

**OSCE Human Dimension Commitments
A Reference Guide
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The Human Dimension of the OSCE: An Introduction, pp XIV-XVI

Since its beginnings, the OSCE has followed a "process" approach. The Helsinki Final Act provides for regular follow-up conferences and meetings. This is very important for understanding the OSCE human rights framework. Firstly, it means that there is a forum for discussing the implementation of the standards agreed in previous meetings. Secondly, it has led to a set of successive OSCE documents specifying and elaborating the human dimensions commitments adopted in past documents. As a result, the OSCE has developed a very flexible and dynamic norm-creating process in the field of human rights, a process which is ongoing.

OSCE commitments generally take the form of documents adopted by consensus at OSCE Summits or Ministerial meetings. Each meeting takes place in a particular political climate and context. Not surprisingly the OSCE summits have therefore been of different importance in creating new commitments. Whereas some meetings, in particular in the early 1990s, created a large set of important new norms, others restricted themselves to minor changes and additions.

This process approach has led to a large number of OSCE documents. As a result, it is not always easy for practitioners to find out which standards exactly apply to a specific situation. In particular, as each document, to a varying degree, contains repetitions and innovations. As a basic guideline the user should note that all documents together form the existing framework of the OSCE. Thus, a document does not become invalid when new documents are adopted. The documents build on each other and constitute what could be called the "acquis OSCE". They have been adopted by consensus and thus are politically binding for all OSCE participating States. This also applies to newly admitted participating States as they were required to accept the aquis upon accession.

Consequently, a user should not only rely on a single document, but should check the whole range of existing documents in order to find the actual scope of commitments on a given right or fundamental freedom. Often, an early document only stipulates a general principle which is then further elaborated on in subsequent documents. However, as the commitments and documents build on each other, a commitment in an early document does not lose its force if a subsequent document has only a general reference to it.

At the same time, each document as a whole reflects a specific historical context and the structure of the document follows a certain logic which puts the different parts of the document in a wider context. Reading a document in its entirety can thus equally provide important information as to the understanding and interpretation of the norms concerned. This explains the

dual approach in this compilation, which consists of thematic and chronological components.

In a number of cases, OSCE human dimensions commitments go far beyond the "traditional", legally binding human rights instruments. In traditional human rights treaties individual (or group) rights are formulated and the State Party has the obligation to respect and/or guarantee those rights. However, it is mostly left at the discretion of the states how they implement these.

The OSCE human dimension goes much further in linking human rights with the institutional and political systems of a state. In essence, through their human dimension commitments OSCE participating States have agreed that a pluralistic democracy based on the rule of law is the only government system capable of guaranteeing human rights effectively. This explains why the OSCE human dimension has been described as a common pan-European public order (*ordre public*). In other words, the OSCE is not simply an organization of 55 participating States it is also a "community of values". This is also reflected in the strong commitment to the rule of law and in the way it is formulated, as a concept based on the dignity of human beings and a system of rights through law/legal structures.

The OSCE process is essentially a political process which does not create legally binding norms and principles. Unlike many other human rights documents, OSCE human dimension commitments are politically rather than legally binding. This is an important distinction as it limits the legal enforceability of OSCE standards. In other words, OSCE commitments cannot be enforced in a court of law. However, this does not mean that the commitments lack binding force. The distinction is between "legal" and "political" and not between "binding" and "non-binding". This means that the OSCE commitments are not only a simple declaration of good intentions; it is a political promise to comply with these standards.

While it usually takes a considerable amount of time to reach an agreement on a final text in international legal documents, and the final documents are subject to ratification and reservations, this is not the case as far as OSCE documents are concerned. The political nature of OSCE documents means that once consensus among the States has been achieved, decisions enter into force immediately and, in principle, are binding for all OSCE States (the so-called universality principle). This allows the OSCE to react quickly to new needs. For example, when human rights violations in regard to minorities increased in the beginning of the 1990s, it was the OSCE that reacted first and drafted a comprehensive set of standards in the field of minority protection. Later, these political standards served as basis for the legally binding Council of Europe Framework Convention on the Protection of National Minorities.

A fundamental aspect of the human dimensions within the OSCE is that human rights and pluralistic democracy are not considered to be an internal affair of a state. The participating States have stressed that issues relating to human rights, fundamental freedoms, democracy and rule of law are of

international concern, as respect for these rights and freedoms constitutes one of the foundations of international order. In fact, the participating States have "categorically and irrevocably" declared that the "commitments undertaken in the field of the human dimension of the OSCE are matters of direct and legitimate concern to all participating States and do not belong exclusively to the internal affairs of the State concerned" (Moscow Document, 1991). Therefore, OSCE participating States are no longer in a position to invoke the non-intervention principle to avoid discussions about human rights problems within their countries. This explains why the OSCE is not only a "community of values", but also a "community of responsibility". It has to be stressed that this "responsibility" does not only focus on the right to criticize other states concerning violations of human dimension commitments, but also on the duty to assist each other in solving specific problems.