



AS (13) RP 3 E
Original: English

REPORT

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

Helsinki +40

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ISTANBUL, 29 JUNE - 3 JULY 2013

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Rapporteur: Ms. Ann Phelan (Ireland)

Introduction

In December 2012, the OSCE Ministerial Council adopted the Decision No. 3/12, launching the Helsinki +40 process as an inclusive effort by all participating States to provide strong and continuous political impetus to advancing work towards a security community, and further strengthening our co-operation in the OSCE on the way towards 2015. This initiative, supported by the Chairmanships of Ukraine, Switzerland and Serbia, has been welcomed by the 57 participating States.

At the core of the Helsinki Final Act, the participating States agreed to “respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief, for all without distinction as to race, sex, language or religion.”¹ They recognized “the universal significance of human rights and fundamental freedoms, respect for which is an essential factor for the peace, justice and well-being necessary to ensure the development of friendly relations and co-operation among themselves as among all States.”²

As part of the Helsinki +40 process, the spirit of this Agreement should be renewed and the progress since 1975 should be measured in the Third Dimension. We should bear in mind the Irish Chairperson-in-Office’s closing statement at the 2012 Ministerial Council: “Of even greater concern, is the sad reality that respect for basic human rights and fundamental freedoms is currently under great threat in many parts of the OSCE region.”³

Not only are the basic rights and freedoms not always respected but new challenges have emerged in the past 40 years. Questions can be raised on whether new laws are improving the human rights situation for people across the OSCE area regarding human trafficking, freedom of the media and Internet, freedom of belief, anti-terrorism laws, the right to peaceful protest, among many others. During this period of economic crisis, workers are facing increased job insecurity and noting that austerity measures may further endanger their rights. Participating States all have their strengths and weaknesses but with increasing interdependence, violations in one country can now have an impact on the wider OSCE area.

The 1999 OSCE Charter for European Security, which states that respect for and observance of human rights and fundamental freedoms is at the core of the OSCE’s comprehensive concept of security, as well as the 1990 Charter of Paris and the Copenhagen Document that affirm the importance of the Human Dimension in the OSCE’s comprehensive security concept. Therefore,

¹ Helsinki Final Act, 1975

² *Ibid.*

³ OSCE, MC.DEL/54/12 Closing Statement by Chairperson-in-Office of the OSCE, Eamon Gilmore, TD, Minister for Foreign Affairs and Trade of Ireland, 19th OSCE Ministerial Council, Dublin, 7 December 2012

Human Dimension reform is not only needed to ensure the respect of the commitments but also to reinforce the role of the OSCE as an institution able to deal with those issues. The recent failure at the OSCE Ministerial to reach an agreement in the Human Dimension demonstrated the fragility of our decision-making process and underscored the role that Parliamentarians play in supporting the transition to transparent and effective institutions and follow-up systems. The Moscow Mechanism, as recalled in many OSCE PA Declarations, should be more frequently and more effectively applied. This mechanism prevents the blockage by one participating State to adopt better standards on human right and lead to a regression of the global situation and encourage setting higher obligations. The Helsinki +40 process creates an opportunity to facilitate discussion of the threats of the OSCE itself for the improvement of the respect of human rights and fundamental freedoms in the OSCE region. Without future agreement on the Third Dimension, it is unlikely that the Helsinki +40 process will be seen as successful.

Human Trafficking for All Forms of Exploitation, including Sexual Exploitation

Trafficking in human beings has been identified as a pressing concern by the OSCE since 1991, when the participating States included a commitment to combat trafficking in the Moscow Document. In 2007 the Spanish Chairmanship extended the concept of security to include sustainable human development, as enshrined in the Madrid Declaration, achieving a consensus on human trafficking.

The OSCE Parliamentary Assembly has regularly debated this burning human rights issue. Last July in Monaco, the Parliamentary Assembly voted on the resolution on gender and minorities in the OSCE region which reminds that in our countries, minority women and men are more vulnerable to trafficking for sexual exploitation. Since the nineties, human trafficking has been recognized as a serious transnational threat and human rights violation affecting women, men and children exploited throughout the world in multiple sectors of the economy, in begging, in forced criminality, and also trafficked for organ removal.

At the Annual Session in Oslo, the OSCE PA voted to step up the struggle against human trafficking for purposes of sexual exploitation in the OSCE countries. At the 2009 Vilnius Annual Session, the OSCE PA adopted a resolution on strengthening efforts to combat all forms of trafficking in human beings and addressing the special needs of child victims. Much work remains to be done to tackle all forms of trafficking. We need to further promote law enforcement for better prosecution, strengthen measures for the prevention, the protection and the integration of victims, and increase international co-operation in this area. Indeed, the former President of this Assembly identified the fight against trafficking as an area of concrete co-operation with the United Nations when he met with UNODC Executive Director Yury Fedotov in December.

The Ministerial Council adopted strong Declarations on this issue such as the Ministerial Declaration on combating all forms of Human Trafficking on 7 December 2011 that “declare[s] that

human trafficking is a grave and heinous crime that violates human dignity and undermines human rights and fundamental freedoms and that feeds organized criminal networks.”⁴

The OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings, Maria Grazia Giammarinaro, should be commended for her tireless efforts in the implementation of her mandate, as well as strengthening the Alliance against Trafficking in Persons as a platform for co-operation among major international organizations and NGOs. Ms. Giammarinaro further underpinned the role of national Parliaments in addressing this horrendous crime and gross human rights violation in her 2012 Annual Report. She met with the several delegations to the OSCE PA to discuss ways to step up our joint efforts in the fight against modern-day slavery and exploitation. The Alliance against Trafficking in Persons should be strengthened as a platform for co-operation among major international organizations and NGOs.

A lack of education on the issue is a contributing factor to increased vulnerability. National Parliaments in the OSCE should adopt strong policies to insure that the level of education in this field is sufficient to fight trafficking directly at the source. Lack of education does not just manifest in one generation but is inherent in several generations. As can be seen in some OSCE states, lack of education within many families is multi-generational.

The OSCE Field Operations are actively working on this issue. Projects are launched with Governments, Parliamentarians and civil society, trainings and workshops are regularly organized, and officials are supported to participate to OSCE events related to trafficking of human beings. Their work is vital and complements well the actions of governments and parliaments.

In Moldova, the OSCE Mission is active on the issue, with activities ranging from counsel, assistance, co-ordination to advocacy. In July, the General Prosecutor’s Office released statistics that showed that nearly half of trafficked women, coming from socially vulnerable families and poorly educated, later become offenders who recruit other victims. Child suicide rate has increased in 2012 compared to 2011. Therefore, the Mission recommended that the OSCE executive structures foster regional co-operation, especially between law enforcement agencies and the judiciary of countries of origin, transit and destination. It hosted several events and one of them can be taken as a good practice. The Summer School of Leadership for Young Rural Women of Both Banks of the Dniester/Nistru trained 50 young women. They learned how to detect and prevent risks of domestic violence and trafficking. The OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings is also implementing a project aimed at preventing human trafficking in children without parental care in the Republic of Moldova. The goal of this project is to prevent trafficking in human beings and irregular migration from Moldova, by supporting sustainable social and professional integration of children without parental care

The OSCE Academy in Bishkek and the Office in Baku have organized meetings and helped NGOs in providing assistance to victims of trafficking. ODIHR maintains its efforts to combat trafficking

⁴ OSCE, MC.DOC/1/11/Corr.1, “Ministerial Declaration on combating all forms of Human Trafficking”, 7 December 2011.

and is working to establish an OSCE-wide network of legal practitioners to improve access to justice and effective remedies, including compensation, for trafficked persons.

In October, the OSCE Special Representative and Co-ordinator for Combating Trafficking in Human Beings hosted prominent event - the Alliance against Trafficking in Persons. The Alliance Conference was also attended by Partners for Co-operation.

The Fifth Annual Inter-Regional workshop on “Sharing Practices in Adjudication of Human Trafficking and Migrant Smuggling Cases among Source, Transit and Destination Countries”, has been organized jointly by the UNODC, OSCE, and IOM in Ashgabat, Turkmenistan. The OSCE Field operations facilitated the participation of many experts.

The Chairmanship has demonstrated its leadership in this area by having recognized the fight against Trafficking in Human Beings as a key issue for the Organization. At the national level, in September 2011, Ukraine adopted the law “On Combatting Trafficking in Human Beings”, which was supported by a regulation on the Procedure for the Provision of the Status of Victim of Trafficking in Human Beings last May, followed by two more governmental regulations on National Referral Mechanism and financial aid to human trafficking survivors in June and August. The authorities should continue in this direction.

According to a study from UNODC,⁵ there are many factors affecting vulnerability in the countries of origin including age, gender and poverty. Children are vulnerable to the demands and expectations of those in authority, including their parents, extended family and teachers. In a study on physical and mental health consequences of human trafficking in Europe, it was found that 60 per cent of victims had experienced physical or sexual violence before they were trafficked. Women are vulnerable because they are often excluded from employment, higher education and legal as well as political parity. Awareness is therefore primordial in every single State, be it a country of origin, transit or destination.

Many Field Operations conduct relevant projects, including on codes of conduct in Albania and Uzbekistan, on women’s economic empowerment and preventing traffic of human beings during major sporting events in Ukraine, on minority children in Albania, or to prevent traffic of human beings of vulnerable migrant and minority children in Bosnia and Herzegovina for example.

The Centre in Bishkek launched an information campaign to raise awareness about the risks of trafficking in the south of Kyrgyzstan. To mark the beginning of the Kosovo Government’s new project, the “Anti-Trafficking Month” in October 2012, the OSCE Mission supported a project aimed at fostering dialogue between anti-trafficking stakeholders and persons vulnerable to human trafficking in municipalities and raising awareness of trafficking among youth. In Tajikistan, the Office disseminates awareness material that has been produced in partnership with the governmental Inter-Agency Commission to Combat Human Trafficking. In Yerevan, the Office organizes several Police Open Day events in conjunction with the Armenian Police and the

⁵ UNODC, “Human Trafficking: An Overview”, 2008, <http://www.ungift.org/docs/ungift/pdf/knowledge/ebook.pdf>

National Centre for Legal Research NGO to reach out to high school students and touched on efforts to combat trafficking of human beings, among other topics. The OSCE also holds an annual meeting of focal points in Vienna to discuss and coordinate work.

OSCE Participating States should adopt strong policies to ensure that the level of education on these issues is sufficient to fight trafficking directly at the sources. Indeed, lack of education or poor education can contribute to people being more vulnerable. Moreover, not a single victim should be neglected and considered as an illegal migrant. All police and institutions – including OSCE field operations – working to help the victims of this tragic practice must be provided with the resources and trainings they need to carry out on their essential work.

Promotion of Media Freedom

The 1975 Helsinki Final Act refers to Article 19 of the 1948 United Nations Universal Declaration of Human Rights: “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”⁶ Unfortunately, this right has been, and continues to be, violated in several countries in the OSCE area.

The role of the OSCE Representative on Freedom of the Media is fundamental, as is the work of the OSCE field missions. Dunja Mijatović is visiting participating States and working with them on possible improvements in the field of media freedom. She calls on the participating States to reverse a culture of impunity that exists in some participating States and to avoid the adoption of new laws limiting the access to information and the rights of the journalists. The OSCE Representative on Freedom of the Media regularly participates in the OSCE PA Winter Meetings, including in February 2013 – where she addressed the OSCE PA’s General Committee on Democracy, Human Rights and Humanitarian Questions on the issue of media freedom. In the 2012 Monaco Declaration, the OSCE PA strongly encouraged the participating States to support her in the efforts to strengthen and implement relevant OSCE principles and commitments,⁷ following the adoption of the 2009 OSCE PA Resolution on Strengthening OSCE Engagement on Freedom of Opinion and Expression.

Self-regulation is another important issue on this matter. Having an independent institution that is separated from the Government and the Judiciary would be a preferable alternative to no regulation or indeed, in some cases, a state regulator. Therefore, a self-regulatory council within a member State would be something that could be developed in some participating States.

Freedom of the media is also closely linked with internationally recognized freedoms, encouraging independent reporting and freedom of the press especially with the advancement of new technologies. In particular, regarding the situation in Belarus, Georgia, Kazakhstan, as well as other countries in the region, we see some worrying trends. In its 2012 report, Freedom House designated

⁶ United Nations, “The Universal Declaration of Human Rights”, 10 December 1948, <http://www.un.org/en/documents/udhr/>

⁷ OSCE PA, “Monaco Declaration”, July 2012

some of these participating States as “not free” in terms of freedom of the press.⁸ How can a nation thrive without democracy and indeed, how is democracy sustainable without freedom of the media, expression, publication and distribution of ideas? In these post-Soviet States, modern methods of information control are still prevalent. However, the emergence of new technologies and media afford new opportunities for greater freedom of expression and for an independent press. Unfortunately, Internet blocking and curtailment of website content frequently occurs in some regions of the OSCE.

We should also be concerned about the situation in Azerbaijan. In December 2012, the OSCE Representative on Freedom of the Media, Dunja Mijatović, said that “all journalists in detention [in Azerbaijan] should be released,” after two convicted journalists and a blogger were freed in Azerbaijan. For example, we have the case of Avaz Zeynalli, editor-in-chief of “Khura” newspaper, whom Mijatović was able to visit in prison last year.⁹ An Azeri court found him guilty in March 2013 under Articles 311.3.3 (bribery on a large scale), 311.4 (extortion by threats), 306 (no execution of a court decision) and 213.1 (evasion of taxes in a significant amount) of the Criminal Code. He was sentenced to nine years in prison. At trial, the journalist completely denied the charges. This case, among others, is a source of great concern.

The European Court of Human Rights found in respect of the Lingens Judgement (1986) that “freedom of the press affords the public one of the best means of discovering and forming an opinion of the ideas and attitudes of political leaders”. The internet has fast become an unprecedented tool of communication for the exchange of ideas and information on a worldwide setting. It is essentially a form of self-education.

We must recognize that media should not forget the issue of intrusion into private life but despite some progress in some countries, there is still a long way to go towards achieving freedom of the media in the OSCE region. The OSCE Parliamentary Assembly is composed of Parliamentarians who are directly proposing and voting on the laws and this is their responsibility to ensure that they are adopted in the most transparent manner and will improve the right to freedom of opinion and expression.

Freedom of Belief

Article 18 of the United Nations Universal Declaration also states that “Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.”¹⁰ According to the Helsinki Final Act, “the participating States will recognize and respect the freedom of the individual to

⁸ Freedom House, Freedom of the Press Data, <http://www.freedomhouse.org/report-types/freedom-press>, 2012.

⁹ OSCE, “OSCE media freedom representative welcomes release of journalists in Azerbaijan, calls for all journalists to be freed”, 28 December 2012, <http://www.osce.org/fom/98422>

¹⁰ United Nations, “The Universal Declaration of Human Rights”, 10 December 1948, <http://www.un.org/en/documents/udhr/>

profess and practice, alone or in community with others, religion or belief acting in accordance with the dictates of his own conscience.”¹¹

At the Winter Meeting in 2006, the Assembly met for an extraordinary debate on “The World Crisis on Freedom of Expression and Respect for Religious Beliefs”. During the opening plenary, former President Alcee Hastings said, “Nothing justifies the use of violence by religious extremists as a way to express discontent over what is printed in the free press. Political opportunists and religious fanatics that go out of their way to inflame sentiment in order to use this dreadful controversy to suit their own purposes are nothing more than provocateurs and thugs.” In the same spirit, six years later, the 2012 Human Dimension Implementation Meeting, which took place over two weeks in Warsaw in September and October, included a special day on freedom of religion or belief.

However, some citizens are still facing discriminations on the basis of their religion or belief. As Member States, we need to identify existing obstacles to the enjoyment of the right to freedom of religion or belief and present recommendations on ways and means to overcome such obstacles. We should support the work of the OSCE field operations in this regard but also continue to emphasize co-operation with other institutions, international organizations, NGOs and the civil society to facilitate follow-up to the Helsinki commitments.

Parliamentary transparency and openness

An added value of the OSCE Parliamentary Assembly is its commitment to openness and transparency. We must recognize the value of sharing experiences among the Assembly’s member parliaments to foster mutual understanding, strengthen co-operation and improve the democratic process for citizens in each of our countries. For example, I can highlight the Declaration on Parliamentary Openness, a product of the 2012 World e-Parliament Conference as one approach to improve legislative transparency, expand access to parliamentary information, enable electronic communication among elected officials and constituents, and increase citizen engagement. We should increase bilateral and multilateral visits and common meetings on this issue. While the economic crisis is hitting our countries, transparency and openness is a key to combat extremism and to reinforce the trust between Parliaments and voters.

Field presence mandates

Last July, the OSCE PA urged, once again, the OSCE Ministerial Council to adopt full, effective and long-term, at least three-year, mandates that include monitoring and reporting activities in all spheres, including the areas of human rights and the Human Dimension. In December 2012, the Permanent Council decided to extend the mandate of all field missions until December 2013. It is regrettable that the decision does not respond to the current field missions’ long-term needs. This issue concerns the overall long-term impact the OSCE is able to have in all three dimensions, but also organizational issues, such as stable recruitment.

¹¹ Helsinki Final Act, 1975

Regarding the OSCE field missions in Belarus and Georgia, we can just acknowledge the failure to reach an agreement despite the urgent need for a local presence in those countries. While we are waiting, the situation on the ground is constantly changing and there are increasing needs for OSCE monitoring and other field activities. Over the last decade, the OSCE has also downgraded the OSCE field presences in Ukraine and Uzbekistan to Project Co-ordinator offices. There are discussions around the OSCE operations in Kazakhstan and Azerbaijan to do the same. This would be very unfortunate, as the project co-ordinator framework limits the OSCE's monitoring capacities – a key element of its work.

Role of civil society and the OSCE

The OSCE's Human Dimension's reform is moving along, but the lack of progress regarding the participation of the civil society in the decision-making progress is missing from the agenda. Several proposals have been made by non-governmental organizations and coalitions, such as the Civic Solidarity Platform.¹²

Despite the request in the Monaco Declaration for the OSCE Permanent Council to organize meetings with regard to the violation of OSCE commitments in the Human Dimension, to conduct these meetings in a way that is open to the public, the media and civil society representatives, we cannot see any improvements in this regard.

In the 2012 Monaco Declaration, the Assembly called for a civil society advisory board within the OSCE PA. While this issue remains on the table, civil society has been present in recent OSCE PA meeting, including the Winter Meeting – where it has become a tradition to invite guest speakers from among civil society to address the parliamentarians, and engage in an open, transparent and constructive debate.

Prison conditions and oversight

Last year's report by the Rapporteur of this Committee, Mr. Coskun Coruz (Netherlands), focused on prison reform.¹³ Coruz noticed that the OSCE has not developed binding standards in the field of prison conditions and the systematic inspection of prisons is still limited. Austria's ratification of the Optional Protocol to the UN Convention against Torture, and other Cruel, Inhuman or Degrading Treatment or Punishment, which provides for an international inspection system, many others still have not ratified this important protocol (Andorra, Belarus, Belgium, Canada, Finland, Georgia, Greece, Hungary, Iceland, Ireland, Kyrgyzstan, Latvia, Lithuania, Monaco, Mongolia, Norway, the Russian Federation, Slovakia, San Marino, Slovenia, Tajikistan, Turkmenistan, the United States and Uzbekistan).¹⁴

¹² The Civic Solidarity Platform, "Civil society recommendations to the participants of the OSCE Ministerial Council meeting in Dublin, 6-7 December 2012".

¹³ OSCE PA, "Report for the General Committee on Democracy, Human Rights, and Humanitarian Questions – The OSCE : A Region of Chance", Monaco. 5-9 July 2012, p. 4-6.

¹⁴ United Nations, "Treaty Collection", <http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en>

As mentioned in the 1991 Moscow Document which indicated that participating States committed themselves to treat all persons deprived of their liberty with humanity and with respect for the inherent dignity of the human person and to respect the internationally recognized standards that relate to the administration of justice and the human rights of detainees, all participating States should co-operate with international institutions regarding visits to all prisoners – including those the international community considers to be incarcerated on political grounds.

Access to justice

In Monaco, this Committee also emphasized the issue of judicial independence.¹⁵ In some participating States, the lack of access to a fair trial has been highlighted. As stated in the 1990 Copenhagen Document,¹⁶ all human beings should have access to a fair trial and tribunal, which also applies to political activists and those accused of terrorist activities.

My predecessor expressed his disappointment regarding the situation in Guantanamo¹⁷, which is still open despite long-standing promises to close the prison, compared to the expectations raised in Oslo during the 2010 Annual Session. On another specific issue, those responsible for Russian lawyer Sergey Magnitsky's death still have not be brought to justice. Unfortunately, there are many other examples in the OSCE area.

Refugees and internally displaced persons

In 2010 in Oslo, the OSCE PA adopted a Resolution on the right of internally displaced persons and refugees to return to their place of origin and considered on the safe and dignified voluntary return of the internally displaced persons and refugees within and from Georgia of utmost importance and urgency. Last year in Monaco, we urged its immediate implementation. It is important to recall again this year on the parties involved to co-operate in finding ways to facilitate an early voluntary return of refugees and internally displaced persons from both sides to their homes of origin in safety and with dignity.

In all OSCE participating States, refugees and internally displaced persons' rights should be respected including the rights to return, education, work, health care and access to justice.

Conclusion

The Helsinki +40 process is not fully defined at the moment. Therefore, the role of the OSCE Parliamentary Assembly is also to bring its contribution in order to make it as useful as possible. We have seen some significant progress in the Human Dimension since 1975, in particular, the

¹⁵ OSCE PA, "Report for the General Committee on Democracy, Human Rights, and Humanitarian Questions – The OSCE : A Region of Chance", Monaco. 5-9 July 2012, p. 3-4.

¹⁶ Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, Copenhagen, 29 June 1990.

¹⁷ OSCE PA, "Report for the General Committee on Democracy, Human Rights, and Humanitarian Questions – The OSCE : A Region of Chance", Monaco. 5-9 July 2012, p. 4.

adoption of the 1990 Copenhagen Document, which is still held up as the key document when evaluating the quality of elections in participating States. However, in some participating States, the situation of specific human rights and fundamental freedoms has regressed. We need to pay special attention to ongoing issues such as human trafficking, freedom of the media and freedom of belief, as well as access to justice and general democratic developments in our region. These do not only affect a part of the OSCE region but the whole area.

To combat human trafficking, origin, transit and destination countries need to work together, to adopt strong policies and to reinforce the education and awareness on this topic so that the most vulnerable can be provided with an alternative and thus protect themselves against this threat before it occurs.

Freedom of the Media and Freedom of Belief are also rights that are regularly violated despite recurring calls to respect fundamental commitments not only through OSCE PA Declarations but also from the OSCE Institutions and Representatives, international organizations, civil society statements.

The Helsinki +40 process should review the achievements and the violations that were observed since the 1975 Helsinki Final Act, note the general trends, make clear recommendations on further integrating human security into the overall agenda of the OSCE and find more effective ways to ensure respect for States' human rights commitments, including follow-up on concrete human rights issues.