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The right to believe, to worship and witness

The right to change one's belief or religion

The right to join together and express one's belief

***Working Session 13 Fundamental freedoms - Freedom of thought, conscience or belief
Legislative developments***

Freedom of thought, conscience and belief is a human right inseparably linked with the rule of law and the other fundamental freedoms and human rights affirmed in the OSCE human dimension commitments. These include the Helsinki Final Act commitment that "participating States will respect human rights and fundamental freedoms, including the freedom of thought, conscience, religion or belief, for all without distinction as to race, sex, language or religion." The essential links between these fundamental rights and freedoms are made very clear in the ODIHR's excellent *Guidelines for Review of Legislation Pertaining to Freedom of Religion or Belief* and *Guidelines on Freedom of Peaceful Assembly*. As Part 1, paragraph 13, of the Peaceful Assembly Guidelines state:

It is essential that those involved in drafting and implementing laws pertaining to freedom of assembly give due consideration to the interrelation of the rights and freedoms contained in these treaties. The imperative of adopting a holistic approach to freedom of assembly is underscored by the destruction-of-rights provisions contained in Article 30 of the Universal Declaration of Human Rights (UDHR), Article 5 of the ICCPR, and Article 17 of the ECHR.

This holistic approach is an integral part of the key insight of the Helsinki Final Act's drafters: national and international security and human rights depend on each other. The situations documented and analysed by Forum 18 News Service provide evidence that violating freedom of thought, conscience or belief for all causes tensions, creating insecurity and conflict. Serious violations always violate other fundamental rights and freedoms and the rule of law. To put it another way, taking action to support freedom of thought, conscience and belief - and other fundamental freedoms - is to take action to support the rule of law, fundamental rights and freedoms, and national and international security.

When we consider the drafting of new laws, a key question - put right at the start of the Freedom of Religion or Belief Guidelines - is: are they needed? For example, some participating States - such as Azerbaijan, Belarus and Uzbekistan - have laws requiring compulsory religious literature censorship, compulsory registration, and other intrusive provisions. Other participating States, such as Ireland, see no need for this, beyond a constitutional ban on discrimination on the grounds of religion or belief - and this is fully implemented. Ireland has never found it necessary, even during times of the most severe violence on our island, to make official check-ups on any religious communities leading to their closure and fears of official harassment amongst their members. The Irish experience is that such violations of fundamental rights and freedoms are unnecessary to defend society against threats such as extremism and terrorism. Indeed, Ireland has found that the defence of fundamental rights, including freedom of thought, conscience and belief, is the best safeguard against such threats.

The human dimension commitments, quite rightly, make no judgements on whether or not participating States should have specific Religion Laws. However, the idea that religious or belief communities must register to enjoy freedom of thought, conscience and belief is incompatible with the international human rights standards affirmed in OSCE commitments. Sadly, ensuring compatibility with human rights standards and the rule of law is not a priority in some participating States' drafting and implementation of laws. In a very extreme example, Uzbekistan's President Karimov described the 1998 Religion Law as necessary to control "Wahhabi" Muslims, as "such people must be shot in the forehead. If necessary, I'll shoot them myself." In less extreme language, the Kazakh parliamentary deputy leading the passage of restrictive new legislation defended, in June 2008, harsh restrictions on

sharing beliefs. This includes a state register of the people permitted to do this: "Do people go to the toilet on a bus?" he told Forum 18. "No, they go to a toilet. Therefore whoever needs to meet their religious needs should go to a synagogue, mosque or a church."

It is highly disturbing that Kazakhstan, Chairman-in-Office for 2010, should be as we speak passing legislation through its parliament which - in so far as the authorities will reveal what is planned - flagrantly breaks its human dimension commitments and ignores the suggestions in the OSCE ODIHR *Guidelines for Review of Legislation Pertaining to Freedom of Religion or Belief*. Sadly, Tajikistan and Kyrgyzstan also seem to be taking this approach, in planned laws to control religious communities.

Excessive secrecy has marked the passage of the Kazakh law, contradicting the openness to civil society encouraged by the OSCE. It seems that all religious communities must register for their peaceful activity to be legal, and existing registered communities must re-register within a year. A transcript of a meeting of officials, addressed by a senior Presidential Administration official, states that the state plans to "very delicately, very exactly, in a very coordinated way and without noise" close some religious communities. Three kinds of religious organisations are planned, the differences between them being obscure. The lowest kind will not, among other things, be able to share beliefs. The highest centralised kind can train clergy and need registered communities in 5 of the country's 16 regions. This bars 2 of the 4 Catholic dioceses, and the Jewish community, from this status.

The implementation of current laws in Kazakhstan - as in other participating States - often ignores the principle that the rule of law applies to everyone, including officials. For example, Kazakh and Azerbaijani officials often claim in raids on peaceful religious communities, documented by Forum 18, that unregistered religious activity is illegal. However in neither country is this the case. In Turkmenistan, where it is administratively illegal, officials have been unable to name the parts of the Turkmen law which - in defiance of international human rights law and OSCE commitments - impose this unjustifiable restriction. However, breaking the law does not seem to concern officials and police.

In Belarus, officials have fined and dismissed from their work human rights defenders who collected a 50,000 signature petition, the largest non-party political petition in Belarusian history, against the restrictive Religion Law. As human rights defenders note, it "violates the rights of all people, even atheists." The former UN Human Rights Committee, most recently supported by the European Parliament, agreed, stating that it contravenes the International Covenant on Civil and Political Rights (ICCPR). Yet the chair of the parliamentary Human Rights, Ethnic Relations and Media Committee, Yuri Kulakovsky, defended the authorities' refusal to consider the petition, repeatedly claiming to Forum 18 that "there is a procedure for such initiatives in any democratic society, and they [petition organisers] didn't follow it." Using Norway as an example, he said that "we didn't make anything up, you know - we followed European democratic norms." As the Norwegian Helsinki Committee was happy to confirm, there is in Norway no need to ask for state permission to collect signatures in support of peaceful activity.

So what can be done? Some human rights defenders, and those who experience violations of freedom of thought, conscience and belief, have told Forum 18 that helpful existing approaches include:

- Understanding fundamental rights and freedoms holistically, as the *Guidelines on Freedom of Peaceful Assembly* recommends. Violations of human rights are not just attacks on particular people or communities, but attacks on the fundamental rights and freedoms of all people.
- Participating States insisting that politically binding human dimension commitments are for implementation by all participating States. This particularly applies to the Chairman-in-Office.
- Supporting those who uphold and exercise fundamental freedoms such as freedom of religion or belief - for this fulfils the OSCE aim of increasing security.
- OSCE field operations being pro-active in helping implement human dimension commitments on freedom of religion or belief. The OSCE Office in Tajikistan, for example, has organised civil society roundtables with the government, linked to legislative reviews.
- Strongly encouraging both the use of the excellent *Guidelines for Review of Legislation Pertaining to Freedom of Religion or Belief*, and the use of the expert assistance of the Advisory Panel of Experts on Freedom of Religion or Belief.

In these ways, we can support those who struggle to make the Helsinki Final Act's vision a reality.

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