

Office for Democratic Institutions and Human Rights

EXTRACTS FROM THE CONSOLIDATED SUMMARY OF THE OSCE HUMAN DIMENSIONS IMPELMENTATION MEETING 2003

FREEDOM OF ASSOCIATION AND THE RIGHT TO PEACEFUL ASSEMBLY

Report of the Rapporteur

The debate reflected that threats to freedom of association continue and in some countries constitute a deterioration or non existence of freedom of assembly. Contributions highlighted cases of arbitrary detentions, judicial and administrative harassment, closing down of NGOs, persecution for participation in peaceful street actions, and even cases of missing public figures. Participants also discussed freedom of association and assembly in relation to the fight against terrorism.

Recommendations by many participants included the following:

- Participating States should welcome NGOs as partners in implementing reforms and developing civil society and refrain from any measures that would place obstacles to the establishment and development of strong civil societies in their countries.
- Participating States should ensure that the process of establishing an association be quick, simple and inexpensive, and review the adequacy of existing legislation and analyze its implementation.
- Participating States should ensure that any possible ground for restricting the freedoms of association and assembly comply with the exhaustive list of legitimate aims that are listed in international and regional treaties.
- Participating States should take up the issue of freedom of association of active military personnel.
- OSCE/ODIHR in cooperation with field missions, where appropriate, should continue to facilitate the development of a culture of consultation between authorities and NGOs.
- OSCE/ODIHR in cooperation with field missions should continue to monitor the situation in the area of freedom of association in order to determine which restrictive measures are applied and continue to work to enhance freedom of association in those States where restrictions still exist.
- OSCE/ODIHR should provide an annotation of OSCE commitments in the area of freedom of association.
- One delegation proposed to consider Freedom of Assembly as a topic for one of next year's SHDM. Such a meeting could review the degree to which laws on Freedom of Assembly throughout the OSCE area are consistent with OSCE commitments and other international standards, and examine what more participating States can do to better implement OSCE commitments in this regard.

Detailed recommendations from participants (unedited)

Delegation of the United States of America:

Recommends:

- that Government of Belarus abolish the law, passed in August 2003, allowing authorities to ban political parties, trade unions and other organizations, or amend this law to comply with OSCE commitments;
- that Uzbekistan allow the registration of political parties and permit them to participate in political life;

- that Kazakhstan clarify the advance notification procedures necessary, pursuant to its February 2003 constitutional amendments, for public meetings, demonstrations and other assemblies;
- that Azerbaijan allow political parties to organize peaceful rallies, especially in the run up to the October presidential election; and
- that consideration be given to freedom of assembly as one of the topics for next year's Supplementary Human Dimension Meetings.

European Union:

- The participating States and the OSCE Partner States should, where relevant, consider acceding to and/or ratifying relevant international instruments pertaining to the right of association and the right of peaceful assembly. They should also examine ways in which to advance concrete respect for those rights, both in a domestic and an international context.
- Freedom of association is a prerequisite for a well-functioning civil society. Governments should welcome NGOs as partners in implementing reforms and promoting civil society. ODIHR in co-operation with field missions should continue to facilitate the development of a culture of consultation between authorities and NGOs, in order to promote representatives of civil society as partners in decision-making processes.
- The parliaments and civil societies of the OSCE participating States should seek to ensure that the right of association and the right of peaceful assembly are properly respected within each State, including through an examination of the adequacy of existing legislation and through comprehensive monitoring and reporting on implementation of legislation and respect for those rights in general.
- ODIHR in co-operation with field missions should continue to monitor the situation in the area of freedom of association in order to determine which restrictive measures are applied and continue to work to enhance freedom of association in those participating States where restrictions on this fundamental right still exist.
- The process of establishing an association should be quick, simple and inexpensive. Participating States should lift onerous registration requirements and over-regulation of independent NGOs, trade unions, political parties, and media.
- Prevention of peaceful gatherings and police violence against peaceful demonstrators constitute a violation of the right of peaceful assembly.
- As laid down in the OSCE Charter on Preventing and Combating Terrorism, measures against terrorism and all counter-terrorism measures and co-operation should be implemented in accordance with the rule of law, the United Nations Charter and the relevant provisions of international law, international standards of human rights and, where applicable, international humanitarian law. All OSCE institutions and Participating States are urged to integrate a human dimension component into relevant programmes, including in the area police assistance.

International League for Human Rights:

- To recommend to the OSCE participating States to introduce and strictly adhere to the principle of notification instead of the authorization when registering various types of NGOs. To abolish (in those States where this norm exists) mandatory registration of NGOs and administrative and criminal sanctions for non-registration.
- During drafting and adopting new legal provisions, pertaining to the issues of formation and activities of NGOs, special attention should be paid in order to ensure that new norms do not worsen, without legitimate reasons, the status of NGOs.
- When elaborating laws and during cooperation between the governmental and NGO structures, a clear distinction should be drawn between political activities and necessary and legitimate public activities of NGOs, aiming at fulfillment of the objectives set out in their charters. Such activities may include, in particular, such elements as:
 - organization of public campaigns, meetings, picketing, etc;
 - lobbying of laws and legal review of existing and draft laws from the point of view of their protection of human rights and legitimate interests of various groups of the society;
 - as well as appeals to the courts of all levels and full utilization of the judicial system for the achievement of their charter objectives.
- To prepare and publish official guidelines for the OSCE area on legislative standards and implementation best practices with regard to freedom of assembly and association, taking into account examples of all OSCE participating States.
- To review the existing legislation and implementation practices related to the exercise of freedom of assembly and association in the OSCE area.
- To suggest to the OSCE participating States, in which the situation with regard to the freedom of assembly and association raises concerns, to submit official reports:
 - on the practice of implementation of the right of citizens to association;
 - on compliance of the national laws with the “Fundamental Principles on the Status of NGOs in Europe”, which were adopted by the CoE in April 2003.
- To assist the OSCE participating States on a regular basis with the task to bring their national laws in compliance with international standards related to freedom of assembly and association and to train state officials and parliamentarians on the relevant norms and standards.
- To organize an OSCE Supplementary Human Dimension Meeting devoted to freedom of assembly and association.
- To call upon the OSCE participating States to stop clampdowns and repression against independent NGOs.
- To review the suggestion to the OSCE and the ODIHR to continue official contacts with those NGOs that have been denied registration by state authorities on the basis of political unsuitability or as a result of persecution.

Coalition for Democracy and Civil Society (Kyrgyzstan):

- Ensure that the Kyrgyz Government pledges and guarantees participation of domestic civil society groups in political life and refrain from using the new Constitution adopted at February 2003 referendum to limit NGOs’ sphere of work;

- Call on the Kyrgyz Government to refrain its editorial offices (e.g. governmental newspaper Slovo Kyrgyzstana) from portraying NGOs as Western agents of destabilization and spying, harassing them for NGOs' independence and criticism;
- The law on public meetings adopted in Kyrgyzstan in June 2002 should be revised to comply with international standards. Decrees of local authorities, most notably of Bishkek City Council of April 2000 which limited the space for public meetings in Bishkek should be cancelled.

European Organization of Military Associations (EUROMIL):

- All OSCE governments excluding active military personnel from freedom of association (in respect to their professional and social interests) should explain to the next OSCE Human Dimension Implementation Meeting the legal background, the reasons that justify the restrictions, why the restrictions are proportional to the legitimate end pursued and which relevant and sufficient evidence there is to make restrictions;
- EUROMIL also appeals to all OSCE governments to accept EUROMIL as professional NGO and relevant social partner for all professional and social issues of active military personnel.

International Helsinki Federation for Human Rights:

- The IHF urges the OSCE member states to refrain from any measures that would place obstacles to the establishment and development of strong civil societies in their countries. Instead, the establishment and activities of NGOs should be encouraged and supported for the central role they play in contributing to the promotion and protection of the OSCE commitments.
- The IHF wishes to emphasize that the manner in which governments treat human rights activists and respond to assaults against them, is a clear indicator of the genuineness of their commitment to the protection and promotion of human rights.
- The IHF accordingly urges the OSCE participating states to fulfill their commitments under the Vienna Concluding Document's Principles 13.5 and 21, in which they pledge to respect the right of their citizens to contribute actively to the promotion and protection of human rights; to ensure that these exercises will not be subject to any restrictions except those provided by law and consistent to their obligations under international law; to allow human rights defenders to carry out their tasks unhindered; to bring to justice all who in any way try to obstruct their activities; and to support their work with all possible means.

Norwegian Helsinki Committee:

- Urges the OSCE member states to refrain from any measures that would place obstacles to the establishment and development of strong civil societies in their countries. Instead, the establishment and activities of NGOs should be encouraged and supported for the central role they play in contributing to the promotion and protection of the OSCE commitments.

FIDH:

The OSCE participating States should:

- Commit to putting an end to this recurrent repression phenomenon against Human Rights Defenders,
- Fully recognize the major role of human rights defenders in the building of democracy and the rule of

law,

- Conform with the provisions of the final document of Copenhagen (1990) and with those of the Declaration on Human Rights Defenders.
- Bearing these goals in mind, the Observatory reiterates its recommendations as regards the adoption of a regional monitoring and follow-up mechanism of protecting human rights defenders. This mechanism should solicit, question, and answer to the States.
- Further, this OSCE mechanism (a focal point or a Rapporteur) should also aim at assessing legislations relative to freedom of association.
- It will have to work in close partnership with the mandate of the Special Representative of the UN Secretary General on human rights defenders, Mrs. Hina Jilani, who has already exchanged views with the highest OSCE authorities.
- The creation of such a mechanism is included in the recommendations of the supplementary meeting on "Human Rights: Advocates and Defenders", 22 - 23 October 2001. These recommendations have, until now, not received appropriate follow-up action and have therefore not produced concrete results.
- This regional mechanism is absolutely necessary to sensitise States and to lead them to respect their commitments and to guarantee the freedom of action of human rights defenders. The OSCE must take into account the appeals of the civil society, all the more so as no improvement has been noticed on the ground as far as HRDs' freedom of action and association is concerned.

OSCE/ODIHR:

To the participating States:

- The participating States should ensure that the existing legislative restrictions on the exercise of freedom of association and the right of peaceful assembly are proportionate to the legitimate aims which the States are trying to achieve. This in particular relates to the need for the Participating States to lift onerous registration requirements and over-regulation of independent NGO's, trade unions, political parties, and media as well as overly restrictive regulations on holding demonstrations and meetings.
- The participating States should ensure that the grounds restricting these freedoms, provided for by the national legislation, comply with the exhaustive list of legitimate aims that are listed in international and regional treaties.
- The OSCE participating States should ensure that their law implementation practices fully conform to the existing national legal provisions. The central government authorities should oversee actions and decisions of the lower government bodies with regard to their strict compliance with national laws
- The OSCE participating States should review their legislation related to the freedom of association and assembly, with special attention paid to the severity of sanctions stipulated for violating these laws. Such sanctions should be justified and proportionate to the legitimate aims of the State. Consistency in application of these sanctions should be reviewed and existence of alternatives to the detention should be guaranteed.

To the OSCE institutions:

- The OSCE should explore in consultations with the participating States how to better assist them in implementing best practices when developing relevant legal and regulatory frameworks, including those affecting political parties, NGOs, trade unions and other civil society actors. OSCE should render assistance to the participating States in their efforts to establish a dialogue between authorities and civil society and increase of civil society's input into decision-making.
- The OSCE should continue to monitor the situation in the area of freedom of association and assembly in the participating States.