

**SUPPLEMENTARY HUMAN DIMENSION MEETING
ON
FREEDOM OF ASSEMBLY, ASSOCIATION AND EXPRESSION:
FOSTERING FULL AND EQUAL PARTICIPATION IN PLURALIST
SOCIETIES**

**29 - 30 March 2007
Hofburg, Vienna**

ANNOTATED AGENDA

The freedoms of peaceful assembly, association and expression are expressly recognized in OSCE human dimension commitments¹ as well as all major international human rights instruments.² On the basis of the commitments, the OSCE and its 56 participating States should promote conditions throughout its region in which all can fully enjoy their human rights and fundamental freedoms under the protection of effective democratic institutions, due judicial process, and the rule of law. This includes secure environments and institutions for peaceful debate and expression of interests by all individuals and groups of society.³

The freedoms of association and peaceful assembly are intrinsic to the exercise by citizens of their right to express their opinions and to raise publicly issues of concern, and their ability to contribute to their resolution. As such, these three freedoms form a vital part of the OSCE's comprehensive concept of security.

During the Special Day on Freedom of Assembly and Association of the 2004 Human Dimension Implementation Meeting, participants noted with concern "a lack of progress and

¹ A compilation of OSCE commitments relevant to the freedom of assembly, association and expression can be found in the brochure distributed for this meeting.

² See e.g. the Universal Declaration of Human Rights, Article 19 (freedom of expression and opinion) and Article 20 (freedom of peaceful assembly and association); International Covenant on Civil and Political Rights, Article 19 (freedom of opinion and expression), Article 21 (freedom of assembly) and Article 22 (freedom of association); the European Convention on Human Rights and Fundamental Freedoms, Article 10 (freedom of expression) and Article 11 (freedom of assembly and association), and on all three rights, the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, adopted unanimously by the United Nations General Assembly (A/RES/53/144), in particular Article 5:

"[f]or the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels: (a) To meet or assemble peacefully; (b) To form, join and participate in non-governmental organizations, associations or groups; (c) To communicate with non-governmental or intergovernmental organizations."

³ OSCE Strategy to Address Threats to Security and Stability in the Twenty-First Century, Maastricht 2003, para. 36.

indeed a setback in recent years” with respect to the implementation of these rights.⁴ In its 2006 *Common Responsibility* report, the OSCE/ODIHR notes that these rights are under threat from a range of excessively restrictive laws and policies that do not always respect the principles of proportionality, legality, non-discrimination, or the requirements of good administration of and transparency in the decision-making process.⁵

At the 2006 Supplementary Human Dimension Meeting (SHDM) on ‘Human Rights Defenders and National Human Rights Institutions, Legislative, State and Non-State Aspects’, participants identified a number of new laws that restrict the freedom of peaceful assembly, association and expression. They also noted that new anti-extremism and anti-terrorism legislation hindered the activities of civil society organizations.⁶

This SHDM seeks to address how the full implementation of the rights to freedom of association, peaceful assembly and expression can be advanced and secured in order to promote the development of an inclusive and diverse society as well as long-term security. It will identify the challenges faced by governments throughout the OSCE region in ensuring that all citizens have an equal opportunity to express their opinions and interests, either collectively or individually. It will focus on ways to overcome obstacles to the implementation of these rights and seek to explore how in a continually evolving society, participating States can benefit from the full implementation of these rights to engage in a meaningful dialogue with civil society.

Working Session 1: Freedom of association in the OSCE region - challenges and opportunities

The freedom of association guarantees the right to join with others for a common purpose and forms one of the basic guarantees for participation in a democratic society.⁷ The freedom of association can be a means of addressing the concerns and promoting the understanding of a diverse range of persons in society, and through partnerships and co-operation with civil society can be a way of dealing with challenges in an inclusive and constructive manner.

Significant challenges and obstacles remain on the way to the full implementation of the freedom of association. The OSCE/ODIHR noted in *Common Responsibility* that the freedom of association is the subject of increasingly stringent regulation in many States. NGOs seeking to exercise their right to freedom of association are faced with laws requiring them to comply with burdensome registration requirements, cumbersome reporting obligations, complex bureaucratic procedures, and the abuse of fiscal, economic, health-protection, and other ostensibly neutral legal regulations. This has contributed to a process that has widened the gap between civil society and the governments of some OSCE States.⁸

⁴ 2004 Human Dimension Implementation Meeting, Consolidated Summary, p. 35 (www.osce.org/odihr/16534.html).

⁵ OSCE/ODIHR, *Common Responsibility. Commitments and Implementation*, Report submitted to the OSCE Ministerial Council in response to MC Decision No. 17/05, on Strengthening the Effectiveness of the OSCE (2006), at §§43-47 (cited as ‘*Common Responsibility*’, available at www.osce.org/item/22321.html).

⁶ Final Report of the 2006 SHDM, ‘*Human Rights Defenders and National Human Rights Institutions, Legislative, State and Non-State Aspects*’, Vienna, 30-31 March 2006, pp. 6-7, 25-28 (www.osce.org/odihr/18831.html).

⁷ Cf., e.g. §9.3. of the 1990 Copenhagen Document. For other commitments on this issue, see the compilation of OSCE commitments in the brochure distributed for this meeting.

⁸ OSCE/ODIHR, *Common Responsibility*, § 46.

Furthermore, the absence of graduated sanctions for breaches of laws by NGOs, wide-ranging sanctions within the power of executive and other extrajudicial authorities (e.g. prosecutors' offices), government monitoring of NGO activities, geographic limitations on NGO operations, and restrictive policies with regard to state subsidies to civic organizations all create obstacles for the establishment of a strong civil society.

The OSCE/ODIHR has also noted many positive examples in which participating States have created an environment conducive to the existence and operation of informal associations and other types of NGOs that do not choose to obtain formal legal personality. It indeed should be noted that the duty of States to uphold the freedom of association applies equally to informal association (such as meetings in private accommodation or other venues) and to formal association (e.g., registered NGOs). In instances where NGOs prefer to have a formal legal status, some participating States merely require notification to be filed with the responsible public body following a simple and non-cumbersome procedure. The OSCE/ODIHR has noted that this procedure is to be preferred over a practice that requires authorization by the responsible public body before formal legal status is obtained.⁹

There is therefore considerable scope for the exchange of best practices on the freedom of association, both between and among participating States and civil society, the OSCE and other intergovernmental organizations such as the Council of Europe, which has promulgated a list of principles on these matters.¹⁰

In response to suggestions made at the 2004 Special Day and the 2006 SHDM on 'Human Rights Defenders and National Human Rights Institutions', the OSCE/ODIHR has established a Focal Point on Human Rights Defenders and National Human Rights Institutions, which will among other issues, address the freedom of peaceful assembly and association of human rights defenders. The OSCE/ODIHR has also responded to recommendations made at these meetings by providing legislative support to participating States to assist them in ensuring legislation on freedom of association complies with OSCE commitments and international standards.¹¹

This session will look at the obstacles and challenges to the right to freedom of association, whilst at the same time showing positive examples of how this right has been used to encourage participation in society of a diverse range of groups.

Issues that can be discussed in connection with this topic are:

- How can freedom of association contribute to a more inclusive society?
- How can OSCE participating States advance the freedom of association and create enabling environments for civil society, and how can intergovernmental organizations and civil society assist participating States in implementing their commitments in this respect?

⁹ Ibid., § 47.

¹⁰ Council of Europe, *Fundamental Principles on the Status of Non-governmental Organizations in Europe* (13 November 2002). A draft recommendation by the Council of Europe's Council of Ministers on the Legal Status of NGOs in Europe can be found in the brochure distributed for this meeting.

¹¹ For ODIHR legal reviews of such laws see: www.legislationline.org.

- What is the best way to shape the relationship between the State and civil society, and how can undue interference with NGO independence be avoided?
- What role can independent national human rights institutions play in protecting and supporting civil society in exercising its freedom of association?

Working Session 2: Freedom of peaceful assembly in the OSCE region - challenges and opportunities

The freedom of peaceful assembly guarantees the public expression of opinion. As a cornerstone of any democratic society, it serves as a powerful tool for a diverse range of groups to make their views known. It may also manifest itself in the spontaneous expression of opinion – both popular and unpopular – on matters of public concern, allowing citizens to express openly their views on current events.

The freedom of peaceful assembly can play a key role in achieving the full and equal participation in society of a diverse range of groups. Full implementation of this freedom implies that governments must be prepared to listen to a wide variety of voices and views, even if controversial. Conversely, respect for this right will promote understanding between groups in society and can serve as a vital tool in resolving issues of public concern, which will ultimately lead to a more inclusive and secure society.

A number of best practices exist in the OSCE region:

- In many participating States, an assembly is considered peaceful if its organizers have peaceful intentions, which includes conduct that may annoy or give offence to persons opposed to the ideas or claims that it is seeking to promote, or even conduct that deliberately hinders, impedes or obstructs the activities of third parties.
- Moreover, in many participating States, spontaneous assemblies are tolerated and managed by the police, not banned or dispersed. Authorities and would-be assembly organizers co-operate in a constructive way with one another without undue interference on the part of the authorities in the practicalities of the organization of the event. Best police practices have developed significantly in the area of assembly management in a way that is sensitive to the needs of both demonstrators and the wider public. The option of using force by the police has hence faded into the background in those States.¹²

However, a number of challenges and obstacles exist with respect to this in the OSCE region.

- The freedom of peaceful assembly is undermined by authorities who impose unnecessarily restrictive measures as a result of an excessively wide interpretation of legitimate grounds for limitations.¹³
- Excessive penalties such as detention or high fines are used to punish individuals who take part in peaceful assemblies. Graduated sanctions are rarely used. Blanket

¹² *Common Responsibility*, § 45.

¹³ *Ibid.*, § 44.

restrictions are imposed without sufficient consideration of the circumstances of each case, and police conduct in the management of assemblies often exceeds permissible limits, which is frequently paired with a lack of accountability.

- In too many participating States, freedom of peaceful assembly is regulated through a system of requiring permission from the authorities before an assembly can take place, rather than through the preferable system of only requiring that notice be given to the authorities.¹⁴

The exchange of best practices developed in OSCE participating States on the proper regulation and policing of the freedom of peaceful assembly is one of the aims of this SHDM. In response to suggestions made by participants at the 2004 HDIM Special Day, the OSCE/ODIHR has continued its consultation on the freedom of peaceful assembly with participating States, provided legislative support, developed new training programmes on monitoring freedom of peaceful assembly, and drafted guidelines.

The OSCE/ODIHR Guidelines on Freedom of Assembly, which will be launched at this SHDM, were compiled on the basis of extensive consultation with experts and stakeholders from all regions of the OSCE area and provide a comprehensive guide for participating States and others in the full implementation of this vital right. They demarcate clear parameters for implementation consistent with international standards, and illustrate key principles with examples of good practice from individual participating States. The Guidelines are addressed to practitioners in many sectors – drafters of legislation, politicians, legal professionals, police officers, local officials, trade unionists, assembly organizers and participants, NGOs, and those involved in monitoring freedom of assembly and policing practice.

Issues that can be discussed in connection with this topic are:

- What challenges do assembly organizers face in the OSCE region and how can these be met by participating States? What legal and regulatory framework is most conducive to the implementation of this freedom?
- How can dialogue between groups seeking to exercise the right to freedom of peaceful assembly and the authorities be promoted?
- How can the freedom of peaceful assembly be advanced in a manner so as to allow as diverse a range of groups as possible the greatest degree of free expression?
- What best policing practices have been developed to fully uphold the exercise by all of the freedom of peaceful assembly?

Working Session 3: Freedom of expression and the role of the media in a pluralist society

¹⁴ *Ibid.*

This session will discuss participating States' obligations to ensure the right of freedom of expression, including the role and responsibilities of the media in a diverse and inclusive society.¹⁵

This right was the subject of SHDMs in 2001 and 2006, which focused in particular on the role of the media.¹⁶ The SHDM in 2006 on 'Freedom of the Media: Protection of Journalists and Access to Information' discussed the importance of access to information and the laws that facilitate and restrict it. This has recently come under intense scrutiny as the security concerns of many states grow. On the other hand, it was stressed that human rights also need to be safeguarded.

The 2006 SHDM also addressed the question of how the media could contribute to the promotion of mutual respect and understanding. It looked at the favourable role of self-regulation compared to governmental interference when handling freedom of expression. The participants looked at a worrying trend in some OSCE participating States, where additional restrictive administrative mechanisms have been adopted, or existing legislation has not been implemented properly, which has resulted in unnecessary procedural restrictions to the free functioning of the media. The right guarantees the expression of a wide variety of views, including those that could "offend, shock or disturb".¹⁷ It is especially important for media professionals, who should be able to work in a safe environment with the guarantee that they will not be persecuted for the reflection of their views or those of others.

Participating States have identified "freedom of the media as a basic condition for pluralistic and democratic societies." At the same time, they have expressed "deep concern about the exploitation of media to foment hatred and ethnic tension and the use of legal restrictions and harassment to deprive citizens of free media..."¹⁸ Pluralism of media content provides a safeguard against the effect of intolerant expressions. At the same time, media professionals can engage with a wide a variety of groups through their work; they may choose to highlight the plight and concerns of marginalized or disadvantaged groups, address prejudices, and break taboos.

Issues that can be discussed in connection with this topic are:

¹⁵ The 1990 Copenhagen Document sets out that: "(9.1) - everyone will have the right to freedom of expression including the right to communication. This right will include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. The exercise of this right may be subject only to such restrictions as are prescribed by law and are consistent with international standards. In particular, no limitation will be imposed on access to, and use of, means of reproducing documents of any kind, while respecting, however, rights relating to intellectual property, including copyright". For other commitments on this issue, see the compilation of OSCE commitments in the brochure distributed for this meeting.

¹⁶ Final report of the 2001 SHDM on the '*Freedom of Expression: New and Existing Challenges*', Vienna, 12-13 March 2001 (<http://194.8.63.155/odhr/16613.html>); Final Report of the 2006 SHDM on the '*Freedom of the Media: Access to Information and Protection of Journalists*', Vienna, 13-14 July 2006 (www.osce.org/odhr/20116.html).

¹⁷ European Court of Human Rights 7 December 1976, application nr. 5493/72, *Handyside v. United Kingdom*, § 49.

¹⁸ Istanbul 1999 (Summit Declaration), § 5.3.6.

- What positive measures can participating States take to promote and protect the freedom of expression and ensure the full and equal participation of all individuals and groups in public debate?
- What are participating States' duties in facilitating the pluralism of outlets representing different opinions and in enabling equal access to information and the media?
- In what ways can the media respond to and engage with as diverse a range of groups as possible and what are the roles and responsibilities of the media in a diverse society?
- What are the benefits of minority access to public service broadcasting?