

Working Session 5: Rule of law II, including prevention of arbitrary arrest, detention or exile, and prevention of torture, exchange of views on the question of abolition of capital punishment, protection of human rights in the fight against terrorism

Rapporteur: Mr. John Svensson, First Secretary, Permanent Delegation of Sweden to the OSCE

No. of statements: 50**Delegations: 10****Civil Society: 38****International Organizations: 1****NHRI: 1****Rights of Reply: 9**

Working session 5 was devoted to issues related to prevention of arbitrary arrest, detention or exile, prevention of torture, abolition of capital punishment, and protection of human rights in the fight against terrorism.

The session was introduced by Ms. Natalia Taubina, Coordinator of Torture Prevention for the Civic Solidarity Platform and Director of the Public Verdict Foundation, and Mr. Jago Russel, Chief Executive at Fair Trials.

Ms. Taubina addressed the meeting on behalf of the Civic Solidary Platform, a network of 90 human rights NGOs. She pointed out that the situation with torture and inhuman treatment in the OSCE region was in crisis. The number of torture victims was growing, as shown by the one-third increase in torture judgements by the European Court of Human Rights. The situation called for states to take stronger measures to combat torture as well as broaden the range of their obligations. Forced disappearances was one of the new challenges since the adoption of the Helsinki Accords 1975 which should be included in the package of obligations related to the prohibition of torture. As for combatting torture, Ms. Taubina highlighted three key issues: opportunity to complain against torture without fear of further pressure and reprisal; effective investigation and punishment of torture perpetrators; and effective civic oversight. She expressed her strong belief that the problem of torture and cruel treatment must be high on the OSCE agenda, and that a clear signal from the OSCE was needed. The Civic Solidary Platform very much hoped that consensus could be reached at the Ministerial Council on a strong resolution on the urgent need to put an end to torture in the OSCE region.

Mr. Russel stated that, while he recognized the very real threat from terrorism, he did not accept the damage done to human rights and freedoms in the name of fighting it. He pointed to the broader themes of exceptionalism, attacks on the outsider, prevention and the expansion of the criminal law, and attacks on civil society. He denounced the argument that the old rules were not fit for purpose, underlining that terrorism could be effectively tackled while respecting human rights. Instead, the threat of terrorism had been used by some governments to support an anti-immigration agenda and fuel conflict. Further, the definition of acts of terrorism had all too often not been clearly and narrowly defined, making it impossible to know when actions might constitute criminal offences. Freedom of speech, in particular, had been in the firing line. Finally, counter-terror laws had become a favoured tool for politically-motivated prosecution of human rights defenders and others. Mr. Russel opposed the concept of balancing human rights and security, underlining it was neither necessary nor making us safer to sacrifice human rights in the name of fighting terrorism.

Several speakers from civil society raised that the political opposition as well as civil society were subject to arbitrary arrest and detention in their countries. Anti-extremism and anti-terrorism legislations were criticized for being unclear, and used to censor activists. The need for civic oversight and access to detainees, especially political prisoners, was raised. A number of interventions on behalf of participating States underlined that that human rights and fundamental freedoms must be safeguarded in the fight against terrorism.

Many interventions focused on the need to further combat torture and other forms of cruel, inhuman or degrading treatment or punishment, as there were serious problems in many parts of the OSCE area.

Reference was made to several concrete countries and cases, in particular by civil society participants. One group of participating States underlined that the prohibition of torture was absolute and unconditional.

Another participating State pointed to torture also being counterproductive to the security of the State. Several

participants highlighted the importance of implementing the Nelson Mandela rules. The issue of enforced disappearances also received special attention by several participants, as well as the need to fight impunity for torture crimes and provide rehabilitation for victims.

Several interventions addressed the issue of the death penalty, most of them calling for its abolishment. One group of participating States described the death penalty as cruel, inhuman and degrading in nature and called for a global moratorium as a step towards its abolition. One participating State expressed respect for those advocating abolition, but stated that capital punishment was not prohibited under international law.

Recommendations made by participants during this session include (non-exhaustive list):

Recommendations to the OSCE participating States:

- Provide clear and narrowly phrased definitions of prohibited activities in any specific counter-terrorism and counter-extremism legislation, with robust and transparent enforcement and independent oversight;
- End impunity for violations of human rights while fighting terrorism and extremism ensuring effective investigation of all cases of alleged violations and bring perpetrators to justice;
- Contribute to the Convention against Torture Initiative and give strong consideration to ratifying all international conventions and protocols on torture and ill-treatment, the abolition of the death penalty and the prevention of enforced disappearances;
- Make use of ODIHR's expertise in their efforts to implement the OSCE commitments to prevent and combat all forms of torture and ill-treatment;
- Support ODIHR's efforts and ensure that torture prevention stays high on the OSCE agenda;
- Follow the global trend towards abolition of the death penalty;
- Abolish restrictions on reporting and ensure that jailed journalists be held in safe conditions;
- Use all possible mechanisms to look into crimes committed against persons based on their sexual and gender identity;
- Strengthen national mechanisms and cooperation between NGOs and the state;
- Stop prosecutions for political reasons;
- Ratify the Optional Protocol to the Convention against Torture;
- Pay special attention to the issue of enforced disappearances;
- Pay special attention to cases of persons detained because of extremism allegations;
- Decriminalize same-sex conduct and stop persecution and extortion of LGBT people;
- Abolish the death penalty by law.

Recommendations to the OSCE institutions, executive structures and field operations:

- Develop a database of those who have suffered from torture or been unlawfully imprisoned;
- Pay special attention to dialogue with civil society.