

Office for Democratic Institutions and Human Rights

EXTRACTS FROM THE CONSOLIDATED SUMMARY OF THE 2004 OSCE HUMAN DIMENSION IMPLEMENTATION MEETING

4-15 OCTOBER 2004
WARSAW, POLAND

WORKING SESSIONS 14 AND 15 SPECIFICALLY SELECTED TOPIC:

FREEDOM OF ASSEMBLY AND ASSOCIATION

REPORT OF THE RAPPORTEUR

Participants based their interventions on the recognition that freedom of assembly and association, like freedom of conscience and freedom of expression, constitutes a *sine qua non* for the establishment and maintenance of democratic societies. This freedom was described as the “bedrock of democracy” in which civil society finds its roots, and as a tool for groups and individuals to seek change and to address violations of human rights. Against this background, participants were disturbed to witness a lack of progress and indeed a setback in recent years in some OSCE states with regard to the legal protection and effective implementation of this right. The need to also respect freedom of assembly and association while combating terrorism was emphasized. It was noted that any limitation should be strictly compatible with international standards.

Contributions highlighted the dual obligation of states: to refrain from placing undue, unnecessary and disproportionate restrictions on the exercise of the freedom of assembly and association and at the same time to actively promote and protect this freedom. In this regard it was noted that human rights were not just meant for popular things: the state also has a duty to protect the right of individuals with whom they do not agree to participate in associations and assemblies.

Concern was expressed in particular in relation to reports of extrajudicial killings, torture, assaults and threats against the safety of NGO representatives and their families. Thorough investigations should be conducted, and fair trial guarantees should be upheld. Furthermore, cumbersome registration procedures for NGOs as well as closing down of organizations on purely formalistic/bureaucratic grounds were seen as a major obstacle to freedom of association in some OSCE states. In this regard, it was emphasized that it was not tenable to argue that it was necessary for an NGO to have legal personality in order to perform any activity, for instance to arrange a demonstration. The point was made that it is the choice of the organization whether it wants to register. Notification regimes for registration and assemblies should be the maximum requirement imposed by states.

It was recognized that it can be difficult to strike a balance between legitimate restrictions/permissible interference and the basic principle of freedom of assembly. Where violence is intended or arises, the state has a right to interfere; however, this does not mean that the existence or possibility of fringe elements of violence or counter-demonstrations removes the right to assemble. It was clear that “blanket” provisions would not suffice. It was noted that in a democracy where views can be expressed through other means, including in the press and in Parliament, freedom of assembly is an addition to and not a substitute for popular representation, and does not pose a threat to the government. Freedom of assembly was deemed to be of special importance during pre-election, election and post-election periods. The right for spontaneous demonstrations should be guaranteed. In relation to public order policing it was stressed

that human rights must be kept at the core of police conduct and that tactics applied to manage demonstrations should ensure a proportional and graduated response, and that police plans could usefully be based on dialogue with local communities and interest groups.

It was noted that the legislative framework, as well as the practice of authorities, is often based on the assumption that freedom of assembly and association is inherently dangerous. Delegations regretted that governments often consider NGOs which critical of certain government policies as members of the political opposition, regarding any criticism as negative. It was emphasized that such an approach creates divisions and does not reflect the fact that civil society can play an important role in working with the authorities to achieve a number of public objectives. A change of mentality was thus considered necessary.

Recommendations by many participants included the following:

- Participating States should promote freedom of assembly and association in recognition of the indispensable contribution of civil society to the development of democratic societies. Participating States should not view human rights NGOs as political opposition but should recognize the indispensable role of human rights defenders in a democracy.
- Participating States should ensure that anti-terrorism legislation respects international and regional human rights standards, including freedom of assembly and association. OSCE/ODIHR should continue its work in this area. Participating States that have adopted anti-terrorism legislation should implement it so as not to curb NGO activity and freedom of assembly.
- Participating States should ensure that any limitations of the right of assembly and association comply with the strict requirements listed in human rights conventions, including those of necessity and proportionality.
- Participating States should refrain from using technical failings to suppress NGOs and should ensure that the process for establishing NGOs is quick, simple and inexpensive.
- Participating States should address the issue of freedom of association of active military personnel.
- Participating States should educate police in human rights and community policing.
- Participating States should ensure that all decisions on registration, dissolution of NGOs and banning of demonstrations are taken in a transparent manner, and that the right to appeal against such decisions is guaranteed.
- OSCE/ODIHR, in cooperation with field missions, should continue dialogue with countries where freedom of assembly and association is hindered by legislative acts or administrative practices in order to eliminate these obstacles through reforms.
- OSCE/ODIHR, in cooperation with field missions, should focus on educational and training aspects. Support for NGOs as well as education and training of administrative and judicial officers is crucial in this regard.
- The OSCE/ODIHR should organize regional conferences on human rights defenders and freedom of assembly and association, and address the issue of how they can best be protected.
- The OSCE should consider incorporating the Council of Europe's Fundamental Principles on the Status of NGOs in Europe into its commitments. While the principles were derived from the practice of the European Court of Human Rights they were deemed to be in line with that of the UN Human Rights Committee, and relevant also to non-parties to the European Convention on Human Rights.
- The OSCE should consider setting up guidelines for the OSCE field missions and institutions on monitoring compliance with the right of assembly and association and human rights defenders, similar to those adopted by the EU.
- The OSCE should make 2005 the year of human rights NGOs.

- OSCE/ODIHR should consider assisting with law drafting in the OSCE region, and in particular in Kyrgyzstan and Ukraine, where new laws on freedom of assembly are currently being elaborated.
- OSCE/ODIHR should continue upgrading legislationline.org.
- One participant proposed the creation of a focal point or special rapporteur on freedom of assembly and association and human rights defenders, who would react immediately to violations against these.
- One participant proposed the setting up of a mechanism for public recognition of associations which are illegally closed down.

WEDNESDAY, 13 OCTOBER

Extracts from the Annotated Agenda of the HDIM 2004

10:00 – 13:00 and 15:00 – 18:00

WORKING SESSIONS 14, 15

Specifically Selected Topic: Freedom of Assembly and Association

Moderator: Mr. Dragan Golubovic, Senior Legal Advisor, International Center for Not-for-Profit Law (ICNL), Budapest, Hungary

Freedom of Assembly and of Association are two fundamental rights that play an important role in any democratic society as they guarantee the right of individuals to freely associate with each other on an informal or more formal basis by either creating or joining associations, or by simply organizing peaceful gatherings in order to express their opinions. It is widely recognised that protection of opinions and the freedom to express them is one of the objectives of the freedom of assembly and association.

These rights are guaranteed by all United Nations and regional human rights instruments. OSCE Commitments also repeatedly reaffirm and guarantee freedom of assembly and association. The Helsinki Final Act of 1975 referred to these freedoms and stated that the participating States confirmed that “organisations and their representatives...can have contacts and meetings among themselves and exchange information.” In 1990 the Copenhagen Document mentioned that “everyone would have the right of peaceful assembly and demonstration...and individuals are permitted to form...NGOs which seek the promotion and protection of human rights...” In the Istanbul Charter of 1999 the participating States further acknowledged “that NGOs are an integral component of a strong civil society and perform a vital role in the promotion of human rights, democracy and the rule of law”.

Freedom of assembly and freedom of association pertain to all members of any society, but NGOs and human rights defenders are often the first ones to be affected in case of suppression of these freedoms by States or non-State actors.

The purpose of this day of the HDIM is to review trends in legal regulation and implementation practices in relation to NGOs and human rights defenders. Such trends either can be used as examples of “best practices,” or of “malpractices” which undermine the essence of freedom of assembly and association. Possible “malpractices” can include, for example, new restrictions aimed at prevention of terrorism or even derogation by States from relevant human rights obligations.

The discussion can also focus on follow up to the OSCE Supplementary Human Dimension Meeting on Human Rights Defenders, which took place in October 2001.

10.00 – 10.15 Keynote presentation by **Jeremy McBride**, Reader in International Human Rights Law, University of Birmingham, Member, European Union Network of Independent Experts on Fundamental Rights and Vice-Chair, Interights, the United Kingdom

Morning session: Freedom of Association

The existence of many NGOs is a manifestation of the right of their founders and members to freedom of association. NGOs can make an essential contribution to the development of democratic societies, in particular through the promotion of public awareness and the participatory involvement of individuals within their societies in the public life. Such contributions can be made through diverse activities which can range from the advocacy for change in legislation or public policy to the provision of assistance to those in need, and from the elaboration of technical and professional standards to the monitoring of compliance with existing obligations under national and international law.

Many NGOs seeking to protect and promote human rights are local groups working to ensure that the rights of individuals within their own society are guaranteed. They may encounter hostility of their governments, precisely because of their role in encouraging debate and openness in society over issues some governments would prefer to keep silent about. As a result, some States may try to prohibit activities of unregistered NGOs, others may impose cumbersome registration requirements or impose unjustifiably strict administrative and criminal penalties for breaches of NGO laws, etc.

10.15 – 10.25 **Dr. Evgeniy Zhovtis**, Director of the Kazakhstan International Bureau for Human Rights and Rule of Law (KIBHR), Republic of Kazakhstan

10.25 – 10.35 **Mr. Ben Majekodunmi**, Assistant to the Special Representative of the UN Secretary General on Human Rights Defenders

Questions that could be addressed:

- Are participating States implementing their OSCE commitments relating to freedom of association?
- How can the OSCE participating States create a favorable environment for the functioning of NGOs?
- Is there a need for a regulatory framework affecting NGOs and their activities? How can it be misused?
- How can the OSCE participating States ensure compliance of relevant laws with international standards?

10.35 – 11.35 **Discussion on Freedom of Association**

11.35 – 11.45 **Mr. Neil Hicks**, Director of International Programs, Human Rights First, the United States of America

- Which new challenges do NGOs face in light of anti-terrorist measures undertaken by the OSCE participating States?

11.45 – 13.00 **Discussion on Freedom of Association**

Afternoon session: Freedom of Assembly

The right of peaceful assembly is a fundamental right and one of the foundations of a democratic society. It covers all types of gathering including assemblies and meetings, demonstrations, marches and processions, whether public or private, static or in motion.

The right to organize peaceful assemblies should be ensured, and possible counter-protests having violent intentions do not annul this guarantee. The participants must be able to hold the assembly without having to fear that they will be subjected to physical violence by their opponents. Genuine, effective freedom of assembly cannot, therefore, be reduced to a mere duty on the part of the State not to interfere and requires States sometimes to take positive measures to guarantee it.

15.00 – 15.15 **Ms. Finola Flanagan**, Head of the Office of the Attorney General of the Republic of Ireland, Member of the European Commission for Democracy through Law (Venice Commission) of the Council of Europe

15.15 – 15.25 **Dr. Alexander Vashkevich**, former Justice of the Constitutional Court, the Republic of Belarus

15.25 – 16.25 **Discussion on Freedom of Assembly**

Questions that could be addressed:

- Are participating States implementing their OSCE commitments related to freedom of assembly?
- Does existing national legislation in OSCE participating States provide adequate guarantees for freedom of assembly?
- Is national legislation enforced in practice?

16.25 - 16.40 **Assistant Chief Constable Peter Sheridan**, Police Service of Northern Ireland
Rural Regional Commander, the United Kingdom

Questions that could be addressed:

- What is the role of police forces in maintaining public order during assemblies?
- Which safeguards exist in the OSCE participating States vis-à-vis the conduct of law enforcement officials during assemblies?

16.40 – 17.40 **Discussion on Freedom of Assembly**

17.40 – 18.00 **Conclusions and recommendations related to discussions on Freedom of Assembly and Association**

General questions that could be addressed:

- **Are OSCE commitments and operational guidelines sufficient for the protection of freedom of assembly and association, especially when they are exercised by NGOs and human rights defenders?**

- **Should the Council of Europe’s Fundamental Principles on the Status of NGOs in Europe be incorporated into the body of OSCE Commitments?**
- How could the OSCE/ODIHR Guidelines for Drafting Laws Pertaining to the Freedom of Assembly assist the OSCE participating States?
- **How could the work of all relevant actors be synergized/improved (coordination of projects, exchange of information at the political and field level, etc)?**
- **Should OSCE encourage and facilitate consultations between Governments and civil society on drafting laws that affect civil society as such, and NGOs in particular?**

Note: The Modalities of OSCE Meetings on Human Dimension Issues (PC.DEC/476, Annex 1 of 23 May 2002) concerning “specifically selected topics” foresee, among other things, that particular attention should be paid in these sessions to providing contributions to the preparation of the next OSCE Ministerial Council.