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REPORT

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

***“RULE OF LAW: COMBATING TRANSNATIONAL CRIME
AND CORRUPTION”***

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

Rapporteur: The Honourable Matteo Mecacci (Italy)

One of the objectives of our Committee is undoubtedly to identify the policies best suited to countering corruption and organized crime, inasmuch as both phenomena have a negative impact on the functioning of democracy and the rule of law. Corruption contributes to – and is frequently the primary cause of – violations of human rights and the rules of democracy when, for example, it impedes the proper and legitimate work of the police and security forces and of the judiciary, whose duty it is to protect the rights of citizens.

According to detailed studies conducted around the world, including in OSCE participating States, violations of human rights are most numerous where the level of corruption is highest, inasmuch as systematic corruption flourishes when the institutions entrusted with enforcing respect for human rights do not do their work properly.

As parliamentarians, therefore, we should ask ourselves what the limitations are that prevent States from combating corruption and organized crime. One of these limitations is the poor functioning of the rule of law and the inability to respect the separation of powers. This prevents States from confronting crime effectively, and it is for this reason that the rights of citizens are not protected as they should be.

Accordingly, it is important to reaffirm the centrality of the OSCE in countering organized crime and corruption, especially because the OSCE considers the interdependence between security, development and respect for human rights to be a central aspect of its mission.

The connection between respect for fundamental freedoms and corruption is particularly well illustrated by the Corruption Perceptions Index (CPI) compiled by Transparency International¹, and by the World Bank Institute's indices of respect for the rule of law.² According to the CPI, which classifies countries around the world according to the perceived level of corruption among public officials and politicians, corruption is defined as "the abuse of entrusted power for private gain". The highest level of corruption is 0, while the lowest is 10. The indicators used by the World Bank Institute are based on transparency, the quality of legislation, the rule of law and government effectiveness; 0 is the highest level, while 100 is the lowest.

When the results of these studies are combined, it becomes evident that 18 OSCE countries are simultaneously experiencing the highest level of corruption and the lowest level of respect for democracy and the rule of law, and that among them, the most serious cases involve the States of the former Soviet bloc, in which democracy and respect for the rule of law were established later than in other parts of the OSCE area.

1 See http://www.transparency.org/policy_research/surveys_indices/cpi/2009.

2 See http://info.worldbank.org/governance/wgi/pdf_country.asp.

Ten OSCE countries, however, show a fairly high level of corruption (albeit not the highest), together with an extremely dysfunctional form of democratic government; another 19 OSCE countries show a medium level of corruption and observe the principles of democracy and the rule of law imperfectly, albeit in a manner deemed acceptable. It must be underscored that only in seven OSCE countries is there a low level of corruption together with a high level of respect for the rule of law and democracy. This calls into question the political and governing classes of the overwhelming majority of OSCE countries, which are still unable to ensure for the citizens of their countries a level of economic and democratic development that would allow corruption to be monitored and combated effectively.

Of all OSCE countries, two in particular – Bulgaria and Romania – are an exception to the aforementioned groups, because they have a good level of governance and respect for democracy, but also a high level of corruption. One of the reasons for this is that the government authorities neither promote nor adopt policies and practices to prevent corruption.

The recent political crisis in Kyrgyzstan is an important example of how political corruption and its perception can make it difficult for the institutions of a State to function democratically. The demonstrations in April 2010 against the government of Kurmanbek Bakiyev – which led to violence, deaths and the control of government institutions through non-democratic means – were prompted by well-founded rumours of widespread corruption and widespread illegality within the government.

In general, according to the 2009 edition of the Global Corruption Barometer published by Transparency International, the sectors and institutions of society in which the highest levels of corruption are found are: political parties (68 per cent)³, public employees (63 per cent)⁴, parliament (60 per cent)⁵ and the judiciary (49 per cent)⁶. This makes it necessary to combat corruption in the political sphere during election campaigns, but not only then, and in the civil service and judiciary.

According to the report “Building a global coalition against corruption”, published by Transparency International, the capacity of States to combat corruption and organized crime diminishes where the rule of law and its basic principles, in particular the principle of separation of powers, do not function correctly. This means that systematic corruption goes hand in hand with the malfunctioning of the institutions that should safeguard the rights of citizens.

The entry into force of the Council of Europe Criminal Law Convention on Corruption (1999) – ratified by 42 OSCE participating States – represents an important step forward with regard to these issues, and the same is true of the Council’s Group of States against Corruption (GRECO), which, among other things, is entrusted with monitoring the implementation of the Convention.

3 This sector is considered the most corrupt in the following OSCE countries: Austria, Bosnia and Herzegovina, Finland, Greece, Hungary, Italy, Serbia and the United Kingdom.

4 This sector is considered the most corrupt in the following OSCE countries: Azerbaijan, Belarus, the Czech Republic, Lithuania, Poland, the Russian Federation and Ukraine.

5 This sector is considered the most corrupt in the following OSCE countries: Romania and the United States. A notable increase, of around two per cent, was seen between 2004 and 2009.

6 This sector is considered the most corrupt in the following OSCE countries: Armenia, Bulgaria, Croatia, Kosovo and the former Yugoslav Republic of Macedonia. A notable increase, of around six per cent, was seen between 2004 and 2009.

Two sectors in particular highlight both the need to combat organized crime and the challenges to be faced in terms of human rights, namely, trafficking in human beings and cybercrime.

Trafficking in human beings

Trafficking in human beings is a modern form of slavery and represents a serious crime, as well as a clear violation of fundamental human rights, inasmuch as it reduces victims to a state of dependency through threats, violence and humiliation. Such trafficking is also a highly remunerative commercial activity for organized crime, which thus has an opportunity to earn considerable profits with limited risk.

In February 2009 the United Nations Office on Drugs and Crime produced a global report on trafficking in persons, according to which the most common form (79 per cent) of trafficking in human beings is for the purpose of sexual exploitation; the victims are predominantly women and girls, and 20 per cent of all trafficking victims are children.

According to the Office of the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings, hundreds of thousands of women, children and men are the object of trafficking for the purpose of sexual exploitation in or via OSCE participating States every year. Nevertheless, the number of arrests, prosecutions and sentences of persons responsible for such trafficking remains low, while the number of victims continues to rise. This testifies to the huge job that remains to be done to combat this terrible phenomenon.

For example, according to a report by Save the Children on developing a child rights-based methodology for identifying and aiding child victims of trafficking, Italy is one of the key destination and transit countries for child victims of international trafficking. The main targets of trafficking for the purpose of exploitation of prostitution in Italy are adolescent girls, and those barely of age, from Nigeria, Cameroon and the countries of Eastern Europe, especially Romania and Moldova, but also Bulgaria, the Czech Republic, Albania, Serbia and Croatia.

A campaign being considered within the OSCE region on this issue includes this series of initiatives:

- (a) The OSCE Action Plan to Combat Trafficking in Human Beings and the OSCE anti-trafficking Mechanisms established in 2003 with the adoption of Permanent Council Decision No. 557;
- (b) The Council of Europe Convention on Action against Trafficking in Human Beings (2005) – ratified by 28 OSCE participating States – particularly Article 3 thereof, which defines the non-discrimination principle and seeks to protect and promote the rights of trafficking victims;
- (c) The 1989 United Nations Convention on the Rights of the Child – ratified by 55 OSCE participating States – particularly Articles 34, 35 and 36 thereof, which deal with protection against all forms of exploitation, including sexual exploitation, and prevention of the sale of or traffic in children, and the 2000 Optional Protocol on the

sale of children, child prostitution and child pornography, particularly Article 3 thereof.

In carrying out anti-trafficking efforts, it is necessary to bear in mind that their priority is to protect the human beings who are the object of trafficking. In Europe and the OSCE area, in connection with measures to counter clandestine immigration and trafficking in human beings, a worrying trend is developing that could have repercussions on the protection of victims, namely, the criminalization of irregular immigrants. The policy of restrictions in the granting of international protection to asylum-seekers in connection with measures to counter clandestine immigration must also be monitored closely, as noted, for example, in the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, drawn up after the European Committee's visit to Italy and published on 28 April 2010.

In carrying out anti-trafficking efforts, it is also necessary to bear in mind that the victims frequently resort to illegal organizations and channels in order to migrate from their countries because of the lack of appropriate legal alternatives offered by the international community. A well-founded and flexible regulation of immigration policy, in line with the interests of immigrants and of the beneficiary countries, would encourage the potential victims of trafficking to be distrustful of illegal immigration channels.

Cybercrime

The extraordinary strides made in information technology have an obvious influence on the evolution of "traditional" organized crime, which is shifting towards cybercrime. Information networks and systems undoubtedly constitute a step forward in the development of society, but they can also be used to make it more vulnerable. Terrorist groups, paedophiles, networks disseminating child pornography, traffickers in arms, narcotic substances and human beings, and those involved in money-laundering exploit these new means of communication to expand their illegal activities.

Efforts to counter cybercrime must be carried out with full respect for fundamental human, civil and political rights, based on freedom of expression on the Internet. The recent case of China and Google demonstrates that governments may try to limit the activities of private operators on the Internet not only to prevent or combat offences, but also to censor and prohibit dissemination on the Internet of legitimate criticisms of government policies, or simply the free expression of opinions.

When considering the efforts to counter cybercrime, it is important to recall a December 2008 decision of the European Court of Human Rights, according to which:

- (a) Human rights must not only be promoted, but also protected on the Internet;
- (b) Governments have an obligation to protect the basic rights and security of their citizens;
- (c) In a law-governed State, measures taken by the government, particularly in the penal sphere, must be provided for by law, must pursue a legitimate aim, and must be proportionate;

- (d) Investigative measures, particularly those which involve the fundamental rights of individuals, must be based on procedural law and must take into account safeguards and conditions that should also include independent judicial oversight;
- (e) The full implementation of the Budapest Convention on Cybercrime will help governments to comply with their positive obligation to protect both the rights and the security of individuals.

The dangers linked to this phenomenon have been recognized, and initial steps have been taken to address it, among other things, through the adoption of the 2001 Council of Europe Convention on Cybercrime, ratified by 28 OSCE participating States.

The question of corruption and malfunctioning of the rule of law have a direct influence on the enjoyment of individual rights. There is a long list of worrying situations regarding respect for human rights in the OSCE area that have been pointed out recently by non-governmental organizations (NGOs) or OSCE representatives and that demonstrate the need for the Parliamentary Assembly, in particular the Third Committee, to monitor the implementation of the commitments undertaken by OSCE participating States in the human dimension area. This is why I encourage the Committee and the Assembly to open an ongoing debate and dialogue in this area, without neglecting the complaints and concerns that are being expressed concerning the ability of OSCE institutions to implement their mandates.

The list of topics to be discussed is broad; it ranges from the application of the death penalty (in Belarus, unfortunately, new death sentences were recently carried out after a period of suspensions, while the United States has continued to execute detainees) to the protection of NGOs and journalists (deaths, ill-treatment and investigations outside international standards have been reported, for example, in the Russian Federation, Kazakhstan and Uzbekistan) and the democratic crisis in Kyrgyzstan, where an interim government has been established, and where heavy monitoring by the OSCE Parliamentary Assembly is undoubtedly needed in order to restore democratic institutions as quickly as possible. There is also the question of freedom of information and of the media, which is a constant challenge for all participating States, including mine.

Conclusions

We must avoid the risk of seeking to combat corruption and organized crime at the expense of respect for democratic principles. A State which embarks on the wrong path not only will not succeed in defending the rights of its citizens, but will expose them to even greater risks. In addition, the poorly functioning judiciary and security and police forces, which choose to concentrate on high-profile operations to suppress organized crime and corruption without ensuring full respect for the principles of legality, only appear to contribute to the building of a better society, even when such operations prove effective. In fact, when the seeds of uncontrolled and irresponsible State power are planted, the fruits of injustice and corruption are certain to grow again.

When politicians raise their voices and concerns about the need to combat organized crime and corruption, which threaten domestic and international security, they should do much more than simply denounce the crimes committed by organized criminals or call for increasing the penalties imposed on the perpetrators: they should also question the capacity and intention of States and their political systems to adopt tangible measures.

In combating corruption, it is not enough to increase the penalties or threaten to resort to the death penalty. What is needed are functioning institutions, based on an efficient and independent magistrature.

To attain this objective, we must not forget the extraordinary role that the OSCE has played for decades in promoting respect for human rights, among other things, by creating institutions that have a unique experience in this realm. In particular, the monitoring of electoral processes in OSCE countries (unfortunately not in all) has been shown to be an innovative instrument in limiting political corruption and ensuring greater transparency and equality in electoral contests. That notwithstanding, Transparency International's annual report on corruption, along with other reports, shows that political corruption is still present in many parts of the world, including in Western or European countries that have a long tradition of democratic institutions. This means that the OSCE's work in the election monitoring area should be strengthened, so as to establish a kind of ongoing and permanent monitoring of the democratic functions of its participating States.

According to the 2009 Europol report on organized crime, terrorism and other forms of organized crime represent a serious threat to national security in the OSCE area and a clear violation of human rights. That notwithstanding, in combating terrorism, organized crime and extremism, some OSCE States have violated certain basic human rights, such as the right to a fair trial, the right to a defence, freedom of assembly, freedom of association and the right to participate in elections; this is clearly demonstrated by the cases reported and compiled by NGOs, such as Amnesty International, Freedom House, Human Rights Watch, and others.

In order to address questions related to safeguarding security and promoting economic development, greater co-operation is needed on the part of the international community in establishing appropriate institutions, governed by democratic principles and the rule of law, to carry out this type of work. At the same time, ongoing international co-operation is essential in order to guarantee respect for the rule of law and democracy; the OSCE must reaffirm its own role and leadership in this area, inasmuch as it can make a robust contribution to strengthening not only the human dimension, but also the security of every society.

In reality, security is guaranteed not by the total absence of crime – resulting from fear of a dictatorship, of harsh repression, or of “exemplary punishments”, as some politicians think, and as public opinion might be induced to believe when a populist “war on crime” approach is being implemented – but by the reasonable hope that, when a crime is committed, there will be efficient police and security forces and a magistrature capable of punishing the guilty in a fair and just manner that will not impair the enjoyment and exercise of the civil rights and liberties of everyone because of the misdeeds of a few.