercised freely. There is no need to emphasize the importance of the OSCE's role in monitoring national elections in different countries. This was again demonstrated in the recent presidential elections held in Ukraine. Priority attention must continue to be given by the OSCE to the question of election monitoring methods.

The aforementioned election also provided an opportunity to highlight the role of national supreme courts when called upon to rule independently on the validity of electoral processes. The fact is that, in addition to asserting rights and recognizing them in the form of legal instruments, States have the responsibility of ensuring the genuine enjoyment of the freedoms granted to citizens by making it possible for the latter to invoke them before independent and impartial courts of law under procedures that meet the requirements of a fair trial and the proper imposition of penalties.

More generally, the OSCE has a responsibility to strengthen its presence wherever human rights are at risk of being flouted, particularly in a tense military situation. The creation under the auspices of the OSCE of permanent offices for the protection of human rights is something to be developed in this regard.

The fight against trafficking in human beings is one of our Organization's major concerns. What is at issue here is the protection of the dignity of the persons who fall victim

to this trafficking and the punishment of those who, directly or indirectly, are involved in it, whether by organizing it, facilitating it or encouraging it or by in some way profiting from it.

Against this background, it seems to me, for example, that any kind of legalization or legitimization of prostitution is a mistake, considering that this trade degrades those involved in it. In all countries and at all levels the phenomenon of prostitution should be made a matter of criminal law in order that the various actors involved in this kind of trafficking may be punished; at the same time the victims of involuntary prostitution must be protected. In this context, the aim must be to inflict punishment at the start of the process by prosecuting those who organize prostitution and profit from it and, at the other end, by going after the clientele who avail themselves of such services.

Lastly, while it is true that freedom of expression must, in all cases and whatever the means of communication used, enjoy protection as a fundamental right, still, we must ensure that possible abuses in this area do not give rise to repressive measures that are no longer purpose-oriented. While it is essential to guarantee the victims of such abuses a system under which the courts can rule fairly on compensation for damages suffered, resort to criminal law would not always seem appropriate given the fundamental nature of the freedom in question. At all events, prison sentences should not normally be among the punishments meted out in this particular area.

### **The safeguarding of fundamental rights from an international perspective**

As my next point, I should like to emphasize the overriding role of inter-State relations in safeguarding the fundamental rights of individuals. The equality of citizens within each State is reinforced if these citizens belong to States that are themselves equal.

The protection of the physical integrity of each person is one of the most important fundamental rights. This protection is inevitably violated in the event of an armed conflict. The protection of fundamental freedoms is therefore dependent on the preservation of peace. Since its inception, the OSCE has made a substantial contribution to the preservation of peace among its participating States.

As a corollary of equality among States, the respect by all for the territorial integrity of nations, as guaranteed under international law, represents a powerful factor for peace, whose importance is demonstrated each day by current events. The uncertain status of borders inevitably leads to the emergence of lawless zones that can potentially give rise to violations of fundamental human rights. From this point of view, the current situation in South Ossetia is especially worrying.

Historically, in the area of criminal justice, collaboration among States first of all made it possible to establish rules governing the extradition of offenders. With the advent of the European arrest warrant, community-wide integration has made it possible today to move beyond this traditional framework within the European judicial space.

Beyond this, it became apparent that the collective protection of citizens required co-ordination, co-operation and joint actions by States. The establishment, under the aegis of the United Nations, of an International Criminal Court charged with hearing cases involving crimes against humanity constituted an important stage in this process.

The challenges posed today by the fight against terrorism are prompting States, acting within international or supranational organizations, to introduce legal instruments aimed at protecting their populations against these new threats. The countries of the OSCE can no longer allow unveiled calls for terrorist action to emanate from their territory.

From this perspective, initiatives aimed at establishing joint and integrated instruments for combating terrorism, created by several States that have similar problems, can only be encouraged.

These real dangers must not, however, be allowed to overshadow the inalienable nature of fundamental rights. No crime, whether suspected or proven, can justify violation of the most basic rights of human beings. No offence can give legitimacy to detentions contrary to the international conventions in force. Similarly, no one may be detained in conditions that violate human dignity.

New forms of communication and, in particular, the Internet have, in recent years, given rise to new kinds of criminality. Among these crimes, child pornography is one of the most worrying. A recent study by the United States Department of Justice has shown that one minor in five aged between 10 and 17 years has already been subjected to unwanted attention online. An adequate response to this scourge can be found only if action is taken at the international level.

In this regard, we can only applaud the launching of the “Global Campaign against Child Pornography” programme under the guidance of the International Centre for Missing and Exploited Children (ICMEC). Resources are to be allocated for monitoring the Internet to make it possible to identify victims and offenders in order that the former can be protected and the latter prosecuted. International police co-operation, an area in which the International Criminal Police Organization (INTERPOL) is a major player, as well as co-operation between public authorities and companies in the computer branch, are more necessary than ever before, and it is gratifying to note that synergies of this kind are developing.

It is also necessary to step up the attention given to economic requirements and environmental protection needs. The decontamination of the testing ground in Kazakhstan, for instance, is one example of how States can share their duties.

Furthermore, it would be well to promote the incorporation of a human dimension into the various international agreements dealing with economic matters so as to encourage investment that takes account of fundamental social rights, such as the right to fair pay and environmental protection.

### **The safeguarding of fundamental rights from a collective perspective**

In the course of their history, our States have witnessed the birth of democracy and have learned to develop it. Today, democracy goes beyond the individual’s right to vote. The cohesion of a State also requires the effort to establish and maintain a balance between the various ideological, cultural, religious, linguistic or ethnic groups that comprise it.

The great challenge facing our democracies today is to ensure the coexistence of different peoples within a given State, indeed of different groups within the same people, while avoiding the three pitfalls of excessive fragmentation of the public domain,

self-withdrawal and a clash between religions rather than their reconciliation in a common and continued search for what is good.

States that include cultural minorities in the broad sense (whether or not concentrated in limited areas of the national territory) are called upon to examine the best ways of taking into account this social reality so as to reconcile the desire to maintain the unity of the country with the legitimate desire of a heterogeneous population to speak its own language in public life and to enjoy an independent cultural identity. Dialogue on these matters must make it possible to avoid calls for the splitting up of States and must be based on the notion of territorial integrity.

Against this background, the right to education takes on a definite collective dimension. This is all the more true when the minority does not speak the language of the majority. In such cases, it is the responsibility of States to organize an educational system that gives parents a choice of having their children educated in one language or another.

I have already had occasion to emphasize the importance, with regard to fundamental rights, of the organization of civil status registration machinery and of reliable census procedures. The choice of a criterion for one's belonging to a particular population group raises questions of the same conceptual nature when this affiliation is taken into account in the way the State is organized. It is always a delicate matter to acknowledge the existence of ethnic affiliations within a given State; it is even more of a delicate matter to determine the effect of this acknowledgement on public life.

In that regard, I have noted with appreciation the efforts undertaken by Kazakhstan to ensure harmonious coexistence of the peoples who inhabit that country. The enormous efforts undertaken in that country to encourage equality among the various ethnic groups deserves to be emphasized. This kind of climate can only promote the progress of a country towards peace and prosperity.

In general terms, the foregoing remarks in no way detract from a willingness to encourage the cohesion of all the citizens of a nation. The fact that a person may belong at the same time both to a State and to an ethnic or cultural group within it, whether it be a majority or minority group, ought not to constitute a source of tension. On the contrary, the aim of the approaches suggested is to organize in the best possible way the coexistence of persons of various backgrounds within an ideal of peace and a philosophy of tolerance. While it is true that it is the OSCE's responsibility to counter discrimination in all its forms so as to ensure that no one is adversely affected, especially because of his or her origin, national cohesion continues to be an objective of the greatest importance and a factor for peace.

There is also room for improvement in election laws.

The role played by political parties in the functioning of a modern democracy cannot be ignored either.

There is no denying that political parties are primary players in a democracy, both because of their role in the electoral process and because of their daily work as actors in political life, in the broadest sense of that term.

As essential cogwheels of a State based on the rule of law, parties provide a structure for political discourse. They act as bridges between State institutions and civil society.

Political parties have a privileged role as partners in dialogue with citizens' associations, which are the natural spokesmen enunciating emerging concerns, and forge the necessary links between office holders, ensuring that there is cohesion in what they do.

To varying degrees, our States have accorded political parties a particular status by granting them special rights with a view to organizing public discourse. For example, during election campaigns it is regarded as imperative to see to it that the radio and television airtime available to the candidates is fairly apportioned.

At the same time, in order to preserve the quality of the democratic debate, it is important to have arrangements that make it possible to remove fascist or revisionist groups or groups that are not sufficiently representative. These procedures must, however, be employed in moderation and handled with the greatest of care. Given the limitations they imply on the fundamental right to participate in elections, their use must be subject to strict conditions.

In all circumstances, it is necessary to guarantee the citizen's right to receive complete information reflecting the various ideological and cultural views. Only by providing a multiplicity of different information channels, whether written, spoken or audio-visual, can one contribute to this end.

The role of the police is in every instance an area of priority concern. The way in which the public authorities proceed is evolving; preventive action, an understanding of social problems, police decentralization, social monitoring for prisons and police oversight committees are some of the approaches of the future.

The composition and formation of police forces must also be considered from the point of view of respect for human rights and the protection of national minorities. In this regard, the integration of members belonging to national minorities is desirable. The efforts undertaken in the former Yugoslav Republic of Macedonia to establish a multi-ethnic police force with the assistance of the OSCE represent, for these reasons, an example that should be encouraged.

## **Conclusion**

The OSCE examines independently the implementation by its participating States of the founding principles of democracy and, if required, proposes the modifications and improvements that appear necessary in the light of the findings reached in each participating State. Other international organizations with which the OSCE co-operates closely, such as the Council of Europe, complement its efforts. In addition, the guidelines and recommendations of the United Nations provide, by way of their universal scope, food for thought.

Thirty years after Helsinki and fifteen years after Paris, the time when the world was divided into two opposing camps seems today to be behind us for good. The threats to human rights are constantly becoming more diffuse and the responses to them more international. Our Organization is finding itself confronted with fresh challenges in a constantly changing world. May it take them up with as much optimism as determination.