OSCE

Office for Democratic Institutions and Human Rights

BULLETIN

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WARSAW

A Note from the Director

Dear Readers,

I hope that you all had a pleasant summer.

We have another selection of interesting articles in this quarter's Bulletin, which we hope you will enjoy.

The first is the speech of Chairman of Supreme Court of Russian Federation V. Lebedev, given at a seminar for Russian judges that we organised in Orel in June as a part of our training programme. It gives a frank and honest assessment of the situation of the Russian judiciary and is a useful basis for our future work with the judicial academy.

Luke Clements, a lawyer representing Roma, has written a most informative article about Roma, describing how their rights are protected by different international organisations.

Due to our growing concern about the treatment of prisoners in many prisons in OSCE area, there is another article on prisons in this edition. It is clear that there is not money available in many countries for a massive prison re-building scheme. But one of the many incisive points that Vivien Stern makes in this article is that many improvements can be introduced into prisons which do not involve the expenditure of vast sums of money.

Professor Letowski has written an interesting article about the experience of the Polish judiciary in accounting for human rights in their judgements. This is a problem which faces all states and it is useful to learn about the experience of a country which has just gone though a transition.

Our final article is a fascinating account of the work of the OSCE field missions in Tajikistan. The OSCE assumed the running of these missions from the UNHCR last year and they have proved to be a success story. This is partly due to the calibre of officers like Nancy and her husband, who work under extremely difficult conditions. But there is also the important task of confidence building at the grass roots level, which the OSCE is ideally placed to accomplish.

In this edition, instead of describing part of our mandate in detail, we have set out our role as we see it, as well our plans for its implementation. Any comments would be most welcome.

This autumn will see a change in staff at the ODIHR. Elizabeth Winship, Jacques Roussellier and Martin Alexandersson are leaving and I would like to thank them most warmly for all that they achieved for the ODIHR during the time that they were with us, and to wish them all possible successes in the future.

It was good to see those of you who dropped into the office while passing through Warsaw and as always, to see old friends and meet new ones at the various meetings we have attended during the last few months. The post- election phase of our work in Bosnia and Herzegovina where we will be working with many international organisations and NGOs, as well as the Review meeting in November will give us an opportunity to see many of you.

OVERVIEW OF THE RUSSIAN JUDICIARY

V. Lebedev

Note from the Editor: We present the opening address delivered by V. Lebedev, Chairman of the Russian Federation Supreme Court, during the morning session of the second workshop of the ODIHR Russian judicial training programme entitled, "The Role of Regional Courts in the Implementation of International Human Rights Commitments." Orel, Russia, July 9, 1996.

Today we continue our Professional Training Programme for Russian Judges with the support of the Supreme Court of the Russian Federation, the Russian Law Academy and the OSCE Office for Democratic Institution and Human Rights. As you know, the first seminar in the framework of this programme was held in Moscow in February of this year. It was attended by federal judges from throughout the Russian Federation. Today, I am quite pleased to greet you in the gracious city of Orel. This training workshop- "The Role of Regional Courts in the Implementation of International Human Rights Commitments" - is very urgent.

Before I address formally the central theme of this activity, I would like to introduce the Russian participants of this weeks' training programme and my colleague Robert Buergenthal, OSCE/ODIHR Rule of Law Adviser, who will shortly introduce our foreign guests-experts from both the OSCE and the Council of Europe.

I would like to note that among the participants present today, there are thirty-five federal judges, including Supreme Court Judges S. Razumov and V. Podminogin. The gracious host of this activity is A. Karpov, Chairman of the Orel Regional Court. In addition, in attendance are V. Ershov, President of the Russian Law Academy and V. Rudnev, Editor-in-Chief of the journal, Russian Judiciary.

Before all else, I would like to touch upon the state of the Russian judiciary and to examine it in light of what has been done during the last few years in the context of the creation of a state based on the Rule of Law and the implementation of international human rights standards. Recently we celebrated the fifth anniversary of the adoption of the concept of judicial reform in Russia. All of us made a constructive contribution to the elaboration of this concept and at the time of its adoption, we sincerely believed that the principles on which it was based would be applied. At that time, we wanted the principles to be implemented as quickly as possible.

The most progressive step was taken with the adoption of the law "On The Status of Judges." In this connection I would like to draw your attention to the Russian context. In most cases, the principal basis of a judiciary derives from the Constitution. But in Russia, the basic principles of the independent judiciary were first laid down in the federal law on the Status of Judges. Only later were they incorporated into the Constitution. In other words, practice itself defined the lawful place for the basic principles of the judiciary and guarantees for judicial independence.

Tenure, a very important guarantee of judicial independence was a big achievement. Federal judges are nominated without any limitation for term in office. There are no age limitations. A special order is established for granting powers and dismissal. Great powers were given to the judicial community which is also one of the main guarantors of judicial independence. The Law "On the Status of Judges" established

the Council of Judges and Judicial Qualification Boards. These organs function effectively now, and at present, all issues concerning the judicial community are resolved by their initiative or through their active participation.

All of these principles are enforced in the Constitution. This is very important for the Russian judiciary. The Constitution has direct effect. It means that the rights and liberties of an individual have direct effect on the entire territory of the Russian Federation. Today, the rights and liberties determine the logic of the actions of the executive and legislative branches. They are assured by the judiciary.

During a relatively short period of time we have accomplished a great deal. However, the question remains- can we be satisfied with the present human rights situation and their judicial protection? Unfortunately, no. But we do not conceal it. On the contrary, we take measures to eliminate everything which might impede further development of judicial reform. We will never agree with our opponents who argue that judicial reform is developing only in the direction to assure judicial independence. And we also can not agree with those who say that judicial reform is a collection of measures designed to create special conditions for judges. We need judicial reform to ensure real human rights protection. We should always remember this, otherwise judicial reform will make no sense.

What are the obstacles to judicial reform? In this connection I would like to touch upon two major problems. First of all, the legislative basis of judicial reform. Indeed, during the last two years we have achieved much. Two sections of the Civil Code were adopted. In the near future we expect that the third will be adopted. In addition, the new Criminal Code will enter into force on January 1, 1997. At present, work on the Criminal Procedure and Civil Procedure Codes are coming to an end. However, we do not have them now. We also do not have the most important law on the judicial system. This law is to determine the federal system of courts and of federal judges in the Russian Federation, to find a solution for the material support of courts, to introduce the institute of the jury as well as to decide a number of other legal issues which are very important for the judiciary. And, this law will be the foundation of other laws on the Supreme Court, on military courts, on the jury, etc. But the most important feature is that the law would define the concept underlying future procedural codes.

The second problem is financing. I think that for the last twenty five years the Russian judiciary has faced the problem of not receiving sufficient financial support to cover their current expenses. I do not mean salaries, because judges receive them on time. I speak about financing for judicial proceedings and for the functioning of courts. In a number of areas, Russian Federation courts have practically stopped carrying out their functions. As a result, the constitutional principle, the right to a fair trial, is violated. I would like to stress now, after the Russian Federation became a member State of the Council of Europe, that the role of courts has increased. Without any doubt, we must observe international human rights norms and principles. We must know well the commitments of the OSCE, the standards of the Council of Europe and the practice of the European Court of Human Rights.

In the field of human rights, the Russian Constitution corresponds to international conventions and treaties. For the first time, the Constitution contains a provision saying that universally recognised principles and standards and international treaties of the Russian Federation constitute an integral part of Russian legislation. If Russian laws do not correspond to international treaties of Russia, priority should be given to the latter.

In conclusion, I would like to thank the experts from the OSCE and the Council of Europe for their presence in Orel. We appreciate their desire to share experiences with us. I believe that the present training session will be a good contribution to our further co-operation.

THE RIGHTS OF MINORITIES - A ROMANY PERSPECTIVE

Luke Clements, Philip A. Thomas, Robert Thomas

The most significant omission from the list of fundamental rights and freedoms protected by the European Convention on Human Rights (ECHR), is a general anti-discrimination article: an omission all the more striking when one recalls that the Convention was in large measure a reaction to atrocities inflicted upon minorities. Minority right is not a marginal human rights question, solely of concern to the individual or group involved; as Sieghart has concluded, "All human rights exist for the protection of minorities."[1]

Article 14 of the European Convention does not prohibit discrimination against the membership of a national minority 'per se'; it merely prohibits discrimination as regards the enjoyment of the rights and freedoms set out in the Convention. In the 40 years since the Convention came into force it is possible to discern two general strategies adopted by the European human rights institutions to overcome this lacuna. The first is the political strategy - which at its most practical involves the promotion of a separate protocol for 'national minorities'; and the second is the legal strategy - an endeavour (through case law) to develop the European Convention on Human rights (henceforth "the Convention") to a point where it effectively protects the rights of minorities.

The success of these two approaches is well illustrated by reference to the position of European Romanies, or Gypsies (henceforth also referred to as 'Roma'). The history of the Roma is unique[2] and their persecution has been well documented[3]; during the Second World War it is estimated that between 300,000 and 600,000 Continental Roma were murdered.[4]

The problems of discrimination and prejudice continue for Roma, who now number eight to ten million in Europe, and experience "widespread poverty and economic hardship, massive unemployment, concentration in unskilled labour, inadequate housing or support for a peripatetic existence, widespread suspicion and prejudice among the surrounding populations, poor education and extensive illiteracy and inadequate health care.[5]

THE POLITICAL STRATEGY

Attempts to safeguard human rights through international political initiatives are inevitably slow, arduous and frequently disappointing. Matters of principle may be compromised in the desire to achieve even minimal progress. As Roma neither constitute an effective pressure group nor a popular cause for political vote seekers, their rights command little time or attention within the political foray.

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1 Sieghart, The Lawful Rights of Mankind, OUP (1985), p. l65.

2 See generally A. Fraser, The Gypsies, Blackwell, 1992 and N. Gheorge & T. Acton; *OSCE Bulletin*, Vol. 3, No. 2 (1995) "Dealing with Multiculturality."

3 See generally H.R. Huttenbach, "The Romani Porjamos: the Nazi Genocide of Europe's Gypsies." Nationality Papers XIX, No. 3, 1991, p.373 and "The Destiny of Europe's Gypsies", Kenrick & Putson, Chatto, 1972.

4 European Committee on Migration, 'The Situation of Gypsies (Roma and Sinti) in Europe', CDMG (95)11, 1.8.95.

5 Equal Opportunities and Community Relations Discussion Group of the OSCE Human Dimension Seminar, Warsaw 20-23 September 1994.

In 1995 the Council of Europe published two surveys of political initiatives relating the plight of European Roma[6], a summary of which appear below. During the last two years there have been several similar initiatives with increasing and welcome signs of inter-agency collaboration; for instance, the OSCE Human Dimension Seminar on Roma in Warsaw (20-23 September 1994) was organised jointly with the Council of Europe.

THE UNITED NATIONS

In March l993 UN High Commissioner for Refugees published a survey of 'the Roma people of Central and Eastern Europe.'[7] The survey concludes that Roma
"Are for the most part, an 'underclass'; uneducated, unskilled, unemployed, in poor health primitively housed, and subject to both passive and active ethnic prejudice... a 'third-world' people, living under 'third-world' conditions... . They are Europe's 'Untouchables'. If the Roma were citizens of a third-world nation they would be eligible for international aid."

The UNHCR report made a number of recommendations essentially aimed at creating a network of existing and new Central & Eastern European organisations to monitor and safeguard the rights of Roma people. Within the UN, UNESCO has also taken limited steps (in addition to its practical activities - e.g., literacy projects in Greece and Spain), for instance, endorsing draft resolutions on Roma education, culture and language.[8] In August 1991, the Sub-Commission on Prevention of Discrimination and Protection of Minorities of the UN Commission of Human Rights included the Roma in its working group on slavery at the request on the International Romani Union.

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The problems faced by Roma were first specifically mentioned in the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the (then) CSCE in 1990, by which the participating States declared their firm intentions to (inter alia) take effective measures to combat discrimination against Roma and to protect their property.[9] Similar expressions of 'unequivocal condemnation' of discrimination against Roma were reiterated at Geneva[10] and Moscow[11] in 199l, at the Helsinki Follow-up Meeting in 1992[12] and at Human Dimension Seminars in Warsaw in 1993[13] and

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6 See note 5 above and 'Council of Europe Activities Concerning Roma, Gypsies and Travellers', CDMG (94) 15 rev, 26.1.95.

7 "The Untouchables. A Survey of the Roma People of Central and Eastern Europe," Mark Braham, March 1993, UNHCR.

8 European Committee on Migration Report, p.2 (note 5 above).

9 .5-29 June 1990, Chapter IV, para.40, HMSO, Cm 1324.

10 Report of the Geneva Meeting of Experts on National Minorities (1991), Chapter VI; the report records each state's readiness "to undertake effective measures in order to achieve full equality of opportunity between persons belonging to Roma ordinarily resident in their State and the rest of the resident population".

11 Document of the Moscow Meeting of the Conference on the Human Dimension (1991), Chapter III, para 42.2.

12 Document of the Helsinki Follow-Up Meeting (1992), Chapter VI, par. 35.

13 Case Studies on National Minorities Issues; Warsaw 24-28 May 1993.

1994.[14] The Human Dimension Seminar on Roma in September 1994 resulted in a proposal to establish within the ODIHR a Contact Point for communication between Inter-Governmental Organisations and OSCE NGO's on Roma issues. The Budapest Summit in December 1994 confirmed the establishment of this Contact Point.[15]

A special report by the High Commissioner on National Minorities was published in September 1993[16], dealing with the social, economic and humanitarian problems faced by Roma in the OSCE region. The report is a valuable analysis of the problems they face; a number of general and specific recommendations to safeguard the rights are made in the report. The High Commissioner reaffirmed the need for participating states to implement the measures agreed to at the Copenhagen meeting. Special government policies were called for to deal with Roma-related issues in the areas of employment, education, health care and general welfare. It was added that policies should not be instituted in such a manner as to exacerbate Roma and non-Roma community relations through the appearance of favourable treatment of one group over another. International co-operation between states was stated to be important in order to exchange experience and expertise that other states have in dealing with Roma issues. Finally, the Commissioner voiced the need to avoid duplication of effort, through co-operation between the CSCE, the Council of Europe, the EC, pertinent UN agencies and others. Perhaps most striking of all is the warning made in the report:
"Not to confront these difficulties now is only likely to lead to even more serious problems for the Roma, and for the region in the coming years, particularly if economic or political conditions deteriorate sharply."[17]

THE EUROPEAN UNION

Of the four European Union programmes which have a specific Roma element[18], the education programme has been the most conspicuously successful. Due to its non-controversial nature and the undoubted quality of the programme's key personnel it has attracted significant EC funds and achieved much. Whilst the programme is based upon Commission resolutions, these have merely acted as the mechanism to transform an existing 'political will' into positive action. There is of course an important point here; political resolutions do not change anything unless accompanied by a corresponding political will.

THE COUNCIL OF EUROPE

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14 Seminar on Roma in the CSCE Region; Warsaw, 20-23 September 1994.

15 For further outline detail see *CPRSI Newsletter,* Vol.1 Nos.1 and 3.

16 "Roma (Gypsies) in the CSCE Region": Report of the High Commissioner on National Minorities for the Meeting of the Committee of Senior Officials 21-23 September 1993.

17 Ibid., para 5.2.

18 The programmes being:
(1) Combating Social Exclusion; see e.g., EC Observatory on National Policies to Combat Social Exclusion: First National Report, 1991.
(2) Combating Xenophobia; see for instance Resolution 90/C 157/01, 29.5.90.
(3) Minority Languages; see e.g. Doc. A - 150l81, Official Journal of EC 30.11.87.
(4) Education; see e.g. Resolution 89/C 153/02, 22.5.89.

Of all the human rights institutions, the Council of Europe has historically been the most active in promoting resolutions concerning the rights of Roma. [19] Early resolutions concentrated upon general anti-discrimination measures, such as full compliance with the International Covenant on the Elimination of All Forms of Racial Discrimination (ICERD). In more recent years specific resolutions relating to Roma[20] have followed, culminating in 1993 with two that have perhaps refined to a new level of purity these high sounding declarations, full of noble sentiments and good intentions.

On the 2nd February 1993 the Parliamentary Assembly adopted Recommendation 1203 'on Gypsies in Europe.' Paragraph 2 recorded that:
'A special place among the minorities is reserved for Gypsies. Living scattered all over Europe, not having a country to call their own, they are a true European minority, but one that does not fit in the definitions of national or linguistic minorities'.

The text contains the obligatory reference to the "deplorable situation in which the majority of Gypsies live today," and explains that this situation is of urgency, as with Central and Eastern European countries now member states, the number of Gypsies living in the area of the Council of Europe has increased dramatically.[21]

The Assembly recommendations included the routine reference to ICERD, the need for member states to ratify the fourth protocol to the ECHR and the issuance of a further protocol relating to the rights of minorities. Also included was an appeal to member states to alter any existing legislation that directly or indirectly discriminates against Roma.

Six weeks following the Parliamentary Assembly's recommendation, a resolution of the Council of Europe's 'Standing Conference of Local and Regional Authorities of Europe' (SCLRAE) on 'Gypsies in Europe' was reached.[22] The Conference correctly emphasised (at par. 7)
"the special responsibility of local and regional authorities towards Roma/Gypsies, particularly with regard to accommodating Gypsies in the municipality, their education, training, health, development and the promotion of their culture."

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19 E.g. Committee of Ministers Resolutions (68)30; (72)22; Recommendation R No. (92)10: Parliamentary Assembly Recommendations 453(66); 583(10); 1134 (90).

20 These include:
The Committee of Ministers:
Resolution (75)13, 22.5.75; the social situation of nomads in Europe.
Recommendation No. R(83)1 on stateless nomads and nomads of undetermined nationality.
The Parliamentary Assembly:
Recommendation 563 (1969) on the situation of Gypsies and other travellers in Europe.
Recommendation 1203 (1993) on Gypsies in Europe.
Standing Conference on Local & Regional Authorities of Europe:
Resolution 125 (1981) on the role and responsibilities of local and regional authorities in regard to cultural and social problems of population of nomadic origin.
Resolution 249 (1993) on Gypsies in Europe: the role and responsibility of local & regional authorities.

21 The Explanatory Memorandum accompanying the SCLRAE Report (see note 11 above) contains at Appendix I an estimate of the number of Roma in Europe (by State): using the minimum figures, the number of Roma in the Council of Europe, prior to the accession of the Central & Eastern European States, amounted to 1,458,l00; the new states have swelled this minimum figure by 3,143,300 to 5,201,100 persons: an increase of over 250%.

22 Resolution 249 (1993).

Whilst the resolution makes the (by now) routine request that the member states implement previous texts of the Council of Europe, it is nevertheless written in practical language and suggests specific measures aimed at breaking down barriers to communication between Roma and non-Roma. As is discussed below, there is a role for high-sounding European Resolutions - even when accompanied by no implementation procedures. There is, however, also a need for such institutions to appreciate that hyperbole alone is not sufficient; the SCLRAE text to this extent is a welcome entrant to the school of realism.

A Framework Convention for the Protection of National Minorities[23] was opened for signature by the Council of Europe on 1 February 1995. The framework Convention contains many important rights and freedoms relating to national minorities. The means of enforcement is, however, weak, relying merely upon state reporting procedures.[24]

The progress of the proposed protocol to the ECHR on the question of minority rights has also been unsatisfactory. The Convention came into force in September 1953, and the following year the Consultative Assembly of the Council of Europe focused attention to the need for "a more precise definition of the rights of national minorities." This proposal led to the creation of a Sub-Committee on Minorities in 1957 and a proposal in 1959 for an additional Protocol on Minorities. Since that time the Protocol has remained on the drawing board for 37 years, with the Parliamentary Assembly becoming ever more insistent about the need for its adoption.[25] The current text of the proposed Protocol[26] contains many fine principles, including the right to express, preserve and develop one's identity, the right to use of the minority in relations with public authorities and in education. Central is the equality before the law and non-discrimination article:
'All persons belonging to a national minority shall be equal before the law. Any discrimination based upon membership of a national minority shall be prohibited.'[27]

In 1995 the Parliamentary Assembly called for the Framework Convention to be "complemented by an additional protocol to the Convention setting out clearly defined rights which individuals may invoke before independent judicial organs." [28]

The history of Protocols to the Convention has, however, shown that they are not an effective vehicle for the development of human rights. With the exception of the first protocol, their ratification by states has been sketchy at best, and in such cases generally only after decades of delay. This is even more the case in relation to Protocols that would have a significant effect upon a particular state. Protocol 4 is such an example, in that it introduces the right of free movement, and is of a special relevance to Roma, a point emphasised in Recommendation 1203 (above). The Protocol was open for signature on 16 September l963, and yet it still has not been ratified by a number of states of the Council of Europe, including the UK and Spain.

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23 16 H.R.L.J. 98.

24 Article 25 (1).

25 See for instance Recommendation 1201, 1.2.93, where the Assembly resolved
"as this matter is extremely urgent and one of the most important activities currently under way at the Council of Europe.... "

26 An Additional Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms, Concerning Persons Belonging to National Minorities (the current text being adopted by Parliamentary Assembly on 5.2.92).

27 Article 4.

28 Paragraph 5, Recommendation 1255 (1995) on the Protection of the Rights of National Minorities.

Even where member states of the Council of Europe agree to take positive action, there is no certainty that such action will in fact occur. By way of example, the 1975 Committee of Ministers Resolution (75)13 (concerning the need to eradicate discrimination against Gypsies) invited each member state to report to the Secretary General on the action they were taking towards its implementation; to date it appears that not a single member state has complied with this resolution.[29]

This lack of practical action is evidenced by the continuing deterioration in the conditions in which Roma live.[30] The SCLRAE Resolution (above) itself at paragraph 5 regretted that the earlier resolutions of the Council of Europe "have as yet been followed up with little concrete action." Further, the Moderator's Report on the CSCE Human Dimension Seminar in Warsaw on Roma (1994)[31],
"acknowledged that no state has yet fully implemented its commitments on human rights with special relevance to Roma. It was further acknowledged that most problems confronting Roma would be resolved if states fully implemented existing commitments."

THE LEGAL STRATEGY

The ECHR together with the first and fourth protocols protect many of the rights and freedoms of importance to Roma, and in particular:

Article 3. The prohibition of degrading treatment. The Commission has held that degrading treatment can occur when a group of persons is publicly singled out for differential treatment[32], although subsequent decisions would suggest that such behaviour would probably need to be accompanied by treatment that aroused a feeling of fear, anguish and inferiority capable of humiliating and debasing the victim.[33]

Article 8. The right to respect for one's private and family life, home and correspondence. The convention does not provide a right to a home, but in general, travelling Roma merely seek respect for their existing home - their caravan or other vehicle.

Article 11. The right to freedom of assembly and to freedom of association with others. Assembly at fairs, family weddings. funerals and other occasions is characteristic of Roma culture. Unreasonable or discriminatory restrictions upon this right are prohibited by Article 11.

Article 14. Prohibits discrimination in relation to the enjoyment of the rights and freedoms in the ECHR (and in the protocols ratified by the particular state). Article 14 applies even in the absence of a violation of one of the rights contained in one of the substantive Articles; all that is required is the existence of real and unjustified discrimination in the way certain individuals are permitted to enjoy that right.

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29 The Committee of Ministers (in response to Recommendation 1203 of the Parliamentary Assembly), has instructed the Steering Committee for Social Policy to review member state compliance with Resolution (75)12 - see Council of Europe Newsletter on Activities of Roma/Gypsies, No.3, 10/11/95.

30 See e.g. International Helsinki Federation for Human Rights Report 'Gypsies: A Vulnerable Minority in Europe', 2.10.92; and see also UNCHR Report (note 8 above).

31 Taken from the preliminary Report of the Moderator Dr Helen Krag (Denmark) from Seminar DG 1: Domestic & International Legal & Policy Issues - See note 15 above.

32 East African Asians case, 3E.H.R.R. 76.

33 Ireland v UK Series A, No. 25; 2E.H.RR 25.

PROTOCOL 1

Article l. Protects the right to peaceful enjoyment of possessions and prohibits arbitrary confiscation or other deprivation of such possessions;
Article 1 is of particular relevance to travelling Roma in that 'possessions' include the mobile home and equipment.

Article 2. Protects the right to education. With regard to education, the rights of travelling Roma raise a number of interesting issues. Article 2 protects against unreasonable state interference in parental choice, and allied to Article 14, a protection against unreasonable discriminatory provision. Interruptions in normal school education might be seen as an occupational hazard of travelling Roma life; obviously, however, there is a difference between parental choice over when to move on and precipitous moves resulting from forced evictions. Unduly restrictive state attendance at schools that interfered with traditional Roma travelling could also amount to a violation of Article 8.

PROTOCOL 4

Article 2. Protects the right to freedom of movement within a state.
Article 3. Protects the right not to be refused entry (or expelled from) a state of which the person is a national. These two rights are of importance, not only to traditional travelling Roma, but also in relation to inter-state Roma movements (forced[34] or otherwise). Roma who are citizens of a European Union state have separate rights of free movement within the EU. [35]

There is a view (possibly a minority one) within the Commission that complaints that raise minority rights issues are to be approached cautiously, if not treated differently to those of a purely individual nature. To an extent, this stems from the unsatisfactory nature of Article 14, in part from the political sensitivity of such complaints, and in part to the escapist view that such complaints would be better dealt with under the minority rights protocol when (and if) it comes into being.

This cautious approach of the Commission and Court was evidenced in the judgement in Belgium Linguistic complaint[36] (1967) which restricted Article 14 to cases of discriminatory treatment in which there was "no reasonable relationship of proportionally between the means employed by the state and the legitimate ends pursued." The Court emphasised that (subject to this) states remained free to choose the measures that they considered appropriate.

In the unsuccessful application **G v Norway**[37] (1983), Lapps complained about a decision to construct a hydro-electric dam and thereby flood part of the valley where they herded deer. The Commission, in its decision, reaffirmed that the ECHR does not guarantee the rights of minorities, but accepted that "under

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34 The Council of Europe's Ad hoc Committee of experts for identity documents and movements of persons produced Report (86) 3 on the legal problems linked with the movement of nomads, in December 1986, which inter alia considered that the number of (then) stateless nomads was 'insignificant.'

35 See Official Journal of EC 22.2.93; C51, written question No. l, 719/92.

36 Series A, No.5; 1E.H.R.R 241.

37 Applications 9218 & 9414/81; Decisions & Reports, Vol. 35, p. 30. See also Kalderas Gypsies v FRG & Netherlands, Decisions & Reports, Vol. 11, p. 221 (1917). The complaint was not primarily related, however, to the applicants' Gypsy status.

Article 8, a minority group is, in principle, entitled to claim the right to respect for the particular lifestyle it may lead, as being `private life,' `family life' or `home.'"

In **X v Ireland**[38] (1983), 13 Roma1iving in caravans on two sites near a special school for travelling children made applications. They had been evicted from their sites because of the consequent nuisance on the sites having no basic facilities; they complained that their eviction by the authorities (without being offered alternative accommodation) violated Articles 3, 8, 14 and Article 2 of the First Protocol. Despite the complaint's disclosure of serious Convention issues, the Commission ruled it inadmissible on the procedural ground of 'non-exhaustion' of domestic remedies. Legal aid for the possible domestic remedy in question would almost certainly have been unavailable, however, the Commission placed weight upon the failure of the parties even to apply for such legal aid. This was objectively a harsh "inadmissibility" decision.

In 1991 and 1992 the Commission considered the admissibility of two complaints against the Netherlands made by several mobile home dwellers, although none claimed Roma status. In both cases the complaints concerned the applicant's forced removal by virtue of the state's Mobile Homes Act (Woonwagenwet) of l986.

In **Beckers v Netherlands**[39] (1991) the applicant was forced to leave his mobile home dwelling because his occupancy was not permitted by the Act. Under the Act, a permit to occupy a mobile home could only be obtained if the applicant practised one of the trades listed in a certain Decree, or if he (or his spouse) had previously had a permit to occupy a mobile home. The applicant complained to the Commission, alleging violation of a number of Articles to the ECHR and Protocols l. & 4. Although the complaint was declared inadmissible, the Commission's finding in relation to the Article 8 complaint is of interest. It accepted that in denying the applicant the right to live in a mobile home, his Article 8 rights had been interfered with; it however, considered that in the case of the Netherlands a restriction on the number of persons occupying such accommodation pursued a legitimate aim (the country is small, overcrowded, etc.). In concluding that there was no violation of Article 8 it held that since the "applicant cannot claim to belong to a minority entitled to specific protection under Article 8 of the Convention, the Commission is of the opinion that the rules are not disproportionate...." It logically follows that such an interference would have been looked at in a different light had the applicant been a Roma.

The willingness of the Commission to accept that the actions by the state were not disproportionate was a matter of some concern, as it accepted (without any empirical evidence being submitted) that the population density of the Netherlands permitted such measures. The effect of the legislation has been the subject of considerable criticism. Annemarie Cottaar (et al) comments that caravan dwellers "were literally dragged to larger camps" and that because of 'the isolated location of the camps... many caravan dwellers lost contact with society."[40]

In **Van De Vin v Netherlands**[41] (1992) a number of mobile home dwellers were required to have a municipal site that was to be closed; they had substantial notice of the move and were offered a variety of

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38 Application No. 9596/81; Decision 12/12/83.

39 Application No. 12344/86; Decision 25/2/91.

40 "Justice or Injustice? A Survey of Government Policy Towards Gypsies and Caravan Dwellers in Western Europe in the Nineteenth and Twentieth Centuries", A. Cottaar, L. Lucassen & W. Willems. Immigrants & Minorities, Volume 11, No.1, March 1992- 'Gypsies: the Forming of Identities & Official Responses.'

41 K van De Vin (and 4 others) v Netherlands, Application No. 13628/88: decision 8.4.92.

alternative sites. The applicants argued that in consequence several Articles of the ECHR had been violated, including Article 2 of Protocol 4. The Commission held the complaint to be inadmissible; in relation to Article 2 of Protocol 4 it stated that this provision does not guarantee a right to a specific place of residence without a title to reside on such a specific place.

In **Powell v UK** [42] (1990) the applicants were non-travelling Roma living on a municipal caravan site built specifically to accommodate Roma. The UK law provided that Roma living on such sites could be evicted more easily than persons who lived on other mobile home sites. At that time the UK law also provided that each municipality was under a duty to provide sufficient sites to accommodate the Roma living in their area. In a poorly argued "majority decision the Commission ruled the complaint inadmissible, holding that in view of the municipal obligation to provide sites for Roma (but not for non-Roma) the difference in treatment did not offend the principle of proportionality (with regard to the state's margin of appreciation). Such a decision comes perilously close to legitimising the morally bankrupt 'separate but equal' doctrine.[43]

Subsequent to the Powell decision, two further, equally unsatisfactory admissibility decisions followed, in the cases of **Smith and others v UK** (1991)[44] and **Smith v UK** (1993)[45], both of these complaints being made by Roma.

In the 1991 decision the applicants stated that notwithstanding the (then) duty of UK Municipal Councils to provide sufficient sites for Roma, there were no such sites in their area, no prospect of such sites and that they were subject to repeated evictions and threats of evictions. The applicants had applied to the domestic Courts to compel the Government to provide sites, but the Court had declined to do this on the basis that the state was aware of the problem and (in the Court's view) endeavouring to resolve the difficulty. In holding the complaints to be inadmissible the Commission asserted that,

"Article 8 does not contain an express right to living accommodation. Moreover, although Article 8 may require positive action from Contracting States in certain circumstances, it is inevitable that when questions of policy and implementation arise, a considerable discretion must be left to them. The Commission finds that, in the present case questions relating to immediate provision of gypsy sites in [the municipality] were broadly canvassed by the Secretary of State and by the Court, and there is no indication that the authorities acted in such a way as not to respect the applicants' right under Article 8."

The Commission's decision is unsatisfactory for a number of reasons, not least that it essentially vindicated the State purely because it had not deliberately acted to the applicant's detriment - despite it having allowed a situation to arise where their Article 8 rights were being routinely violated.

The 1993 complaint concerned a specific UK law[46] which made it a criminal offence for a Gypsy (but not a non-Gypsy) to camp in certain "designated" areas (unless he or she lived on a legal site). The applicant was a Gypsy and lived in such an area on a legal site. The Commission held that
"the traditional lifestyle of a minority may, in principle, attract the guarantees of Article 8 .... However an individual applicant who is a member of a minority must establish that the measure complained of has a

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42 Application No. 14751/89; decision 12.12.90; Decisions & Reports, Vol. 67, p. 264.

43 The US Supreme Court rejected such a doctrine in the desegregation case Brown v Board of Education (1953) 34 U.S.483.

44 Ruby Smith and others v UK, Application No. 14455/88; decision 4.9.91.

45 Ruby Smith v UK, Application 18401/91; decision 6.5.93.

46 Caravan Sites Act l968.

real and direct effect on his or her pursuit of that lifestyle. The Commission finds on the facts of the present case that the applicant has failed to do so."

The Commission's decision imposed a far more severe admissibility test in this case than applied to many non-Roma complaints. [47]

The Commission's approach to complaints made by Roma could legitimately be described as disproportionately harsh. In **X v Ireland** it applied an unusually stringent requirement in relation to exhaustion of domestic remedies. In **Powell v UK** and **Smith & others v UK** (1991) it appeared to allow a margin of appreciation to the state, so wide as to amount to an endorsement of the 'separate but equal' doctrine. In **Smith v UK** (1993) the requirement that the applicant be a victim was applied with far more vigour than has been the case with complaints made by (for instance) homosexuals.

On the positive side, the Commission's decision in **Beckers v Netherlands** indicates that the severe actions by the state (which the Commission found proportionate) might have been viewed otherwise if the victim had been a number of a minority such as the Roma.

On 11 January 1995 the Commission adopted its Report on the complaint **Buckley v UK**.[48] The complainant is a Gypsy and her complaint concerns very similar facts to the **Ruby Smith v UK** (1993) complaint, save only that in the Buckley complaint, the applicant was under a threat of eviction from her encampment (as it lacked planning permission).

In its Report the Commission concluded (by a majority) that the complainant's rights under Article 8 (right to respect for private and family life, home and correspondence) had been violated. It accepted that the measures (both in relation to the criminalisation of Gypsies in designated areas, and in relation to the planning enforcement measures used by the state) were in accordance with the law and pursued a legitimate aim However, on the question of whether the measures were necessary in a democratic society (in relation to Article 8 (2)) the Commission considered them to be disproportionate.

The Commission contrasted the effect of planning enforcement measures on Gypsies and non-Gypsies:
"in the general type of planning case ... the assumption is that an individual has a wide range of accommodation possibilities available to him or her throughout the country. This case presents the special feature that, being a Gypsy, the applicant leads a traditional lifestyle which restricts the options open to her." [49]

The Commission considered the specific circumstances of the complainant's case in detail and concluded,
"the measures taken against the applicant with regard to her continued occupation of her land, place her in the position where she is being required either to move off without any specific lawful place where she can go or to apply for a future vacancy on a site which she considers, with reason, to be unsuitable. Both of these alternatives offer the prospect of insecurity and the threat of disrupting the stability of her home and her children's existence. Against this, the Commission considers that the factors weighing in favour of the public interest in planning controls are of a slight and general nature. ...In these circumstances, the burden placed upon the applicant by the enforcement measures is, in the Commission's opinion, excessive and disproportionate. Even having regard to the margin of appreciation accorded to the domestic authorities, the

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47 See for instance Modinos v Cyprus, Series A, No.193; 13 E.H.R.R.212.

48 Report on Application No. 20348/92; (admissibility decision 3.3.94).

49 Ibid at para 76.

Commission finds that the interests of the applicant in this case outweigh the general interest. It does not consider that this finding is tantamount to rendering Gypsies immune from legitimate planning controls. Special considerations arise in the planning sphere regarding the need of Gypsies which are acknowledged in the Government's own policies."

The Buckley complaint was transferred to the European Court of Human Rights for a final decision. An oral hearing occurred on 19 February 1996, and a final judgement is expected before the end of this year (1996).

CONCLUSION

Both the legal and the political strategies have been slow to produce any practical benefits for Roma. **Buckley v UK** may represent the high water mark of attempts to develop the jurisprudence of the ECHR to deal with minority rights issues - but (regardless of the eventual court decision) this seems unlikely. The tide is still flowing, as the many bleak resolutions from European institutions continue to assert. Indeed, the prominence of Roma is likely to increase with the accession of the Central and Eastern European states to the Council of Europe, including perhaps four million Roma, the majority of whom are living in conditions of poverty and repression even greater than that documented within western Europe.

The political strategy has yet to deliver much in the way of tangible benefits to the Roma. They still live in predominantly third world conditions in which there is a general disregard for their civil and political rights. States are vying with each other to approve resolutions of high flown rhetoric, with the implementation of such resolutions then being ignored.

At present the political strategy has `failed to deliver,' rather than failed. There is no doubt that a widely adopted and directly enforceable protocol on minority rights is a worthy goal. The question that must be asked, however, is whether such a quest is being used as a device to bar Roma and other minority groups from the existing Convention process.

It is equally unlikely that general recommendations emanating from the Parliamentary Assembly of the Council of Europe will result in any direct benefit to European minorities in the foreseeable future. Such recommendations can, however, lend support to specific complaints under the ECHR.

Complaints to the European Commission of Human Rights are made against individual states, most of which will have (in one way or another) been partly to the various political resolutions referred to above. The Court and Commission will accordingly approach the complaint on the basis that these resolutions form the bench mark for acceptable standards of state behaviour.

The Court and Commission have repeatedly asserted that the Convention is a living instrument[50] which must adapt and develop with the changes in public attitude. Further, they assert that their decisions be informed by, and take into account, relevant developments within the Parliamentary Assembly and other institutions concerned with human rights.[51] It is perhaps through this route that such resolutions will prove to be of most benefit.

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50 See for instance Loizidou v Turkey (1995) 20E.H.RR.71.

51 Of particular relevance here is Article 27, International Covenant on Civil and Political Rights, which enshrines the rights of minorities and Article 26, which is a free standing anti-discrimination provision (see also Articles

The Committee is indeed showing signs of relaxing its past reservations about admitting complaints that raise minority rights issues. This change of attitude has perhaps three causes, the first being the general acceptance that in all probability a fully ratified and enforceable minority rights protocol will not exist for several decades - if at all. Second, there exists the expectation of a significant growth in minority rights complaints as a consequence of the ratification of the ECHR by Central and Eastern European states (and the relatively recent recognition by Turkey of the jurisdiction of the Court); and finally, there is a sense of competition, with the significant minority rights role being developed by the OSCE.

The mechanisms for effective protection of minority rights do exist. Whether any substantial benefit is to be gained from them remains to be seem.

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2(1) and 3). The Human Rights Committee has given general comment on article 27 (No.2350). With the exception of Greece, Liechtenstein and Turkey, all states which have ratified the ECHR are also parties to the ICCPR.

52 The Research Committee, Cardiff Law School, provided the funds to employ Robert Thomas as a student researcher on this paper.

Penal Reform in Eastern Europe and the Former Soviet Union

Vivien Stern
Secretary General of Penal Reform International

BACKGROUND

In July 1994 the UN Special Rapporteur on Torture visited the Russian Federation to establish whether conditions in the pre-trial prisons could be regarded as torture. After a visit to the two main pre-trial prisons in Moscow he state, "The Special Rapporteur would need the poetic skills of a Dante or the artistic skills of a Bosch adequately to describe the Infernal conditions he found in these cells".[53]

Speaking to a parliamentary committee in 1994, General Yuri I. Kallnin, Head of the Penitentiary Department of the Russian Ministry of the Interior, said,

"I have to confess that sometimes official reports on prisoners' deaths do not convey the real facts. In reality, prisoners die from overcrowding, lack of oxygen and poor prison conditions... Cases of death from lack of oxygen took place in almost all large pre-trial detention centres in Russia. The critical situation in SIZOs (pre-trial prisons) is deteriorating day by day: the prison population grows on average by 3,500-4,000 inmates a month...."[54]

Since the collapse of totalitarianism in the former Soviet Union and Eastern Europe most institutions in these countries have been going through a far-reaching and dramatic upheaval which has affected the law, education, civil society - all those matters that are at the heart of the relationship between the state and the individual. Reforming the prisons is one of the milestones on the path to a society based on the precepts of the International Covenants on basic human rights.

Yet, as the comments of the UN Special Rapporteur and General Kallnin make clear, reforming prisons is no easy task in the current economic, political and social situation of the countries of the former Soviet bloc. The old Soviet prison system which was imposed on the rest of the Soviet bloc countries is based on a long tradition, very different from that which emerged from 18th century Europe and America, and which now prevails in the West. The Russian system had its basis in banishment and forced labour. After sentencing, prisoners would be sent to serve their punishment many thousands of kilometres from their homes. Sometimes they were never to return, instead settling as ex-convicts in Siberian villages.

THE SOVIET SYSTEM

The basis of the prison regime was straightforward. Discussions about which method was most likely to touch the prisoner's soul or disagreements about the rehabilitative merits of solitary confinement versus

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53 UN Economic and Social Council, November 1994, Report of the Special Rapporteur on his visit to the Russian Federation.

54 "In Search of a Solution: Crime, Criminal Policy and Prison Facilities in the Former Soviet Union," Moscow Centre for Prison Reform, 1996, Human Rights Publishers, Moscow.

silence, which were part of American and European prison history, had no place in the Soviet Union. Prisoners were expected to work and were organised in divisions for this purpose; certain prisoners acted as work and division leaders. In the Western tradition the big prisons were in the towns so that the citizens would see the imposing, fearsome portals and consequently be filled with such dread that any temptation to crime would be resisted. In the Eastern tradition prisoners were exiled far from the main centres of population. They were sent to places where the minerals, uranium, gold and diamonds needed to be mined, to the frozen north where the dams and railways had to be built. The railway from Baikal in Siberia to Amur in the far north was built by prisoners. They also worked in factories with dangerous chemicals. More recently, it is alleged by the Belarus League of Human Rights, Belarussian prisoners have been sent to an area near Chernobyl where the environment is so polluted with radiation that no free workers would agree to go there.

A discussion about how much the penal system costs, which has become a major issue affecting penal systems in the West, would have until recently been unintelligible to a Russian official or Minister with responsibility for prisons. Prisons did not cost money, rather, they made money. Forced labour in the prison camps produced every sort of industrial product: machine tools, pumps, clothes, airline seats for the Aeroflot airline, kitchen equipment and office furniture.

The uniformity of the system extended to all parts of the Soviet empire. In Almaty, in Kazakstan, the pre-trial prison, when visited in 1993 by a delegation from Penal Reform International including the author, was very much like its counterpart in Moscow. In poor physical condition, the prison's accommodations consisted of medium-sized rooms which held between 15 and 49 prisoners. Prisoners left their cells only to go for exercise for one hour each day in the roof-top exercise yards. There were triple bunks with virtually no space between them; each room had one toilet. There was no indication of books or other activities in the room. When the door to the room was opened the smell was quite overpowering and many of the prisoners were clothed only in underwear.

It is the same if one goes in the other direction, west, to Estonia. Prison Number One in Talinn, according to journalist Roman Rollnick who visited it in July 1993, is "Like a grim medieval fortress". In cell No. 88, there were 31 men sharing 16 beds. It was so tiny that they "could only stand in small groups at the end of the beds". Those who break the rules are locked into "a stinking, freezing, dark concrete box too tiny to stand upright and too small to lie down in."

Harsh penal systems were also a feature of the Central European countries in the Soviet bloc. Poland for instance, in the 1970s and 80s, had the largest prison system in Europe, apart from the USSR, with an average 100,000 prisoners held in 209 prisons. By the early 1980s, one out of every eight adults in Poland had been in prison at some time.

The Director-General of the prison service in the Czech Republic until 1995, Zdenek Karabec, appointed since the arrival of democracy, describes the old system as he saw it:

"In every former communist and socialist country prisoners were used as cheap labour. The planned economy depended on their labour. They were given work which honest citizens refused because health and safety conditions were so bad. Prisons had the appearance of concentration camps."[55]

55 "The Problems of a Prison System During a Period of Transition Towards Democracy", Dr Zdenek Karabec in *Prison Service Journal*, March 1996, No 98, HM Prison Service, England and Wales.

The ideology behind the Soviet system is described by Pawel Moczydlowski, who was Director General of the Polish prison system from 1989 to 1995. Crime was seen as the product of inequality in capitalist systems, which under communism would wither away. At first the continuation of crime was regarded as a leftover from the previous systems that would eventually dwindle and die. But in fact it seemed to increase. Thus, an awkward question needed an answer: why was there still crime when social inequality had in theory been abolished? The answer was that offenders were not just thieves or burglars, rather, they were really trying to re-introduce the capitalist system. The act of stealing was "illicit privatisation" and therefore a political act. The offender was a class enemy and an opponent of the system, a counter-revolutionary. Consequently, punishments were very severe. The penalty for stealing a chicken could be a prison term of five or six years.

There was another reason why the prison terms needed to be long. Since offenders were class enemies something had to be done about them. They had to change into proper communist citizens, so the system required a process of re-education. From the prisoner's point of view , the best way of demonstrating that one had been re-educated was to become an informer. "Prisons became the hotbed of agents of the criminal and political police," states Moczydlowski.

The way in which the prisoners were treated reflected the view of them as enemies. According to Moczydlowski,

"The perfect specimen was an individual who no longer defended himself, a broken and defeated person ready to obey any order....the staff were equipped with machine guns, clubs, gas, dogs, handcuffs, etc., to make them more powerful. Barbed wire, wells, bars and other similar elements of architecture supplemented the staff's special equipment. The staff were militarised for the maximum efficiency of their work."[56]

With the arrival of democracy and the acceptance of international human rights standards, there had to be changes in the foundation. The whole approach, the fundamental basis of the system, had to be transformed from top to bottom. Zdenek Karabac of the Czech Republic lists the stages of this transformation. First, there has to be an official response to the great anger and outrage felt by those unjustly imprisoned and ill-treated, as well as their families. Measures to give official pardons and ensure political rehabilitation have to be brought in.

The second imperative is the removal of all the staff most involved with the former injustices. In Czechoslovakia (before the division into two separate states) 1500 of 7600 staff were dismissed. In Poland, 7500 out of 17600 were replaced over a two and a half year period.

Next, there is a need to create a new framework for the prison system, one based on human rights standards and the ideas of democracy. This process, usually described as "humanisation", includes a requirement for vast improvement in physical conditions. Entirely new laws are needed to regulate imprisonment and ensure that prisoners are treated according to the basic rules of natural justice.

The entire staff structure needs to be de-militarised and civilian staff appointed and trained. The actual content of imprisonment has to change, to prepare prisoners for release and to find work and education for them. Former totalitarian prison systems need international contacts in order to open the eyes of the staff to an entirely new way of viewing prisoners and imprisonment.

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56 "Prisons From Communist System to Democracy. Transformation of the Polish Penitentiary System", Unpublished paper - October 1993.

The reform process which took place in the Polish Prison Service from 1990 to 1993 is widely regarded as a worthwhile model. According to Danuta Gajdus, Deputy Director-General at the time[57], in 1989 the prison service lost control of the prisons. In order to re-establish control without reverting to the violent and repressive methods of the past, it was necessary to adopt a quite different philosophy. The staff needed to accept new principles and a new ethical approach.

Therefore a process was set in motion which included:

- Staff changes: After the new approach was announced and corruption, theft of prison property and drunkenness were stopped, 2500 staff left the prison service immediately, many taking early retirement;
- Staff re-training: The remaining staff went through a re-training process which emphasised human rights, treatment of prisoners as individuals and rehabilitation as the basis of imprisonment;
- Abolition of informers: The system of staff collusion with some influential prisoners in order to control the rest, and the use of some prisoners as informers in return for privileges was stopped;
- Opening up: Prisons were opened up to the outside world. Some prisoners were allowed temporary release. Outsiders, such as teachers, students, workers in the mass media, actors and writers, with a genuine reason were allowed to visit and many meetings, events, seminars and concerts took place;
- Staff uniforms: With the exception of guards, all prison staff, i.e., teachers, educators and social workers, were taken out of uniform;
- Staff name badges: Staff were required to wear name badges so that they became more personally responsible for their actions and decisions; and
- Economic problems: Shortages of funds supported economic arguments for reform measures, such as prisoners wearing their own clothes, receiving more parcels from home, and the allowance for families to prepare meals for prisoners during visits.

Such a reform process is complex, lengthy and calls for determination and stamina. The very necessary changes in the legal framework are only a start. Profound changes are needed in the culture and concept of penal systems in former totalitarian states.

REFORM ACTIVITIES

Since the collapse of totalitarianism in the CIS and Eastern Europe, strenuous efforts have been made to help the newly democratic countries to reform their penal systems. The Council of Europe, through its THEMIS programme, has run an extensive programme consisting of visits by foreign experts, reports, analyses, needs assessments, exchanges, seminars and conferences. The United Nations has also been involved, although on a much smaller scale. The Organisation for Security and Co-operation in Europe has begun to establish an innovative penal reform programme, and has started a project in Georgia. Non-governmental organisations have also made efforts. For example, the Moscow Prison Centre has since its formation campaigned tirelessly for prison reform in Russia and the CIS. It also supports a regular radio programme for prisoners and about prisons, and publishes up-to-date information on the deteriorating situation in CIS prisons.

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57 "Changes in the Polish Prison System," Dr Danuta Gajdus, NACRO Community Prisons Initiative Seminar Paper. NACRO, London, July 1992.

These efforts have resulted in some changes. A study carried out by Roy Walmsley for the Helsinki United Nations Institute[58] shows that many of the most repressive prison laws have now been repealed. New and more humane laws or instructions have been introduced in sixteen of the former Soviet bloc countries. In five countries, responsibility for penal institutions has been moved from the Ministry of the Interior to the Ministry of Justice; such a move is also planned for the Russian Federation.

However, other problems have accompanied democratisation and old problems have been difficult to solve. In 13 of the 14 countries studied by Roy Walmsley, prison populations increased between 1991 and 1994; in the Czech Republic and Belarus they doubled. Overcrowding, poor buildings, delays in reformation of the penal laws and codes, the shortage of non-custodial alternatives, difficulties in recruiting good staff and a shortage of work for prisoners all remain as obstacles to reform.

For example, a delegation from Penal Reform International, which in 1996 visited Georgia at the instigation of the OSCE in order to make recommendations for a reform programme, found poor buildings, cracked walls, leaking roofs, broken windows, dangerous floors, overcrowding, bad conditions for juveniles, prisoners controlling other prisoners, a crisis of finance, staff with low salaries and often no uniforms, and finally, no training programme.[59]

SOME LESSONS

Some lessons of the first years of prison reform are beginning to emerge. First, it may be that too much emphasis has been placed so far on the unspoken but ever-present assumption in most reform efforts that the prison administrations of Eastern Europe and the CIS should try to abandon their old systems in order to be as much like Western Europe as quickly as possible. This assumption, where it is present, is both mistaken and cannot be realised. It is a mistaken belief that Western penal systems present a model solution to the problem of dealing with lawbreakers.

Some aspects, such as the openness of some Western European prison systems, the access prisoners have to the outside world, and the opportunities for education and training, are well worth emulating. Others may be less so. For example, visitors from Russia viewing prisons in the West, whilst impressed by the physical conditions and the educational opportunities offered to prisoners, are not always convinced that the system is humane. The single cells with spy-holes in the doors, the staff watching prisoners' movements on video cameras, or the conditions in the Washington D. C. prison where one wall of the prisoners' dormitory is made of glass, can seem like an invasion of privacy which is more oppressive than the work regime of the Russian system. Valery Abramkin from the Moscow Centre for Prison Reform visited prisons in Canada, the United States and England. He was struck by the 24 hour surveillance of prisoners by guards. He stated: "One feels there like a fish in an aquarium. I'd rather do time in one of our prison camps."[60]

Copying the West is also unrealistic because the resources will never be available to make such a change. To give but one example, the conversion of labour camps holding hundreds of thousands of prisoners in

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58 "Developments in the Prison Systems of Central and Eastern Europe," Roy Walmsley, The European Institute for Crime Prevention and Control, Helsinki 1996.

59 *PRI Newsletter*, No 23, December 1995, PRI, London.

60 "Gulag Today", Valery Abramkin in New Times, 2 June 1990.

dormitories into European style prisons with individual cells would cost more than any state would be able to afford. Whilst resources are inevitably needed, there are reforms what can be made which are not dependent on substantial injections of new funds and which will have a humanising effect on the prison systems.

The main methods used in the reform process so far have been either seminars consisting of lectures from Western experts and visits to Western countries, or needs assessments carried out by Western experts. These can be very useful in opening up people's minds to new possibilities and conveying to prison staff how matters appear when viewed from a different culture, but they can only form the first stage in any reform process. Other methods are needed to help prison administrations to work out how to bring about change in their very different situation. Extensive follow-up work needs to be done to show that change is possible and that the gap between the reality in the East and the systems in the West is not too great to bridge.

The gap between the systems, for example, in Denmark or Canada and those in Romania, perhaps, or in Russia is enormous. There is therefore a need for the penitentiary administrations aiming at reform in the CIS and Eastern European countries to concentrate on that which can be achieved in a practical manner. A basic framework for penal reform contains many elements that can be accomplished without substantial expenditure on infrastructure.

A BASIC FRAMEWORK FOR PENAL REFORM

First, resources have to be made available to meet minimum standards of care. Food and living conditions must enable prisoners to retain their health and survive the experience of imprisonment without physical damage. Once a person is in prison the state has accepted the responsibility to feed, clothe and care for that person, whatever the economic circumstances of the country. People cannot be locked up in prison and then allowed to die from neglect. International law protects everyone, including prisoners, against gross violations of their health and integrity. When prisons are so overcrowded that infectious diseases spread rapidly, prisoners die from suffocation or from attacks by other prisoners, a gross abuse of human rights is taking place. assurance of minimum physical standards must be the first and most urgent priority in many penitentiary systems.

However, putting minimum standards in place is only the first step. Unless it is accompanied by other changes it will not be sustainable in the longer term. There is a need to reconsider the purpose and use of imprisonment in a modern, democratic society. The use of imprisonment in Eastern Europe and particularly in the countries of the former Soviet Union is very high by international standards. Further, imprisonment is used for many minor offenders, nuisance offenders and people who pose no threat whatsoever to society. Congested and malfunctioning legal systems result in many pre-trial prisoners serving longer periods prior to their trials than the sentence they will receive if convicted.

Moreover, imprisonment is very expensive, and in countries with severe financial constraints it is economically often a poor use of scarce resources. The argument about the relationship between crime rates and imprisonment is complex , but certainly mass incarceration is one of the least effective available methods of responding to crime. There is a substantial body of research evidence, published by the United Nations and research institutes around the world, showing that control of crime is not achieved primarily by criminal justice measures. Moreover, it is certainly not achieved by incarcerating larger numbers of citizens for increasingly long periods. Levels of crime in a country are little affected by the punishment system and

its severity, whether there is death penalty or not, or by how many people are sent to prison. The amount of crime in a society is affected by other factors, such as poverty, unemployment, the strength of family structures and culture. Consequently, reducing the use of prisons and alternatively funding other methods of dealing with crime and conflicts between citizens, is a vital question for public policy in all countries.

Therefore, if prison reform is to be possible in countries facing economic difficulties, urgent priority has to be given to a drastic reduction in the number of people who are sent to prison and to the introduction of less expensive, but no less effective forms of community punishment. It is interesting to note that the Penal Code in the Czech Republic was amended in 1995 to allow the introduction of several new alternatives to prison. Community service provisions came into effect in January 1996. Community service may now be imposed when a prison sentence of up to five years could be passed. The judge must take into account the nature of the crime, the personality of the offender, and must have grounds to believe that the purpose of punishment will be achieved though the offender is not sent to prison. It is intended that community service shall be a genuine alternative to prison and not used in place of other alternatives; it should only be imposed when a prison sentence would otherwise be seriously intended.

A person carrying out community service is required to do unpaid work beneficial to society for a period extending from 60 to 400 hours. The work must be finished within one year from the date the court order is imposed. The court may also impose appropriate restrictions on the offender. For example, if the offender fails to lead an orderly life, or intentionally fails to meet the conditions of the order, the court will convert the entire order or the part remaining into a prison sentence. An offender in this position is required to serve one day in prison for every two hours of the remaining portion of the community service order.

A new measure has also been instituted to allow postponement of prosecution if compensation is paid and other conditions are met. Mediation is also now an option, on the condition that both the victim and the accused agree to this method and compensation is made in some way.

The Czech Republic has one of the highest rates of imprisonment in Europe and the range of community sanctions and measures are expected to lead to a reduction in the number of prisoners.[61]

Alternatives to prison are not yet widely available in East and Central Europe and the countries of the former Soviet Union. Creation of such alternatives will require substantial new thinking as well as some investment, although in the longer term their use can lead to substantial savings.

Penal reform also depends on changes in the attitude of staff towards prisoners. The largest expense in any prison system is the staff. However, they are also the element with the greatest capacity to make the a difference in the nature of imprisonment as it is experienced by prisoners. They control every aspect of prisoners' lives, including their access to everything valued, such as visits, time out of their cells, food, companions, access to facilities and activities, medical care, even sometimes to basic sanitary facilities such as lavatories and showers. In many CIS and Eastern European countries staff are part of militarised structures, are poorly paid and barely trained, with no incentive to use their own initiative. Management structures are centralised and hierarchical, and the scope for individual initiative is very limited.

A third major plank in any reform programme should be to invest in the prison staff, through retraining and restructuring the management of prisons to devolve responsibility and reduce bureaucracy. An example of such an effort is the programme being organised by the Netherlands Helsinki Committee and the Romanian

61 *PRI Newsletter*, No 25, June 1996, PRI, London.

Directorate of Prisons. The two organisations will carry out a three-year training programme in Romanian prisons using prison officials from the Netherlands and the United Kingdom to work with their Romanian counterparts on a long term remodelling of the prison regime there. Penal Reform International is working with the General Penitentiary Department of the Russian Federation to produce human rights training materials for prison officials based on everyday prison practice.

Fourth, the treatment of prisoners can be substantially improved at a very low cost by opening up the prison to the outside world. Prisons in Eastern Europe and the former Soviet Union have a long tradition of facilitating advantageous family visiting arrangements, with families able to visit for several days in the prison in special accommodation with the prisoner. Families are also allowed to send prisoners parcels. Most of these arrangements have been further liberalised since the arrival of democracy. Increasing the involvement of families, ending censorship of letters for all but top-security prisoners, allowing more and longer family visits as well as unlimited correspondence, even perhaps telephone calls in some situations, can greatly improve the lot of prisoners at a low cost.

Such changes also bring other substantial benefits. People who have been in prison are less likely to commit further crime if they have strong family support. Contact with family during imprisonment is very important. Opening up the prison system can also assist in the elimination of brutality from prison treatment since it is more difficult to hide the evidence of brutality and malpractice when there are many and frequent visitors.

Such an opening-up needs to extend beyond families, however. It must allow controlled and responsible access to the media and politicians as, well as to non-governmental organisations (NGOs). NGOs committed to penal reform and the care and resettlement of prisoners can be of great assistance to prison administrations looking for support in their reform endeavours. Penal reform is not normally a popular cause with the general public, which is angry about rising crime and has no sympathy for prisoners. The public cares little if prisoners do not get enough food or die because there is no doctor. They feel that there are plenty of people who are not criminals who do not get food and cannot afford a doctor. They do not sympathise with the position of prison administrations whose staff have to work in conditions as bad as those of the prisoners. Further, they are usually unaware that the government has international obligations to protect the human rights of prisoners. The public does not sympathise with prison administrators in their wish to improve prisons, and does not often listen to the argument that if prisoners are badly treated they will leave prison in a condition worse than that in which they arrived, possibly even more dangerous.

NGOs working for penal reform therefore have a crucial role to play. They can develop these arguments and present them to the public. They can try to initiate a debate about the problems faced by prison administrations and the need to treat prisoners in a humane manner. This is a very important role for NGOs.

There are other roles, however. Prisons often represent a closed world, with the public knowing little about what goes on inside. Consequently, people often have strange ideas about activities in prison. NGOs can take on the job of opening up prisons to the world outside and helping prisoners maintain outside contact. An example is the Lithuanian Prisoners Aid Association, which produces a bi-monthly newspaper that is distributed to all the prisons in that country.

NGOs have another important role in that they can try to provide helpful services that assist the aims of the prison administration. They can help the prison services that do not have enough staff by entering prisons to give advice to prisoners, as well as by taking educational and cultural activities into the prison; on the

outside, NGOs can also help prisoners' families. The Lithuania Prisoners' Aid Association, for example, produces informational leaflets for prisoners and their families.

NGOs may specialise in helping prisoners who belong to minority groups. In many countries in the world, minorities are sent to prison in greater numbers than they should be. In Western Europe, foreigners make up a large proportion of people in prison; in Eastern Europe it is people of Roman origin. In the United States it is African-Americans who are most often imprisoned. The discrimination found in outside society against minorities is reflected in the use of imprisonment. Treatment inside prisons and involvement of a specialist NGO may help to make staff aware of the needs of these groups and help minority prisoners to feel more secure.

There may be organisations that specialise in helping drug addicts or those suffering from AIDS or HIV, as well as organisations that help ex-prisoners to rebuild their lives outside prison. In Poland for example, the organisation Patronat has set up hostels for people who leave prison without a place to live. They have set up workshops where the prisoners make objects for sale which provides money for the workshop and the hostel. The Estonian Christian Centre for Rehabilitation also runs such hostels and helps those people leaving prison with addictions to alcohol or drugs.

NGOs can be invaluable in these three roles: support to prisoners, watchdogs and public advocates of penal reform. However, an official watchdog and supervisory mechanism is also needed. There are many methods of ensuring these functions are carried out. Some states have a prison ombudsman, while others have independent inspectors, committees or commissions for human rights. In many of the newly democratic countries of Eastern Europe and the CIS this function is carried out by the prosecutors office or by the General Procurator.

Frequently advocated as a step on the road to penal reform is the relocation of penitentiary administrations, formerly part of Ministries of the Interior, to Ministries of Justice. In five countries responsibility for penal institutions has been moved to the Ministry of Justice and such a move is also planned for the Russian Federation. Whilst this in itself is no guarantee of reform, it locates the penitentiary administration in a part of government with a concern for the rule of law and the observance of due process.

To ensure that the rule of law and due process operate in prisons it is usually necessary to revise the prison laws, rules, regulations, and standing orders. This has already been done in 16 countries (see above). However, it is important to ensure that such revisions are not merely changes on paper but actually lead to a new respect for justice within the prison walls. Prisoners need to be able to complain without fear of being victimised when there are grounds for complaint. Staff need to know that they operate within a clear framework of rules governing both their freedom of action and that of the prisoners. A clear set of rules must exist governing the behaviour of prisoners, as well as a clear and fair procedure for imposing punishments when the rules are broken, with some system of appeal against unjust decisions.

Such a framework is essential if prisoners are to feel that they have other ways of making their views heard than through violence, and if staff are to feel confident of their protection if they encounter aggression from prisoners. If this framework is not in place, an informal system will fill the vacuum, where the strong, staff and prisoners alike, oppress and terrorise the weak. Although prison is a society where such a sub-culture is likely to emerge in spite of the best efforts of prison authorities, it is less likely to take hold when there is also a legal structure operating.

CONCLUSION

Such steps towards penal reform are in motion in many countries of the former Soviet Union and Eastern Europe, with good examples of reform existing in all of the six areas listed above. Great advantages can result from sharing this experience, from working regionally, and from bringing the best people and practices in a region into contact with those in need of reform. Prison administrations who want to change their systems and need help to bring about change are best advised by those people who understand their background, culture, governmental machinery, legal framework and resource constraints and who respect the efforts already made in the face of great difficulties. Through such linkages, it should be possible to both deepen the understanding of the steps that need to be taken to reform a former totalitarian system and the methods that can be employed, as well as to build a regional penal reform movement of people genuinely committed to reform.

Note About The Author:

Vivien Stern is Secretary-General of Penal Reform International, an international non-governmental organisation with 400 members in 80 countries. It is registered in the Netherlands and has a head office in London and offices in Paris and Puerto Rico. It was established at a meeting in London in November 1989 and receives funding from the European Union, the Governments of the UK, the Netherlands and Switzerland, the Swedish International Development Agency, the Danish International Development Agency, the Canadian International Development Agency and other private funding organisations. It has consultative status with the United Nations and the Council of Europe, and observer status with the African Commission on Human and People's Rights.

POLISH COURTS AND THE CONCEPT OF HUMAN RIGHTS

Prof. Dr Janusz Letowski

Nearly all countries with a modern legal system abide by the principle that judges, though independent, are bound by the content and the spirit of the law. This results directly from the general acceptance of the constitutional principle of the Rule of Law in a modern, civilised and democratic state. Despite this fact, there are continual disputes over the doctrine concerning the actual relationship between the judge and the law. Today, in Poland, these disputes no longer concern not only the doctrine, but also political, moral and ethical issues. In various publications it is possible to encounter opinions which claim that the judges who faithfully applied the laws in force under the totalitarian government were not only bad judges, but were also dishonest and unethical. Consequently, people thus demand that they be removed from the courts and this problem becomes one of a fundamental nature. It is difficult to find a solution to this problem which would be just in all cases.

The modern political sciences very often speak of the weakening role of the law, which it is said to be a result of the political weakness of modern legislators. Lawyers, on the other hand, pretend that everything is completely in order. Such an approach, to a large extent, stems from the fact that traditional followers of the constitutional doctrine still want to believe that in the modern state there is only one legitimate democratic authority empowered to make the law, i.e. the parliament. The parliament holds monopolistic legislative powers, and the administration and judiciary derive their legitimacy from it.

One can say that such opinions are based on an anachronistic approach to the world, and express the desire for stable systems for the creation and establishment of law, as well as a vision of the state which belongs to the past, never again to return. The law today has become an instrument of political battles in the short term; long gone are the times in which great codes served many generations. Today, it is most often the case that when a new political orientation comes to power, it immediately attempts to create its own law, claiming that the previous one was completely unjust and wrong. The price, however, is that the law loses its material relationship to ethical and moral values, as well as to fair competition. Consequently, its loses its stability, becoming less easily understood by everyone, and less worthy of human respect. In reality, no one today expects that the government or administration will behave in an ethical, noble, and fair manner. The task of these institutions is to be efficient and to provide citizens with safety and wealth. During elections, the citizens in turn evaluate their representatives with respect to the performance of their duties.

It should also be taken into consideration that in the modern state real authority is concentrated mainly in governing or administration, and not in the process of establishing and applying the law. The relations between the parliament and the government administration do not correspond to the models presented in textbooks. Most laws today are created through ordinances and resolutions passed by the government. The modern state's legislation primarily concerns administrative issues. The supervision of such legislation is conducted by the parliament and constitutional tribunals, and despite its undoubted importance, it has, at least from the point of view of its objective possibilities - a very limited, if not illusionary character.

All of these rather objective processes conclusively point to the need for creating the means for ethical and just persons to correct the excessive results of poor and unfair laws - established in an *ad hoc* manner by

small-minded politicians for corrupt purposes. That is why we can see the attempt at creation of "supra-legal" spheres, i.e. principles which are to guide the internal legislator in the performance of his tasks. The provisions regulating the sphere of human rights are assigned a leading role. This seems to be one of the most important areas, from the practical point of view, in which the modern legislator has lost - until now - his unlimited sovereignty. This has to be taken into consideration when one analyses the development of the new role of the judge in both the processes of creation and application of the law.

There are two new features of legislation in the contemporary world. First, in most modern states the character of legislation has changed: in the past the legislators (for example, in the field of labour law) formulated specific rules concerning human behaviour (work hours, safety, prohibition of work for children, results of collective employment agreements, etc.). This is no longer the case today, as the legislators rather establish various agencies and offices and provide them with the power to make more specific legal provisions. Thus, the manner of solving problems has changed, as the rules of human behaviour have made room for means of institutional character. The modern legislator limits himself to the specification of a certain policy, determining certain principles, but leaves the details to the ministers, local authorities or newly established bodies, such as committees, agencies and administrative courts. From the role of provider of punishment for violations of the law - not unlike the role of a policeman - we have moved in a direction in which the administration acts upon its own initiative, fulfilling a constant and active role and ensuring the implementation of accepted programs. This means that a new role and new tasks have been placed before the judges in the state. They have become, independently of their will, part of a complex state apparatus, for no other reason than that their tasks and powers include that of requiring administrative offices to fulfil their duties, as well as the subsequent supervision of such offices' proper performance. Similar situations may be found throughout in the world.

The second feature of contemporary legislation is that during the last few decades the position and tasks of the judiciary clearly crossed national boundaries. No one today is surprised by the functioning of the EEC Tribunal in Luxembourg or the activities of the Human Rights Tribunal in Strasbourg. The French lawyer, Louis Favoreu, several years ago spoke of the third stage of the development of the judicial functions within national and supranational organisations. Within this third stage, he foresaw the occurrence of the following: establishment of new institutions, such as public constitutional complaint, and the increasing participation of the judiciary in the institutional supervision of administrative authorities' activities - these trends are noticeable in many countries. Poland is a good example of this thesis, and similar phenomena are visible in other countries of Eastern and Central Europe as well.

In Poland, consecutive political transformations leading towards an increasingly democratic system were accompanied by an increase in the judicial powers. Establishment of new institutions also took place, such as the administrative court, constitutional court, the State Tribunal, as did a substantial change in the position and tasks of the Supreme Court. The institutional logic of these changes is obvious and unequivocal: freedom, democracy, and law and order indicate an increase in the participation of independent courts in public life.

In bringing this introduction to a close, I would like to provide a small anecdote. One of the most valued and esteemed judges of the Supreme Court recently met with a group of judges from voivodship and appellate courts. She presented the current problems of the Supreme Court case law, pointing out to the justices that more and more often case law referred to constitutional principles. One listener, visibly irritated, stated, "Today you want us to refer to the constitution when making our decisions, and tomorrow you will most likely tell us to reach our resolutions based on international law!" The speaker answered very calmly, "But of course! Why tomorrow? We are already doing so today, and each following day we will have to do this to a larger extent...." When she told me this story, I commented that, "The day will come,

because it is inevitable, when the first Polish judgement will be appealed in Strasbourg. And the person who will have passed the given judgement will go down in history....He will justify to himself that he has properly applied the Polish law as he has been doing so for years. And no one in Strasbourg will be convinced by these explanations....I only hope that it will not be me....After this, everyone will want to make sure that they are not the second or the third person to make the same mistake. In this manner, reality will change a bit, and we will make another step towards Europe and Civilisation. This time it will have to be real and not just for show."

This is why I believe that human rights are, in our case, a legal (because Poland has ratified relevant international agreements) instrument, which may be used by the judge when he deems it necessary to correct excessive resolutions foreseen directly by the law. The judge may do so currently, though he is not obliged to do so, and it is unlikely that anyone will complain if he does not do so (although some newspaper articles concerning this have already appeared). However, that the future will be completely different is one thing of which we can be sure.

HUMAN RIGHTS IN THE CURRENT CASE LAW OF THE SUPREME COURT

The following presentation of selected current decisions of the Supreme Court, in which it is possible to find references to the concept of human rights, should be preceded by a few introductory words. In Polish legal publications - similar to such publications in other European countries - there has for many years been an ongoing dispute concerning the legislative role of case law. Obviously, many different opinions are voiced on the topic. Without getting into the merits or essence of the aforementioned discussions, it may be stated that the case law of the Supreme Court, in practice, carries significant authority. Important decisions and resolutions concerning the interpretation of the law can even be found in daily newspapers; the information is commented upon and discussed. It is especially important when, as is the case presently in Poland, the legal system is undergoing continuous transformation and is being adjusted to the standards of a democratic state governed by law. That some of the law dates from the period of totalitarian government plays a role in this respect. Poland lacks political stability, and discussions are under way with respect to what extent each of the consecutive political parties in power is authorised to develop the legal system in accordance with its own beliefs and visions.

This also results in substantial difficulties in the drafting of the new constitution. In such a situation, obviously, the practical role of the case law of the courts of the highest instance increases substantially, as it is the official, legal, expert and most current source. The case law of the Supreme Court plays a particularly important role in this respect. It is not limited to the verification of the hierarchic compliance of provisions concerning the specific field (e.g., checking the compliance of a given law with the constitution or an ordinance with a law); it is also not limited by the framework of only one branch of law (for example, administrative). On the contrary, it very often reaches a system of very broad interpretation, developed on the basis of provisions of different branches of law (in the practice of the Supreme Court very often one may find decisions based on the provisions of the administrative, civil and labour law interpreted in correlation with one another). Increasingly, it is possible to encounter decisions in which the court refers to constitutional provisions and applies them directly. During the past few years it has been possible to find even important decisions based directly on international law (among others, the provisions of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which was ratified by Poland). This phenomenon is noticed and favourably commented upon by legal publicists. Undoubtedly, it can be stated that today we are dealing with a new vision of the Supreme Court's case law in Poland. A rich case

law, it deals with fundamental political and legal issues, is bold in its concepts, and is directed towards increasing the protection of citizens' rights.

The material presented below, the basic political and legal principles expressed in the case law of the Supreme Court, is based primarily on the case law of the Administrative, Labour and Social Insurance Chamber. The reason for this is simple: the legal tasks of this Chamber include the consideration of extraordinary appeals from the decisions of the Supreme Administrative Court; and the passage of resolutions which involve interpretation of legal provisions which may prompt questions, including those concerning public law. The constitutional and political issues thus appear more often in the case law of this Chamber than in other chambers of the Supreme Court. The following presentation contains quotes from original statements in the case law of the Supreme Court. I believe that original texts provide the foreign reader with a clearer understanding of the trends in Polish case law than even the most genuine summaries or commentaries might.

THE SUPREME COURT ON THE PRINCIPLE OF STATE GOVERNED BY LAW

From the moment that the fundamental principle of the Republic of Poland's status as a state governed by law (art.1) was introduced into applicable constitutional provisions, it was used by the Supreme Court in two basic ways. First, the Court's shaping of material practical rules concerning the relationship between the state authority and a citizen was based on this premise, and further, it was used in creating methods for interpreting the provisions of public law. The following are some of the most important statements:

- In case of doubt as to the understanding of the given legal provision, the interpretation used should be that which most complies with constitutional principles. (III ARN 33/93)

- The general principles of international law may and should be directly applied in the internal legal system and do not require additional transformation. This concerns, however, such general principles of treaties or bilateral agreements in which it can at least be assumed that the intent of their application in the internal legal order of the countries or parties thereto, or the possibility of such application, results from the content of such treaties or agreements or other objective premises associated with their execution. (I ARN 45/93)

- In a state governed by law, there is no room for the principle of superiority of the general interest over that of individual interest as understood in a strict and or narrow sense. This means that in each case, the acting body is obliged to demonstrate which general or public interest is at stake, and must further prove that such interest is important and meaningful enough that it demands that the rights of individual citizens be limited. Both the existence of such interest and its importance, as well as the premises which underline the necessity of placing the public interest above that of the individual interest, must always be subjected to detailed judicial supervision. This is especially important when it comes to proving that the limiting or withdrawal of a constitutionally determined right to ownership is in the public interest. (III ARN 49/93)

- In a democratic state governed by law, the administration bases all of its actions primarily on the principle of law and order. If the requirements of the principle were to be loosened and replaced with the right of the administration to apply commercial and fiscal principles, such would lead to a direct endangerment of the fundamental rights and freedoms of citizens. The concept of "public interest" especially cannot be identified with the economic or fiscal interest. (III ARN 33/93)

- The right to free association constitutes, in a state governed by law, a citizen's constitutional right. As one of the pillars of a democratic system, its inviolate implementation serves the public interest. A court registering an association's articles of association thus cannot evaluate whether the founders of the association or union and its future members "deserve" to have their organisation registered. (I ARN 45/93)

- For the possibility of applying art. 421 para 2 of the Code of Civil Procedure[62], it is not enough that the appealed decision violates the law, but it must violate it in a manner which may be assumed to also violate the state interest. The aforementioned interest cannot be identified with the financial interest of the State Treasury or a state owned enterprise. For the application of art. 421 para 2 of the Code of Civil Procedure, it is necessary that the effects or results of a violation of the interest of the Republic of Poland lead to contradictions either with the principles of the state governed by law (art. 1 of the Polish Constitution) or with the most essential issues connected with the understanding of the concept of justice. (III ARN 41/90)

- A citizen is entitled to have his lawful claims and applications considered within the framework of legal procedure and in the forms specified by the law. The administrative bodies act contrary to constitutional principles when they proceed to consider the applications of the citizens without following such procedure or in a manner not provided for by the law, as such activities result in legal uncertainty, thus limiting the citizens' rights to the protection of their rights with respect to public administrative bodies and courts. (III ARN 49/93)

- The fundamental principle of tax law in a democratic state governed by law is that the scope of the object of the taxation must be precisely specified in tax law, and that the provisions thereof cannot be interpreted in a broad manner. (III ARN 50/92)

- In a state governed by law, a citizen should be able to predict the legal results of his actions and behaviour, and be able to reasonably prepare for such results. He thus should have the certainty that his activities undertaken under the currently applicable law and all the effects thereof will also be subsequently acknowledged by the new legal order. The standards of a democratic state governed by law demand that all repressive principles (not only the provisions of strictly penal law) are covered by the principle of *nullum crimen sine lege* resulting from the International Covenant on Civil and Political Rights, ratified by Poland in 1977, and consequently binding for the country. Article 15 of the Covenant explicitly prohibits the use of repression not stipulated by the law at the moment the given activity resulting in sanctions was performed. (I PRN 34/91)

- The principles of the state governed by law demand that the inevitable risk of making mistakes, errors or conducting even purposeful administrative activities- in the public interest but unfavourable for the individual - are not imposed on the individual, if the given individual was not at fault in his behaviour or did not behave inappropriately. (III ARN 56/93)

- Compliance with the prohibition of reformations *in peius* in appellate procedure should be considered to be one of the fundamental principles of legal proceedings in a democratic state governed by law. Thus,

[62] Art. 421 para 2 of the Code of Civil Procedure allows for the filing of an extraordinary appeal (the number of entities entitled to apply for such an appeal is strictly limited) for each lawful judge and at any time, if such a judgement violates the interest of the Republic of Poland.

detailed court supervision should always be applied with respect to the implementation by the administration of art. 139 of the Code for Administrative Procedure[63] (III ARN 33/93)

- Extensive interpretation of legal regulations regarding population records, made on the basis of judicial interpretation (even in the extended composition of the Supreme Court), pursuant to which decisions of the administrative bodies concerning population records could declare ineffective the rights of the owner or co-owners to use of such object, is inadmissible (in the light of art. 7 of the Constitution and art. 1 of the First Additional Protocol to the European Convention for the Protection of Human Rights and Fundamental Freedoms). (II AZP 28/92)

- The legal interest of an employee, demanding that his certificate of employment include a declaration that he did not suddenly abandon work for unjustified reasons, may be expressed in an authoritative confirmation of the fact that he did not behave in an unacceptable and disrespectful manner. Article 189 of the Code for Civil Procedure does not define precisely the type of legal interest provided for in this article, though undoubtedly the limiting of this interest only to property interest (and those related to it) would be unjustified and even arbitrary. This is especially true when the case concerns the protection of such values as human dignity, social prestige or respect of a given environment (even if such are understood in a subjective manner). (I PZP 13/91).

THE SUPREME COURT ON THE POSITION, ROLE AND GOALS OF CASE LAW IN A STATE GOVERNED BY LAW, AND ON THE CITIZEN'S RIGHT TO A FAIR TRIAL

The Supreme Court made the following statements concerning the position and goals of the court case law in a state governed by law:

- The role of case law is not exclusively to expertly resolve a given, specific and individual case. The concept of "judicial authority," in the understanding of constitutional provisions and the provisions of international law as accepted by Poland (especially those concerning human rights) which address the "right to a fair trial," has other meanings. In short, the issue is that it should be clear and unequivocally visible to everyone that as a result of proceedings in court, a fair and most lawful solution was reached. One of the means necessary for the attainment of this goal is an exhaustive and comprehensive (both from the point of view of subject matter, as well as the legal point of view) justification of the given judgement, especially when the case involves a conflict of interest; the solution must further stress the importance of one interest over the other. In such cases, the purpose of the justification is to convince the other party that his or her point of view was taken seriously; however, if an unfavourable decision was made, there are also important reasons for the justification. The legal obligation of providing such a justification is based on the premise that in such a manner we are exhibiting respect both for human dignity and the freedom of a citizen of a democratic state; if he receives a banal and incomplete justification in a case of importance to him, his rights have been infringed upon. (III ARN 2/94)

The Supreme Court stated the following concerning the responsibilities of the court in the light of article 6 of the European Convention for the Protection of Human Rights (III ARN 49/93):

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[63] 2 Art. 139 of the Code of Administrative Procedure allows the body of the second instance to change the decision in an unfavourable manner for the appealing party, if the "appealed decision flagrantly violates the law or flagrantly violates the public interest."

- If the administrative court - detaining for nearly a year a case concerning the resolution of a complaint of an unlawful resolution as made by the city council - makes it impossible (due to a one-year statute of limitations) to determine the invalidity of such a resolution, the court's actions clearly violate the citizen's right to a fair trial and a fair judgement, as provided for by constitutional provisions and art. 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms, which was ratified by Poland. The function of the trial in cases concerning the violation of public rights is not only the protection of the formally understood legal order, but more importantly, for the implementation of citizen's rights and freedoms.

Similarly - and even more generally and decisively - the Supreme Court spoke on this issue in case III ARN 33/93. In light of art. 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, an excessive prolongation of the pending proceedings in a given case may be considered to be a violation of each person's right to have his case considered and resolved by an independent court in a reasonable period of time. This especially may hold true for cases in which the prolonged proceedings - in the light of existing inflation - may lead to a decrease in the value of damages awarded to a given party.

In the case III ARN 56/93, the Supreme Court stated the following regarding the scope of judicial supervision over the activities of administrative bodies:

- In supervising the application of law by administrative bodies, the judges - bound only by the law - take into account mainly the compliance of such activities with the law, rather than the purposefulness or effectiveness of such activities. If they were to consider the latter, such would lead directly to the disappearance of the fundamental principle of separation of powers and consequently impair the constitutional order in the given state.

In the case III ARN 30/92 the Supreme Court stated the following:

- All doubts regarding the extent of judicial review in cases concerning possible violations either of rights protected by law, or of the lawful interests of citizens, should be resolved in accordance with the principle *in dubio proazione*. Thus, in such cases of doubt the principle of broadening, rather than of narrowing the court's jurisdiction, must be adopted. The preceding point of view also finds justification in light of art. 14 of the International Covenant on Civil and Political Rights, ratified by Poland on March 3, 1977, and art. 6 of the European Convention. These articles state that each person is entitled to have his case fairly and publicly considered in a reasonable period of time by an independent court established by law. The Polish Constitutional Tribunal applied these principles, in its decision of January 7, 1992 (K 8/91), to the issue of determining the extent of the jurisdiction of the administrative court in individual cases involving citizens and public administration. Thus, this is a principle which should guide the interpretation of all procedural provisions, as well as the premises for the development of the Polish system of protection of the rights and interests of citizens with respect to public authorities.

A further problem concerning the principles of judicial case law was the topic of a Supreme Court statement concerning case III ARN 32/91:

- Hypothetically, contradictions in case law have been historically possible - since the time that courts began to preside in various compositions and produce case law. Such is not, however, a circumstance which would authorise one to assert that it always, and in all forms, must lead to a violation of the interest of the Republic of Poland (art. 421 para 2 of the Code of Civil Procedure) - if for no other reason than the fact that differences in case law lead, ultimately, to an improved, more rational, correct and just

interpretation of the law. The point of view that all differences in case law constitute a violation of the law, in essence, leads one to question judicial independence; if the legislator intends to avoid differences in interpretation, he can exclude them through strict formulation of the given provision, consequently not allowing for any interpretation at all.

The Supreme Court's statement concerning the scope of judicial control over the decisions of administrative bodies, based on the so-called 'free will' thereof, also merits attention:

- In acknowledging administrative decisions, there must be not less, but rather greater judicial supervision. This means, among other things, that the existence of all evidence used to justify the negative resolution of a given party's case must be proved by the administrative body in an irrefutable manner, and the correctness of such proof - both with respect to the fact and the law - should be judicially supervised. (III ARN 33/93).

THE SUPREME COURT ON CITIZEN'S RIGHTS IN THE LIGHT OF THE RELATIONSHIP BETWEEN CITIZENS AND STATE ADMINISTRATIONS

The problem of the citizen's fundamental rights (and more importantly, the ability to petition for them against administrative bodies in individual matters) has been raised many times by the Supreme Court. Below are some of the statements concerning this issue:

- The relationship between an individual and the administrative body regulating his or her situation deviates to a large extent from the model in which only the lawfulness of administrative activities is taken into account in evaluation of the conformity and legal relevance of sovereign activities of the administration. Presently, such actions must not only be legal, they must also be reliable, i.e. not arbitrary. This means that they can be rationally explained or justified by the *de facto* circumstances of the given case, and that they do not exhibit traits of persecution or excess (both in favour of and against the interested party). This trend, undoubtedly inspired by the development of the human rights theory, can be seen in many legal constructions which limit the arbitrariness of administrative activities towards the individual, even when such activities for other reasons clearly fall within the freedom of administrative decision-making. (I PA 5/92).

- Citizens, whose legal and *de facto* situations in relation to administrative bodies are similar, may expect that decisions made by such bodies concerning their cases will be similar, if not the same. The given administrative body, on the basis of the decision, may distinguish the situation of the citizen within the scope of certain specified group of relations only on the basis of the formulated premises, which result undoubtedly from different *de facto* circumstances, the explicit order of the law or from the public interest, which speaks in favour of granting different treatment to given citizens. (III ARN 28/90)

- I would not comply with the principle of equality of citizens with respect to law, if the favourable results for a party remaining in good faith and the constitutionally protected trust towards authorities be applied only to a chosen scope of administrative matters, and to reject them with respect to others, only because they concern a different subject. (III ARN 56/93)

- The principle of trust in relations between the citizen and the state is expressed in, among other things, such establishment and application of the law so as not to turn into a certain type of a trap for a citizen. He

must be able to take care of his business in faith, without the feeling that he is endangering himself with certain legal results, which he could not foresee when making his decisions and undertaking certain actions. The decisive motive in the restrictive application of provisions with retroactivity is the conviction that the freedom and responsibility of the citizen, who, acting within the given legal framework, may decide upon taking different options and choices. Such a freedom to choose a certain way of acting is endangered in situations which allow for the unpredictable and retroactive application of the law. In a state of law and order the citizen should be able to predict certain results of his actions and behaviour, and he should also be able to reasonably prepare himself for them. He should also thus be able to possess the certainty that his actions, undertaken under a certain applicable legal order and all results connected thereto, will also later be acknowledged by a subsequent legal order. (I PR lz/91, I PRN 34/91)

- The obligation of the party conducting the proceedings to inform and explain to the parties the entire *de facto* and legal circumstances concerning the pending case (art. 9 of the Code of Administrative Procedure) should be understood as broadly as possible. A proven violation of this obligation should be treated as sufficient reason to repeal the decision, especially in cases when the official determines (or should determine) that the party intends to undertake actions resulting in unfavorable circumstances, or even if there were only a risk of such existing. In such a case, the official is under explicit obligation to, in the most clear way possible, explain the full circumstances of the case, indicating the risk to the interested party associated with the planned activities. This is the sole means of interpreting art. 9 of the Code of Administrative Procedure which complies with the principles of article 1 of the Constitution (III ARN 40/92).

- When an administrative body first informs the interested party of the manner in which it applies the law, and subsequently issues decisions of a completely different content, it acts contrary to the principle of trust in the state and law, which is one of the basic components of the principle of the democratic state governed by law. There are no barriers or limits when it comes to adjusting the practical application or interpretation of the law considered by the party applying the law to be improper; however, such actions should have positive effects in the future. In such situations, it is the obligation of the relevant body is to disseminate information concerning this matter to the potentially interested parties in a sufficient amount of time so as to allow the citizens to undertake their actions in conditions of reasonable or fair legal risk. The aforementioned actions of the administrative bodies fulfill all the requirements of due diligence with regard to the relations between the citizen and the administration in a democratic state governed by law. (I PA 5/92)

- The responsibilities of the administrative bodies may arise only on the basis of clear provisions of substantive law, which authorise the given and clearly indicated administrative body to issue decisions in specifically mentioned cases. A decision cannot be the result of an internal authorisation based on legal provisions regulating an area completely outside of the scope of the administration. (III AZP 17/92).

CONCLUSIONS

Polish publications appear to contain positive opinions concerning the trend in judgements issued by the Supreme Court with respect to human rights. The following trends have been observed:

a) In contrast with the period prior to 1990, a substantial intensification of Supreme Court case law concerning fundamental issues relating to the relationship between the authority and the citizen has occurred;

b) In its case law the Supreme Court often refers to provisions of the constitution and international law, and does not limit itself to resolving the particular case but rather sets forth in its case law general principles of law;

c) A certain similarity exists with regard to trends in the case law of the Supreme Court, the Constitutional Tribunal, the Supreme Administrative Court, and even the practice of the Ombudsman. An example of this is the interpretation of the principles of the state governed by law and the fundamental rights and freedoms of the citizens. However, notwithstanding, each of the above mentioned bodies (as has been pointed out in publications, for example, W. Taras, "The Problem of Public Administration in Light of the Case Law of the Supreme Court", *Panstwo i Prawo*, z. 11-12/1993, p. 50) plays its own irreplaceable role in the system of controlling the law and order within the state;

d) It has been pointed out that the principles of law expressed in the case law of the Supreme Court are formulated in a clear and understandable manner, not only for experts in the given field and employees thereof, but also for the majority of citizens. In this manner the principles also fulfil an educational, cultural and legal role, and thus gain further significance.

AN OSCE FIELD OFFICE EXPERIENCE

Nancy Lee Sandrock

INTRODUCTION

In a bold experiment, the full value and impact of which is yet to be determined, the OSCE's Permanent Council approved in the summer of 1995 a significant departure from its previous approach to long-term field missions. Missions in conflict zones have become the OSCE norm, however, now three field offices dedicated to the promotion of human rights were to be located in a strife-torn region of a nation that had suffered a crippling civil war, where sporadic fighting still continues, and where "OSCE Norms and Principles" had hardly been heard of and were even less well understood.

On October 1 1995, OSCE assumed responsibility from the United Nations High Commissioner for Refugees (UNHCR) for the human rights protection of returned Tajik refugees at three field offices in southern Tajikistan. New OSCE mission members had been selected and briefed at the OSCE's Vienna Conflict Prevention Center and at ODIHR in Warsaw for this new and unique OSCE role. Even those who briefed the new mission members were not entirely sure as to what the role and mission of the new field offices would be.

"Go and monitor human rights," was the directive. How do you do that in a nation like Tajikistan where there secrecy and a closed society have been the tradition for 70 years, where those in authority decide what is best and try to maintain complete control over individual action and thought? One does not simply wait in the capital city for a human rights violation to appear. The monitor has to be accessible to the individual citizens of the country who are willing to bring their concerns, and will work together to resolve their own problems. In order to accomplish this, mutual trust and respect are essential. To assist and, indeed, to solve problems, monitors must be activists with good relations not only with their clients, but also with local government officials who, although they may be part of the problem must also be a part of the solution. Trust and access to all are important ingredients in this human rights formula.

In addition to the refugee protection aspect, the OSCE Mission to Tajikistan carried its own broader mandate - to increase the dialogue between regional or political factions within the country, to promote the rule of law and democracy, and to monitor human rights. The Mission is asked to keep the Permanent Council informed on these issues.

OSCE monitors encourage citizens to work through their local authorities to resolve problems. If monitors were to assume the role of advocate for every problem that comes their way, they would inhibit the further development of local problem-solving. OSCE is not here to stay - it is a temporary catalyst. Local and regional governments must develop the capacity to solve the problems of their citizens through legal processes - and to be attentive to their needs. A pattern of mutual trust and responsibility must develop between the government and its citizens. -- *John H. Sandrock*

GOLDEN NUGGETS

The best advice I was to receive came from Audrey Glover, the Director of OSCE's Office for Democratic Institutions and Human Rights (ODIHR). "Trust your instincts, and try to leave a sense of well being." She knew I was not a lawyer nor an expert on post-Soviet Tajik law, however, I was raised in a system where the rights of the individual are recognised, protected, and achievable. Power rests in the hands of the people. Government officials serve only with the consent of the governed. Individual initiative and responsibility are key ingredients in a democracy.

In Tajikistan, one must go back to the basics. Officials here clearly feel superior to the general population and capable of deciding what is best for them, without their input. The average citizen with a problem prefers to complain to an international organisation rather than go directly to local authorities, who at the least may blame him for his problem, perhaps threaten him if he persists in complaining, or try to mollify him with promises to solve the problem - eventually.

UNHCR TURNOVER

The second good fortune was in being able to take over a functioning UNHCR field office - complete with staff, a 4-wheel drive vehicle, radios in vehicle and office, office equipment, and an excellent UNHCR reputation, all of which made for an exceedingly smooth beginning. From day one we had a clientele who believed OSCE could help, and local authorities who were used to working with women from international organisations, as well as with men. I replaced a female UNHCR field officer, who introduced me to local officials, showed me returned refugee villages where homes had been looted and dismantled during the Tajik Civil War, and walked me through a repatriation of Tajik refugees from a camp in northern Afghanistan. Together we distributed letters and began the VHF radio conversations between families here and their refugee relatives in the UNHCR camps in Afghanistan.

UNHCR gave OSCE a two-day briefing and prepared for each field office a thick field officer notebook containing guidelines and detailed local information on UNHCR protection cases. A roving UNHCR field officer continues to manage repatriation of refugees through the OSCE field offices. The UNHCR protection officer in Dushanbe advises, consults with and relies on the OSCE field officers with regard to human rights issues.

SETTING UP A FIELD OFFICE

At the suggestion of my predecessor, I set up weekly office hours in three districts of southern Khatlon - Kabodion, Shahrituz, and Jilikul. The first task was to establish a working relationship with the district chiefs, prosecutors, judges, police chiefs, and KGB chiefs, as well as the chiefs of collectives and village leaders. I introduced the OSCE goals and purposes in simple human rights terms, mentioning the types of cases inherited from UNHCR and also stressed that the OSCE field offices are not limited to refugee work and further, that Tajikistan is an OSCE member country. As there is so little to read there, I took a packet of information with me to share:

- OSCE Mission to Tajikistan Mandate (in Tajik)

- ODIHR's Human Rights and the Judiciary (Russian)
- OSCE Fact Sheet (Russian)
- UN Universal Declaration of Human Rights (Tajik/Farsi/English/Russian)
- Tajik Constitution (Tajik/Russian)
- International Herald Tribune; news and women's magazines (English)

PERSISTENCE

Every morning the doorbell begins ringing before seven. In Tajikistan the problems of basic survival are overwhelming. Each person who enters my office in Tajikistan has a unique and challenging problem - no clothing, no food, no home, no medicine, no idea what to do next. Half of them are not strictly speaking legal or human rights problems. However, it is hard to separate survival and human rights. Flexibility, persistence, and a lowering of expectations are key to survival as a human rights monitor in these circumstances. To keep from becoming hardened to the plight of those struggling in the aftermath of war, my staff and I place ourselves in their shoes and see if we can improve their condition.

We must savor the victories and encourage each other to find new ways to solve old problems. Here in Tajikistan I think we are operating on a 20 percent resolution rate, and we must not let it get us down. We do our best each day, saving enough energy to get up the next day and start all over again - one day at a time. Human rights work takes a lot of energy. You walk a fine line between doing your best and overdoing it. You must be able to last. Just being here is 50 percent of the job.

HUMAN RIGHTS CASES

The following is an example of the primary reason for OSCE's presence in UNHCR field offices - to protect the rights of returning Tajik refugees. After a recent repatriation, the KGB arrested a newly returned refugee only two hours after his return to his village from the transit centre. The KGB interview in the transit camp was normal, but his arrest immediately thereafter was not. On our visit to the village one hour later, his wife reported the arrest to us and we went immediately to the local KGB office, which denied being involved. We went to another senior local official, who promised to locate the refugee. After I waited in his office for two hours he had the KGB chief turn over not one, but two returnees; the second was a person whose arrest we had been unaware of. By midnight, I had delivered them both to their villages to very relieved families.

One also needs to be able to anticipate. For instance, in a country where more than 40 journalists have been killed and no one has been brought to justice, protection becomes a major concern. In order to encourage the safe return of refugee journalists, I have accompanied their families to the KGB, the police, and district officials to obtain their guarantees of safety once the journalist in question repatriates. While the guarantees of the local authorities may be open to question, my direct request for guarantees puts the local authorities on notice that an international organisation is very interested and will continue to monitor the case.

Due to the austere conditions in Tajikistan - little or no food, medicine, or government salaries - those who do not have the freedom to feed themselves are the worst off. Prisoners and army draftees in their 20s died of malnutrition last winter at alarming rates. A two-year sentence for bicycle theft became a death sentence. The ICRC was not allowed access to the prisons and therefore, the prisoners could not benefit from their

provision of food and medical programs. OSCE pushed the Government of Tajikistan for ICRC access. An ICRC supplementary feeding program has been initiated in some prisons for the guards as well as the prisoners. The death rate is still alarmingly high, but has been reduced by half. It is possible to go too far in putting yourself in the other person's shoes. The mother of the bicycle thief, a widow, whose only son starved to death at age 22 in Yavan Prison, did not want to hear that I understood because I have a son his age. "Your son doesn't live in Tajikistan," she said coldly. She was right. It was an unfair comparison. The thorniest problem in southern Khatlon is house occupation. Refugees who fled the fighting with only the clothes on their backs return years later to find their homes destroyed or occupied by a former neighbour who now refuses to leave the house he has repaired. Documents were lost or taken by officials who re-issued papers to fellow employees in the absence of the true owner; the officials then refused to act because the true owner had no documents to prove ownership. Some refugees returned in 1993 and sold their looted, destroyed homes to neighbours at a very low price. Years later they return and want their houses back because they were "sold under pressure." Courts at the time told the purchasers they had to return the houses and in turn, the former homeowners had to return the money they had received from the sale of their homes. Further complicating the process has been the devaluation of the Russian ruble, which was in use then, as well as the inflation of the new Tajik ruble. Returnees could reclaim their homes for the price of a sweater in the market. Recently, a Tajik judge decided to use the US dollar, a currency with a stable exchange rate, to determine the sum to be returned. In addition, the city architect may evaluate the improvements done to homes and add that value to the cost the returnee would pay to reclaim his home. Even when the district judge rules that the occupier must move, many who were armed militia commanders during the war threaten violence when the police attempt to evict them.

Monitoring means following up. In a country with a difficult human rights situation, follow-up is essential, especially in the most serious cases. Visitors in dire straits are encouraged to keep us informed; my staff and I take every opportunity to visit problem cases each week.

COOPERATION WITH LOCAL AND INTERNATIONAL ORGANIZATIONS

The citizens of Tajikistan, who either fled as refugees or weathered the civil war in place, carry a heavy emotional burden. Stress-related illnesses are currently the leading cause of death. People are told to put the past behind them and move on - and this often comes from the mouths of those responsible for much of the misery in the civil war.

UNHCR provided humanitarian assistance as part of their program; OSCE has no such capability. Since we are on the former premises of UNHCR, people still come to us with requests for tents, building materials, food, blankets and medicine. OSCE cannot simply tell the returnee he has come to the wrong organisation. OSCE field officers must be familiar with the international organisations that provide humanitarian assistance. Food is of paramount concern, so we stay informed about the World Food Program distribution schedule to the districts and inform WFP of any local problems. Missing persons reports are forwarded to International Committee of the Red Cross. UNHCR and OSCE publish and distribute missing persons bulletins. The two roofing organisations, Swiss Caritas in Kabodion and Save the Children/US in Shahrituz, continue to repair homes as refugees return. SC/US has begun food-for-work projects and feeding programs in kindergartens. Relief International provides medicine to the village clinics and the local RI doctor offers consultation when critical medical cases come our way. The International Rescue Committee responded immediately to the Shahrituz hospital's hand pump request during a dry spell. The German Embassy is considering underwriting the renovation of a deteriorating 1000 year old archaeological site in Shahrituz. A Tajik Red Cross representative shares our Jilikul reception, giving

valuable advice. Similarly, these organisations refer cases to us that are better addressed by OSCE. Co-operation and sharing the load increases our effectiveness.

EXTRA SERVICES

Tajikistan has a literate population, but there is little to read. Even in the capital city, only small weekly newspapers in Russian and Tajik are published. Although English is taught in schools here, Tajik citizens have had little opportunity to converse with English-speakers, although they are definitely interested. I set up an English-language lending library. Newspapers, magazines and pamphlets on study programs are placed on the table where visitors sit during reception hours - they are read constantly.

Multi-ethnic women who have come to me with major problems in their lives have joined my cooking class. We visit each other's homes and take their children on outings. When a 10 year old was depressed that his refugee father still had not returned, we took him with us for a couple of days - to expand his horizons and take his mind off himself. These people need a break from the aftermath of war, they need to laugh, and share their concerns. I have seen these women begin to network with each other outside of OSCE's auspices.

Running an OSCE field office is the greatest job I'll ever have. Each day is different, each is filled with challenges. There is an opportunity to expand my language ability and to view another culture with a unique history. I must remember that I represent the best intentions of some fifty nations and, at the same time, remember to not take myself too seriously. I could just as easily have been born a Garmi Tajik, forced to flee for my life during the '92 civil war, an ethnic Uzbek, starving to death in Yavan Prison, an ethnic Russian trapped in one region of the former Soviet Union, or the parent of a POW missing in Tavildara. Here I can be a conduit and must constantly keep myself open to the opportunity to do good work.

About The Author

Nancy Lee Sandrock has been an OSCE mission member in Shahrituz since September 1995. She was an American Peace Corps Volunteer and holds a Master's degree in Central Asian Studies from George Mason University. She has worked in India, Afghanistan and Germany prior to her work with the OSCE. Her 22 year old daughter and 24 year old son both visited Tajikistan in June. Ms Sandrock's husband is the acting OSCE Head of Mission in Dushanbe.

ODIHR'S MANDATE

Note from the Editor: Throughout the years 1995 and 1996, we have informed our readers of the specific areas of the ODIHR activities that are stipulated by its mandate. This issue will be different. In an attempt to give you the "big picture" of what ODIHR is all about, we want to share with you our Mission Statement - a short document which outlines our role and the means through which we chose to implement the tasks given to the Office. We hope this will contribute to a better understanding of the ODIHR.

The aim of the Office for Democratic Institutions and Human Rights is to assist the participating States of the OSCE to build democratic institutions and implement their human dimension commitments. In carrying out its tasks, the ODIHR works not only with the other OSCE institutions, but also co-ordinates its activities with other international organisations.

PRIORITIES

Although the mandate of the ODIHR is broad, its resources are limited. Consequently, it has set certain priorities which reflect its mandate and the current concerns of the participating states. These priorities reflect the overall goal of the organisation, that of comprehensive security in the OSCE Region.

The priorities are:

- supporting the Programme for the Recovery and Development of Bosnia and Herzegovina;
- co-ordinating election monitoring processes;
- integrating human dimension issues into the work of the Permanent Council and monitoring the implementation of the Human Dimension commitments;
- working with the Chairman-in-Office, particularly by providing early warning reports;
- providing co-ordinated legal support;
- assisting in the process of the building of Civil Societies, working with NGOs, national democratic institutions and with the media;
- providing information about the Human Dimension;
- working as a Contact Point for Roma and Sinti Issues;
- working on Migration issues; and
- providing support to the OSCE Missions with respect to their Human Dimension activities.

The ODIHR's work is based on requests from participating States, the OSCE Missions, international organisations and NGOs. Every OSCE participating State may request and be provided with assistance from the ODIHR. The focus of the Office's work at this time, however, is in the countries in transition and on the process of reconstruction taking place in Bosnia-Herzegovina.

GUIDING PRINCIPLES

The Guiding Principles of the ODIHR's activities are:

- to work in a spirit of co-operation with OSCE member States;
- to work closely with all OSCE institutions;
- to ensure that Human Dimension is a crucial element of the OSCE Comprehensive Security; and
- to work in co-ordination with other international players.

REPORT ON THE REPUBLIC OF BOSNIA AND HERZEGOVINA

SUMMARY OF ACTIVITIES TO DATE

Note from the editor: This issue of the Bulletin goes to print only a few days before the elections. Much work has been done in order to assist in the process of assuring - to the extent possible - that they are conducted democratically. The vast majority of the work related to preparation of the election and to election monitoring and supervision was done by the OSCE Mission in Bosnia and Herzegovina. The staff of the ODIHR also dedicated a lot of time and effort, primarily to assisting the OSCE Mission. We would like to present you with a brief outline of our activities to date.

The Dayton Peace Agreement (DPA Article III, Annex 3) envisaged three main roles for the OSCE:
* to supervise the electoral process in Bosnia and Herzegovina;
* to monitor human rights; and
* to assist the Parties in facilitating arms control and confidence and security building measures.

In the context of the first of these roles, namely the preparation and conduct of elections, the ODIHR has been active in its support of the work undertaken by the OSCE Mission and the Office of the Co-ordinator for International Monitoring (CIM) in Sarajevo.

Since November 1995, the ODIHR has been very active in arranging and sponsoring a wide range of activities in relation to the Bosnia and Herzegovina elections - from the conception and organisation of the initial Election Assessment Missions, which laid the groundwork of the Provisional Election Commission - drafting of the new electoral codes - to the commissioning of voter motivation posters throughout the Federation (2,000 copies each of three different types were printed and distributed).

In May, the ODIHR hosted a meeting for international organisations to encourage co-operation and disseminate practical information with regard to their forthcoming role in the elections on 14 September. At the beginning of June, invitations were distributed inviting governments and international organisations to nominate long and short term observers to monitor the elections in Bosnia and Herzegovina. These have been followed by regular updates providing more specific information and details on necessary arrangements.

The ODIHR has arranged for Mr. Andrew Ellis to work with the Office of the Co-ordinator for International Monitors in organising the training of the short-term observers; Col. Michael Shannon will provide logistical assistance. Ambassador Glover and Elections Advisor Gerald Mitchell will leave for Sarajevo on 6 September.

Twenty-five long-term observers from 11 countries are already in place, and approximately 800 short-term observers from 30 countries are expected. They will attend a one-day training session in Vienna, and then be flown to three centres in Bosnia: Sarajevo, Tuzla and Banja Luka. Prior to being deployed, the short-term observers will also receive local security briefings. Approximately two hundred and fifty short-term observers will stay on for a week following the elections in order to observe the counting of votes.

OUT OF COUNTRY REFUGEE VOTING - M. MEADOWCROFT

Outside of Bosnia and Herzegovina, 641,000 people are registered to vote (compared to 740,000 inside Bosnia). Seventy-five percent of the out-of-country refugees are located in three countries: FRY (220,000), Croatia (136,500) and Germany (133,000). Electors have had to state in which part of the ethnically divided Opstinas they will vote.

Most of the twenty countries in which a OSCE/RESG (Refugee Election Steering Group) Country Representative is located will run a postal election. Croatia will have only in-person voting, while in the FRY, Hungary and Turkey voting will be both in-person and by post.

M. Meadowcroft, an expert adviser funded by the ODIHR, has been appointed Co-ordinator of out-of-country refugee voting, and is responsible to Mr. Van Thijn, Co-ordinator of International Monitors.

Voting will take place between 28 August and 3 September, allowing time sufficiently prior to the 14 September in-country polling for completed ballots to arrive at the appropriate counts in Bosnia and Herzegovina in time to be incorporated into the relevant election.

Mr. Meadowcroft has just completed a mission to accredit and debrief observers in Croatia (80 polling stations) and FRY (60 polling stations). Problems in finding observers locally for these two countries have now been solved. An observer will be travelling on the van transporting refugee votes from Germany to Vienna, and Adam Bedkowski will be first in Belgrade and then in Vienna to observe handouts and linkages of the votes prior to their transfer to Sarajevo. Votes from Croatia and FRY will be transferred to Sarajevo by land convoy with the assistance of IFOR.

ELECTIONS

PARLIAMENTARY ELECTIONS
REPUBLIC OF ALBANIA

MAY 26 AND JUNE 2, 1996

Rapporteur: Gerald Mitchell

The Office for Democratic Institutions and Human Rights dispatched three representatives to Albania in late April to serve as long-term observers for the Albanian Parliamentary Elections on May 26. They included the on-Site Co-ordinators, Mr. Anders Eriksson (Sweden), Eugenio Polizzi (Italy) and Mark Power-Stevens (United Kingdom). The ODIHR representatives observed the pre-election process and the first round of balloting from April 25 to May 29, 1996. However, the ODIHR did maintain a limited presence in Albania for the second round of run-off elections on June 2nd.

Upon arrival in Albania, the ODIHR representatives established contact with the Ministry for Foreign Affairs, the Central Election Commission (CEC), the Ministry for Local Government, the Verification Commission, a number of prefectures, all major political parties, embassies of OSCE participating States, and domestic and international non-governmental organisations.

According to their terms of reference as outlined in the OSCE / ODIHR election observation framework document, the ODIHR representatives monitored the pre-election period and facilitated the accreditation and deployment of approximately 50 short-term observers. Observers were deployed to 18 different areas of the country, covering more than half of the 115 election zones, including the capital, Tirana.

All observation teams returned to Tirana to participate in a de-briefing seminar on Monday May 27, where they reported their findings. The conclusion of the observer mission was that in many instances the implementation of the election law failed to meet its own criteria. More specifically, 32 articles out of 79 dealing with the pre-election period and election day were violated. They include articles 4, 13, 16, 19, 21, 22, 28, 29, 31, 32, 36, 37, 38, 39, 40, 44, 48, 51, 53, 56, 57, 60, 63, 64, 66, 68, 70, 71, 72, 73, 74, and 75. In reference to the OSCE election related commitments, five of nine articles under paragraph 7 of the Copenhagen Document were not met, including 7.4, 7.5, 7.6, 7.7, 7.8. Article 8, dealing with both domestic and international observers was not fully met.

The following recommendations were made by observers, and include:
* Establishment of a permanent and independent Central Election Commission to create confidence in the administration of the election process among all parties and the electorate;
* Establishment of a more realistic timetable in the election law for election related deadlines. The present time schedule in the existing law is too tight;
* Establishment of a comprehensive voter education program, particularly in light of the large number of invalid ballots;
* Re-designing the ballot forms so that the voter selects the party or candidate of his/her choice by marking only the party/candidate selected, thus eliminating the time-consuming process of crossing out the name of each party/candidate not selected;

* Establishment of a more inclusive process for amending the electoral map, so that all parties can have greater confidence in this process. The CEC should also be involved in any future amendments to the electoral map, a process which is currently impossible due to the Commission being appointed only 45 days prior to the election;
* Implementation of confidence building measures, such as full co-operation with international observers, accreditation of all domestic observers, the issuance of protocols to polling stations in sufficient numbers and mandatory sealing of ballot boxes;
* Updating the accuracy of the voter register, and improving the accessibility of the electorate to the voter register;
* Establishment of a standardised training for all election officials (including party representatives) at all levels of the election administration; and
* Placing more than one polling booth at each polling station.

ROMANIAN LOCAL ELECTIONS

2ND AND 16TH JUNE 1996

Rapporteur: Peter Hatch, ODIHR Representative

A monitoring mission on behalf of the ODIHR was conducted with respect to the local elections held on 2nd June 1996 and the subsequent round, or repeat elections, held on 16th June. The elections, the second held locally in Romania since the fall of the Ceausescu dictatorship in 1989, were seen by many as a key test prior to the Presidential and Parliamentary elections to be held in November 1996.

The new local elections law was promulgated on 18th April, the same day as the elections were called. Consequently, an ad hoc administration was faced with the considerable task of absorbing the detailed provisions of the law, as well as with organising the elections within a short time scale - forty five days for the first round on 2nd June and fourteen days for the subsequent elections on 16th June.

Given the sheer size and complexity of the operation, (factors which often escape the attention of political parties, the media and the public) there were, understandably, administrative, procedural and political problems. Generally speaking, however, the elections administration did remarkably well in organising and conducting the elections.

The elections were held in an atmosphere of calm, peace and normalcy. Electors were free to express their views without fear or intimidation in the voting process. However, a high rate of abstention characterised both election days, with a low turnout of 53% nation-wide for the first round, compared with 68% for the local elections held in 1992. Despite efforts made by politicians, along with the extensive involvement of the media to encourage a higher turnout on 16th June, abstention was again a main feature of the election.

The election administration paid scrupulous attention to the law to ensure the proper conduct of the elections and endeavoured to establish fairness in the electoral process. Irregularities occurred, however, and claims and appeals were made to and adjudicated upon by the administration and the courts. Such irregularities did not affect the overall results and it is concluded that the final results reflect the views of those electors who cast votes.

PRESIDENTIAL ELECTIONS

RUSSIAN FEDERATION
SECOND ROUND OF VOTING
3 JULY 1996
Rapporteur: Michael Meadowcroft, Co-ordinator
OSCE/ODIHR International Observer Mission

Already in April 1996, long-term observers began to take up their positions in the regions of Russia. The OSCE/ODIHR has established six regional offices: in Irkutsk, Kazan, Khabarovsk, Novosibirsk, St Petersburg and Stavropol. A central office was established in Moscow and, with assistance from the European Union, logistical and information services were provided. By polling day, some five hundred international observers had been deployed across the territory of the Russian Federation.

We are satisfied that, given the scale and particular difficulties of the country, the electoral laws and the Commission's regulations were in principle sufficient to provide a secure legal framework for the conduct of the election. We are also satisfied with the structure of electoral commissions. From the polling station up to the Central Electoral Commission, via the territories and the subjects (each with the opportunity for registered groups and for all candidates to have non-voting members), each commission provided, in principle, an effective structure for the administration of the election. With only a few exceptions, the commissions welcomed international observers and enabled them to carry out their observation.

The Media: The provisions of the electoral law with regard to free time on television and radio were carried out with scrupulous fairness. The same, however, cannot be said of the news and commentary programme coverage of the various candidates' campaigns. Not only was there a significant imbalance in the amount of coverage in candidate Yeltsin's favour, but his campaign was also generally shown in positive terms, compared to other candidates, in particular candidate Zyuganov, whose campaign tended to be depicted in negative terms.

Pre-election observation: There were some reported difficulties with registration of voters temporarily resident in an area, who, though entitled to vote, did not have the necessary documents. Also, observers noted that on occasion events were organised at public festivals with public money, which clearly assisted candidate Yeltsin's campaign. In contrast, it was reported to observers that in some areas, other candidates were refused permission to use public buildings for meetings, contrary to the provisions of the electoral law.

Polling Day: On polling day itself numerous infringements of the electoral law and regulations, varying in seriousness, were observed. The most widespread comment amongst Observers was the lack of secrecy when individuals voted. There were many instances of voting outside the booths, and of family members going into the booths together. Observers, whilst unhappy with such practices, did not get the impression that this necessarily indicated undue influence.

Conclusions: The OSCE/ODIHR Observer Mission is satisfied that the allegations in advance of polling day of potentially widespread and substantial electoral fraud were not substantiated. In the opinion of the OSCE/ODIHR Observers, the concerns listed above, though serious in and of themselves, did not materially affect the result of the balloting. In general, the election was well managed and efficiently run.

The OSCE/ODIHR Observer Mission believes that the results declared thus far accurately reflect the wishes of the voters on the day and that this election is a further example of the consolidation of the democratic process in the Russian Federation.

UPCOMING ELECTIONS IN ARMENIA

Rapporteur: Vladimir Shkolnikow

The ODIHR was invited to observe the Presidential Elections in Armenia, scheduled for September 22. In preparation for the elections, the ODIHR sent one of its election advisers to Armenia for two-weeks to assess the situation. Following that visit, the ODIHR established an Election Observation Office in Yerevan, which is now fully operational.

The co-ordinator of the Observers Mission, Mr Simon Osborn of Great Britain, arrived in Yerevan on Wednesday, August 28. The ODIHR has secured the services of two long-term observers, one from Finland, the other from Germany, and is currently looking for more long-term observers.

NEWS FROM THE ODIHR

LEGAL TRAINING PROJECT

28-30 MAY, 1996
DUSHANBE, TAJIKISTAN
Rapporteur: Robert M. Buergenthal

At the request of Justice Minister Ismailov and in co-ordination with the OSCE Long Duration Mission to Tajikistan, the Programme for Co-ordinated Legal Support implemented the first phase of a national legal training project in Dushanbe, May 28-30. The three-day programme marked a milestone in Tajikistan for both the ODIHR and the Mission, and was the culmination of several months of liaison activity by the Head of Mission, Ambassador Gantchev and the ODIHR Director, Ambassador Glover.

More than sixty representatives from twenty governmental ministries, bodies and international organisations gathered in Dushanbe for the first national rule of law activity sponsored by the OSCE. The Objective of the programme was to expose participants to the roles, mandates and legal standards of international organisations, to stimulate discussion on the practical implementation of those standards and to examine the ways in which those standards can be applied to guarantee a free trial and combat transnational crime. Working groups, training sessions and discussions during the programme were led by Anatoli Brizitski, Justice of the Russian Federation Supreme Court; Janusz Letowski, Justice of the Supreme Court of Poland; Professor Elizabeth DeFeis, Seton Hall University; Richard Seaman, Criminal Law Liaison with the ABA/DOJ/CEELI Criminal Law Reform Project and the ODIHR staff members.

The programme was attended by senior delegates from all principal governmental and non-governmental bodies, including the President's Office; Majlisi Oli; the Ministry of Justice; the Constitutional Court; the Supreme Court; the Prosecutor's Office; the High Economic Court; the Lawyers Association; the regional courts of Khojent, Khatlon, Kofernigon, Lenin, Hissor, Faizabad and Dushanbe; Tajik State University; the Academy of Sciences; and the Young Lawyers Association. Participants included a senior Presidential Advisor, the Minister of Justice, the Chairman of the Supreme Court, the Deputy General Prosecutor, the Chairman of the High Economic Court, the Dean of the Law School and twenty-two local and regional court chairmen. Also present were representatives from the United Nations Development Programme and the United Nations Humanitarian Centre on Refugees Juridical Assistance Project.

Tajik governmental representatives have requested several follow-up activities, including the national distribution of materials produced by the OSCE and other international organisations and additional training activities.

Following the formal programme, the ODIHR staff and visiting legal experts were accompanied by OSCE Mission members Ewa Chylinski and Tomas Bollinger to the OSCE field missions of Shahritus and Kurgantube where they received briefings on local conditions and the work of the missions. Prior to their departure, mission members also provided a briefing and shared their impressions with Alois Reznik, Head of the OSCE Liaison Office in Central Asia.

SEMINAR ON DRUGS AND CRIME: NEW CHALLENGES

10-12 JUNE 1996
BISHKEK, KIRGIZSTAN
Rapporteur: Jacek Paliszewski

The seminar was prepared jointly by the OSCE/ODIHR, United Nations International Drug Control Programme and Crime Prevention and Criminal Justice Division of the UN Office in Vienna, in co-operation with the Government of the Kyrgyz Republic.

The goals of the seminar were to provide a forum for the exchange of views and experiences on the prevention and control of organised crime and transnational crime, illicit drug trafficking and other related issues, such as money-laundering and corruption. The seminar was also designed to strengthen international co-operation at the bilateral, regional and multilateral levels and to provide an opportunity for the assessment of the technical co-operation requirements of the participating States from Central Asia.

Almost one hundred participants, representing 13 participating States and six international organisations attended the meeting.

The participants agreed on a number of proposals and recommendations aimed at further increasing joint actions against the growth of organised crime and corruption in the region. These phenomena pose a serious danger to national security and the building of democratic institutions, weakening the rule of law and the possibility for practical implementation of human rights.

It was also pinpointed that the participating States of Central Asia should not only co-operate in strengthening law enforcement, but also in improving social, political and economic action to combat organised crime and illicit drug trafficking, with the support of non-governmental organisations.

Further, the mass media should be used more extensively to create an atmosphere of non-acceptance of drug addiction, as well as to emphasise the consequences of the growth of organised crime and corruption.

ROUNDTABLE ON THE ROLE OF OMBUDSMEN IN CONFLICT PREVENTION, CONFLICT RESOLUTION AND CONFIDENCE BUILDING

24-26 JUNE 1996
BUDAPEST, HUNGARY
Rapporteur: Jacques Roussellier

Ombudsmen, experts and representatives of international organisations met in Budapest on 24-26 June 1996 for a thorough exchange of views and experiences on the role of national human rights institutions in conflict prevention, conflict resolution and in creating confidence-building measures. Ombudspersons from Central/Eastern Europe, national experts and parliamentarians involved in ombudsman institutions, as well as NGOs with experience in conflict resolution at the grass-roots level were joined by the Heads of UNTAES (United Nations Transitional Authorities in Eastern Slavonia), General Jacques-Paul Klein and of the European Community Monitoring Mission/Croatia, Mr. J-L Faure, to review and assess the functions of ombudsmen and human rights commissions in newly emerging democracies.

This roundtable was convened at the initiative of the Human Rights Unit of the Office for Democratic Institutions and Human Rights, with the aim of assisting both current and newly-established national human rights institutions in the emerging democracies of the OSCE.

Most participants agreed that even in situations where traditional national human rights institutions are unlikely to function effectively, they provide an invaluable "democratic space" where citizens can freely air their views and discontent, thus preventing the dangerous accumulation of resentments among aggrieved ethnic communities. The ombudsman institution in Bosnia-Herzegovina was mentioned as an example of the international community's involvement in assisting with the establishment of one of the first national state institutions at the stage of post-conflict democratic rehabilitation.

Participants unanimously endorsed the proposal made by the Georgian representative to create a forum for the informal exchange of information and experience among newly-established national human rights institutions in the OSCE region, with the ODIHR acting as a secretariat and in close co-operation with the UN Centre for Human Rights.

CONFERENCE ON THE ROLE OF THE MEDIA IN THE CONFLICT IN FORMER YUGOSLAVIA

25-26 JUNE 1996
BOL, CROATIA
Rapporteur: Paulina Merino

Journalists from Bosnia and Herzegovina, Croatia, the Federal Republic of Yugoslavia (Serbia and Montenegro) and the former Yugoslav Republic of Macedonia met in Bol, Croatia on June 25-26 to take part in the conference organised by the ODIHR, together with the Croatian Helsinki Committee and International Helsinki Federation. Though representatives of state-owned media from each of the above mentioned countries were invited to the conference, none attended.

The participants discussed obstacles to independent and professional journalism, including restricted availability of newsprint, penalties for advertisers and exorbitant taxes. The participants also noted the existence of persistent hate speech in some state-controlled media, which is at variance with the Helsinki Principles. Participants from Bosnia and Herzegovina cited physical dangers faced by journalists. Journalists from the Republika Srpska and the Federation of Bosnia and Herzegovina specifically mentioned the lack of possible telephone communication and the inability to purchase and distribute print media across the political divisions. It was suggested that the OSCE Regional offices could assist in this matter.

The participants discussed the possible initiatives through which journalists could improve communication and co-operation in the prevailing circumstances. They focused especially on the issue of improving their professionalism in dealing objectively with the issues "of national consensus" and recognising the need to investigate and report on sensitive issues.

PROFESSIONAL TRAINING PROGRAMME FOR RUSSIAN JUDGES OREL, RUSSIA

JULY 10-13

Rapporteur: Robert M. Buergenthal

Russian Federation Supreme Court Chairman V. Lebedev chaired the opening session of the second training programme for Russian Federation judges, held in Orel, Russia. Entitled, "The Role of Regional Courts in the Implementation of International Human Rights Commitments", the training workshop was the second in the Professional Training Project designed by the Programme for Co-ordinated Legal Support.

The workshop was the first judicial training programme implemented directly by the International Legal Department of the Russian Federation Supreme Court and the first OSCE regional judicial training activity in Russia. In addition to providing basic training, the principal objective of the activity was to determine the feasibility of using regional courts to implement a national training project developed by the Supreme Court and the ODIHR. Toward this goal, all judges participated in two working groups and a needs assessment survey which will be used as a basis for upcoming judicial training activities.

Topics addressed included the new Russian code of criminal procedure; the role of regional courts and judicial review; human rights and the death penalty in the Russian Federation; the implementation of international human rights commitments by regional courts; the OSCE system; the European Convention of Human Rights and its control mechanism; and the impact of Strasbourg case law on the judicial systems of member states.

More than sixty judges and observers from eight regional and oblast Courts were chosen to participate in this activity, which included the chairmen of the regional and oblast courts of Orel, Belgorod, Bryansk, Lipetsk, Smolensk, Tambov, and Tula. Also present were representatives of the Rostov Oblast, which is one of the oblasts currently developing and studying jury trials in Russia. Additional participants included eight representatives of the Supreme Court, the editor-in-chief of the journal *Russian Justice,* and the Dean of the Russian Legal Academy.

Four international experts were joined by Russian Supreme Court judges throughout the three day activity. Participating on behalf of the ODIHR were Dr. Bernardino Correa Guimera, Legal Officer, European Court of Human Rights; Justice Janusz Letowski, Supreme Court of Poland; Justice Erik Mose, Borgarting Court of Appeals, Norway; Dr. Agnes Nemeth, Councillor of the Constitutional Court of the Republic of Hungary; and Justices S. Razumov and V. Podminogin, Russian Federation Supreme Court.

TRAINING PROGRAMME FOR BELARUSSIAN GOVERNMENT MIGRATION OFFICIALS

WARSAW, POLAND

JULY 15-19

Rapporteur: Vladimir D. Shkolnikov and Robert M. Buergenthal

As a follow-up activity to the joint UNHCR-ODIHR Workshop in Minsk on Humanitarian and Refugee Law held in January and the CIS Migration Conference, the ODIHR Migration Expert and Programme for Co-ordinated Legal Support developed a six-day practical training project for Belarussian government officials. The UNHCR Liaison Office in Minsk played an active role in initiating and co-sponsoring this activity.

Senior Belarussian migration officials were hosted by their Polish counterparts and on-site training was held at several ministry and refugee affairs offices, the Centre for Refugees, customs and immigration offices, police headquarters, border stations and the Polish Helsinki Committee. The agenda, developed

with the assistance of the Polish Migration and Refugee Affairs Office of the Ministry of the Interior, provided the Belarussian officials with a substantive review of the new legal and organisational policies that guide Polish refugee and migrant affairs, as well as on-site meetings with those who implement the new laws. Topics covered included a review of the agencies and services dealing with migration, legal and organisational policy, the process of conferring refugee status, border inspections, legalisation of foreign residence, visa procedures, international co-operative efforts and international organised crime prevention.

In addition to practical training, one of the principal objectives of this activity was to further develop the horizontal co-operation approach initiated by the Legal Support Programme. It was also hoped that meeting would strengthen multilateral professional links in order to continue the OSCE's effort to address migration in a regional security context. For this purpose, Polish authorities have agreed to host other delegations and to work with the ODIHR as a facilitator and host of future migration related training.

The Belarussian delegation, led by the Deputy Minister of Labour of Belarus, who also heads the State Migration Service, included the Head of Section of the Chief Directorate of Border Guards, the Head of the Department for Refugee Affairs, the Chief of Directorate of the State Security Committee, the Head of the Department for Foreigners and Stateless Persons of the Interior Ministry, as well as representatives from the State Security Council, the Cabinet of Ministers, and the Ministry of Labour.

HIGH COMMISSIONER ON NATIONAL MINORITIES

Since the beginning of June 1996, the OSCE High Commissioner on National Minorities, Mr Max van der Stoel, has paid visits to Croatia, the Former Yugoslav Republic of Macedonia, Romania, Hungary and Ukraine. The High Commissioner was also invited to address the OSCE Parliamentary Assembly at its annual meeting in Stockholm.

CROATIA

On 9-13 June 1996 the High Commissioner paid another visit to Croatia. During the visit Mr van der Stoel met in Zagreb with the Deputy Prime Minister and Minister of Foreign Affairs, Mate Granic, and also with deputy prime ministers Ljerka Mintas Hodak and Ivica Kostovic, the latter being the person responsible for the process of the reintegration of Eastern Slavonia. Other interlocutors in the government included M. Separovic, Minister of Justice; L.Jarnjak, Minister of Internal Affairs; and Ms Simic, Head of the Governmental Office on National Minorities. In the parliament, the High Commissioner met with Mr Kis, Chairman of the Parliamentary Commission on Human Rights and National Minorities. He also had discussions with representatives of Serbian organisations in Croatia and of a number of NGOs.

Prior to visiting Zagreb, the High Commissioner travelled to Vukovar and some neighbouring villages in Eastern Slavonia. He met with officials from UNTAES, the United Nations Transitional Administration, headed by General Jacques Klein. UNTAES is responsible, under the Erdut Agreement which came into force on 15 January 1996, for administering the region for one year, a period which can be extended up to a maximum of one additional year at the request of one of the parties.

In Vukovar, the High Commissioner had meetings with representatives of the local Serb authorities in Eastern Slavonia. He also went to Osijek, the administrative centre of the region, which is the seat of the Croat office for liaison with UNTAES. In Osijek, the High Commissioner met with the head of the Governmental Office for UNTAES liaison, Mr I. Vrkic and his deputy, Mr M. Tankosic.

Meetings with other representatives of international organisations included talks in Zagreb with UN Assistant Secretary General for Management and Coordination in Croatia, Behrooz Sadry, and Head of the UN liaison office in Zagreb, Jaque Grinberg; Mr van der Stoel also with officials from UNHCR, ECMM and ICRC.

Amongst the subjects discussed were the Amnesty Law; the situation of the Serbs in Krajina; and the opportunities for a return of Croats to Eastern Slavonia, in turn allowing those Serbs who came to Eastern Slavonia in 1995 to return to the localities from which they came. The High Commissioner also explored methods which might contribute to the development of improved inter-ethnic ties in the post-transition period.

FORMER YUGOSLAV REPUBLIC OF MACEDONIA

On 1-3 July the High Commissioner paid another visit to the Former Yugoslav Republic of Macedonia, with the aim of getting acquainted with recent political developments in the country, particularly in the field of inter-ethnic relations. During the visit the High Commissioner was received by the President of the Republic, Kiro Gligorov. The High Commissioner also had meetings with Prime Minister Branko Crvenkovski; Minister of Foreign Affairs Ljubomir Frckovski; Minister of Education Sofia Todorova; and a number of senior officials in the Ministry of Foreign Affairs.

Other meetings were held with representatives of the Albanian Party for Democratic Prosperity, Naser Zyberi and Xhemal Hajdari, both of whom are ministers in the coalition government of the Former Yugoslav Republic of Macedonia. The High Commissioner also held talks with leaders of one of the Albanian opposition parties, the PDP-PAM, as well as with representatives of NGOs.

The High Commissioner discussed, inter alia, possible projects that could be of support in helping to solve possible problems in the area of inter-ethnic relations in the Former Yugoslav Republic of Macedonia, especially concerning the position of the Albanian ethnic group. Such projects might include initiatives in assisting dialogue between the government and the Albanian minority; Albanian-language secondary education; in- and pre-service training of local civil servants; and training of representatives of certain professional groups in the field of human rights, including rights of persons belonging to national minority groups.

ROMANIA AND HUNGARY

On 25 July the High Commissioner had a meeting in Bucharest with the Romanian Foreign Minister, Teodor Melescanu, and on 26 July he met with Hungarian Foreign Minister Laszlo Kovacs in Budapest. During both meetings the main topic of discussion was the current state of negotiations between Hungary and Romania on the issue of concluding the Basic Treaty on Friendship and Co-operation.

The main obstacle preventing agreement on the Basic Treaty was a difference of opinion over the way in which the rights of persons belonging to national minorities should be mentioned in the Treaty. On 24 August it was announced that Hungary and Romania had reached a compromise on this problem, thus removing the main stumbling block on the path to concluding the Basic Treaty.

UKRAINE

On 25-29 August the High Commissioner visited Ukraine, where he had a series of meetings in Kiyv and Simferopol. During the visit the High Commissioner was received by the President of Ukraine, Leonid Kuchma. In Kiyv, the High Commissioner also had meetings with Speaker of the Ukrainian Parliament, Oleksandr Moroz; the Vice Prime Minister, Vasiliy Durdinets; the Minister of Foreign Affairs, Hennadiy Udovenko; the Minister of Justice, Sergei Holovaty; and the Chairman of the State Committee on Nationalities Affairs, Mr Evtukh. His agenda further included meetings with a number of other government officials, parliamentarians and representatives of NGOs.

In Simferopol, the High Commissioner met with the Prime Minister of the Autonomous Republic of Crimea (ARC), Arkadiy Demidenko. He also met with the Acting Speaker of the Parliament of the ARC, Anushevan Danelyan. Talks were conducted as well with deputy speakers Yuriy Podkopayev and Refat

Chubarov, the latter of whom is also First Deputy Chairman of the Mejlis of Crimean Tatars. A meeting was further held with the Chairman of the Mejlis, Mr Djemilyov.

Discussions in Kiyv and Simferopol concentrated on three main areas: the general situation concerning inter-ethnic relations in Ukraine and the specific situation in the Autonomous Republic of Crimea; prospects for bringing the constitution of the ARC into conformity with the recently adopted Constitution of Ukraine; and the current provisions for minority education and means of further improving the situation, especially in the sphere of higher education.

HIGH COMMISSIONER'S ADDRESS TO OSCE PARLIAMENTARY ASSEMBLY

On the 5th of July, the High Commissioner attended the OSCE Parliamentary Assembly annual meeting in Stockholm, making a short presentation. In his speech the High Commissioner outlined the nature of his tasks as being instruments of conflict prevention; he emphasised the importance of political support from OSCE participating States, which is essential to the proper functioning of his office in these tasks.

Highlighting the significant role of Parliamentarians, Mr van der Stoel said that they, more than anyone else, would have to convince voters that there are no easy solutions for social, economic or political problems, that extremism is never an answer, and that conflict prevention is a cause worth investing in.

HOW TO OBTAIN FURTHER INFORMATION

The recommendations of the High Commissioner that have been made public are available, as are other documents of the OSCE, free of charge from the Prague Office of the OSCE, Rytirska 31, 110 00 Prague, Czech Republic. When possible, please quote the relevant CSCE/OSCE Communication number.

Documents may also be accessed over the Internet by sending an e-mail message to: listserv@ccl.kuleuven.ac.be and adding the following text: sub osce Firstname Lastname. Data concerning the activities of the High Commissioner are also available on gopher: URL://gopher nato.int:70/1

A bibliography of speeches and publications relating to the High Commissioner's work has been compiled by the Foundation on Inter-Ethnic Relations. Copies may be obtained free of charge by writing to: The Foundation on Inter-Ethnic Relations, Prinsessegracht 22, 2514 AP, The Hague, The Netherlands.

NGO PAGES

During Spring and Summer 1996 the ODIHR has been engaged in a wide range of activities in which NGOs have benefited from participation and/or informational support. An account of the various programs follows.

OSCE / ODIHR FORA

A Human Dimension Seminar on Constitutional, Legal and Administrative Aspects of the Freedom of Religion took place April 16 - 19 in Warsaw. Representatives of 55 NGOs, totalling 78 persons, participated in the 11th in a series of OSCE Human Dimension Seminars. Copies of the Consolidated Summary, List of Participants and Index of Documents Distributed are available upon request from the ODIHR.

The "Round Table on Legal and Institutional Guarantees for Gender Equality in the Labour Market: National Models and International Standards," took place in Warsaw from 27 - 29 June, co-organised by the ODIHR and the Women's Rights Centre, a Polish NGO. Of the 51 participants in attendance, 32 represented NGOs. The Consolidated Summary of this event, including a list of participants, is available upon request. A comprehensive report on the Round Table will follow in the next issue of the Bulletin, together with details on another Round Table, also with a focus on gender issues, planned for October in Dushanbe.

A Seminar on National Human Rights Institutions will be soon convened in Tashkent. Representatives of local, regional and international NGOs concerned with human rights issues were invited to attend, together with journalists, governmental delegations and international organisations. A full report on this Seminar will follow in the Winter 1996 Bulletin.

All relevant NGOs known to the ODIHR have been notified of the OSCE Review Conference, scheduled to take place in Vienna throughout the month of November, and the Lisbon Summit, which convenes 2-3 December.

OSCE INSTITUTIONS

Missions of Long Duration

From 3 - 9 April, the NGO Liaison Advisor held meetings at the OSCE Mission to Bosnia-Herzegovina, as well as with members of the Office of the High Representative and international and local NGOs. The discussions culminated in the creation of an Information/Support Centre for Civil Society in Sarajevo, established under the auspices of the Helsinki Committee of Bosnia-Herzegovina. Working in close co-operation with the ODIHR, the Centre will play a complementary role to the NGO Drop-In Centre founded by the International Council of Voluntary Agencies.

On visits to the Caucasus in May and July, the NGO Liaison Advisor consulted with members of the OSCE Mission to Georgia in Tbilisi on NGO development and support. The OSCE Mission provided logistical and organisational support for the ODIHR's NGO Workshop (see below).

OSCE Secretariat

The NGO Liaison Advisor provided a briefing on the role of NGOs in the context of the OSCE's work, as well as a mandate for participants in the first OSCE Mission training programme on June 20 in Vienna. The programme was organised for the OSCE by the Centre for Applied Studies in International Negotiations, based in Geneva.

TRAININGS/WORKSHOPS

Additional workshops, entitled "Capacity Building and Leadership Training for NGOs," were held in Tbilisi (4-9 May), Yerevan (12- 17 July), and Baku (19 - 24). Two additional trainings are planned for Chisinau (October) and Tirana (December).

The ODIHR sponsored the participation of Mr. Ilham Hasanov, a judge from Baku City Juvenile Court, in the International Interdisciplinary Children's Rights training programme organised by the Children's Rights Centre at University of Ghent, Belgium, from 29 June - 6 July.

In co-ordination with the newly established Information/Support Centre in Sarajevo, the ODIHR has sponsored the participation of five NGO representatives from Bosnia-Herzegovina in a series of meetings in Warsaw, 17 - 25 September. The meetings were designed to facilitate the establishment of direct contacts and joint programmes between analogous Bosnian and Polish NGOs. The ODIHR included in this group a representative of the Sarajevo Centre who held additional meetings in Vienna, Poznan and at an NGO Support Centre in Vilnius.

Additionally, the ODIHR has sponsored the participation of two NGO representatives from Bosnia-Herzegovina in the NGO Summer School of the Agency for Development Initiatives in Piran, Slovenia, 21-26 September.

The NGO Liaison Advisor has co-ordinated with the UNHCR Hungary and UNHCR Slovakia programmes for legal counsellors to work within NGOs on behalf of Roma human rights cases. The first program, entitled "Effective Remedies Against Administrative Decisions and on the Protection of Aliens," was held in Budapest, 19-21 September, and the second in Bratislava, on 26 - 28 September.

OUTSIDE CONFERENCES/SEMINARS

The NGO Liaison Advisor attended a conference, "Regulating Civil Society," organised by the International Centre for Not-for-Profit Law and the Non-profit Information and Training Centre Foundation, from 1 - 5 May in Budapest. This conference was the third in a series of annual meetings organised by ICNL (the first held in Romania, the second in Estonia) for the purpose of bringing together governmental and non-governmental representatives having relevant experience and involvement in the development of legislation for the regulation of civil society. Full details on the conference may be requested from:

ICNL
Prof. Karla Simon, President

1511 K St., N.W., Suite 723
Washington, D.C. 20005
Fax: 202 624 0767

From May 18-19, a representative of the ODIHR attended the 6th Verona Forum for Peace and Reconciliation on the Territory of the Former Yugoslavia. Taking place in Budapest, NGOs concerned with reconstruction and reconciliation met to determine strategies for co-operation and future work in the region. For a detailed report on the Verona Forum, please contact:

Verona Forum for Peace and Reconciliation on the Territory of the
Former Yugoslavia
c/o European Parliament,
MON 015, 97-113
rue Belliard,
B-1047 Brussels
Fax: 32 2 326 5122

From 1 - 3 July, the NGO Liaison Advisor attended the EUROMA Network Regional Planning Workshop in Budapest, as a guest of the Network and representing the ODIHR's CPRSI. The Network partners, from Slovakia, Romania, Bulgaria and Hungary, examined and compared experiences on three specific components of their work: legal counsel for members of Roma communities; leadership and management training for young Roma; and radio broadcasting. Keeping in mind the invaluable work of this Network, the ODIHR's CPRSI has designed complementary programmes for September (e.g. with UNHCR - see above) and October.

ODIHR MEETINGS, WARSAW

The ODIHR hosted a group of Slovak NGOs visiting Poland under the auspices of a program run in mid-May by the Stefan Batory Foundation. The NGO Liaison Advisor provided a briefing on the activities of the ODIHR and exchanged information on the current climate for NGO development in Slovakia.

The NGO Liaison Advisor has attended several meetings at the Polish Sejm and within Ministries to discuss Poland's draft legislation for the regulation of non-profit organisations and foundations.