

**Excellencies**, distinguished delegates, members of the Advisory Council on freedom of religion or belief, dear colleagues, ladies and gentlemen -

OSCE's '**human dimension commitments**' reflect aspirations and undertakings in protecting and promoting constitutionalism, the rule of law, and civil and political rights as also prescribed in a range of international instruments joined by the OSCE member states. OSCE has been sensitive and responsive to the challenges its member states face, may we talk about democratic institution-building, facing the plight of national minorities, the Roma or refugees, or the need to counter aggressive nationalism or terrorism. Human dimension commitments inform and strengthen responses in times of challenges and crisis in the OSCE framework.

As clearly displayed by numerous concluding documents and decisions of the Ministerial Council, in the domain of the protection of freedom of thought, conscience, religion or belief the two key areas of concern remain (i) -on the one hand- the **protection and promotion of freedom of religion** as a right of individuals and their religious communities, and (ii) -on the other hand- the need to **address intolerance and discrimination** in an effective and lasting manner.

These key aspects have already been clearly elucidated in the OSCE framework in the **Vienna Concluding Document of 1989**, and were more recently summarized with a clear sense of urgency, yet with illustrative clarity in the Astana Commemorative Declaration Towards a Security Community (2010). The Astana Declaration emphasized that these commitments have to be read in their broader context, with due regard to **(a)** surrounding (and sometimes competing) human rights and ensuing government obligations, and also, **(b)** to the very nature of those conflicts which bring these rights to the forefront of consideration.

Decades of positive developments reflect the OSCE region's formative role in the development of international human rights standards bring their fruit. Noteworthy among these is the decision of the European Court of Human Rights which recognized for the first time conscientious objection to military service as an aspect of freedom of religion, under Article 9 of the Convention.

Despite regular reaffirmation of fundamental principles, in the area of freedom of religion or belief several practices emerged recently in the member states which are problematic in light of these international standards as formulated by various bodies of the UN, the Council of Europe and of the OSCE itself.

In the domain of **protecting freedom of religion as an individual right**, governmental regulation, and re-regulation of access to legal entity status (often referred to as 'church registration') remains a matter of continuing attention and concern. It has been a well-established premise of the protection of freedom of religion as a human right that the **exercise of religious liberty cannot be conditioned upon prior governmental permission or authorization**. This basic principle forms a precondition to the undisturbed manifestation of many other dimensions of religious liberty. This principle needs to be **re-confirmed** in light of recent legislative attempts to make free religious exercise dependent on prior registration of religious communities, while at the same time also prohibiting (and even criminalizing) any religious activity by unregistered groups.

It is also important to recall that **registration cannot become a means of governmental control or** exclusion of certain religious groups from the public sphere. Rather, as also emphasized in the ODHIR's Guidelines for Review of Legislation Pertaining to Religion or Belief (which were also endorsed by the Venice Commission), "laws governing access to legal personality should be structured in ways that are **facilitative** of freedom of religion or belief". (CDL-AD(2004)028, p. 17) Importantly: religious communities -if they decide to seek formal registration at all- do so in order to be able to **obtain legal personality**, and thus to become able to function in a modern world, open a bank account or rent a space of worship.

Legislative attempts to make access to legal entity status burdensome – for instance, through high membership requirements, using lengthy existence requirements, or prescribing an intricate administrative procedure – are also not compatible with the Guidelines. Recent legislative efforts in several members states which seek to assign key decision-making roles to a '**committee of experts** on matters of faith' are equally problematic, as such solutions do not limit but expand the scope of uncontrolled executive discretion in curbing the exercise of a fundamental human right.

The emphasis on **limited executive discretion** (and thus, ultimately on the predictability

and legality of administrative decisions) needs to be reinforced simultaneously: church registration procedures which transfer key decisions to public administration or other decision making fora (such as a parliamentary supermajority) **without** the possibility of judicial oversight are equality problematic from the perspective of the rule of law. Similarly, respect for the basic elements of the rule of law would require the protection of **acquired rights**. Therefore, any re-registration procedure which is premised upon previously registered religious organizations losing their entity status (and their organizational autonomy with it) for even a transitional period is highly suspect.

In addition to the contents of legal rules which impose harsher registration regimes than their predecessors, one has to be mindful about the **motivations** of such legal reforms introducing new limitations on religious freedom. International human rights instruments carefully prescribe reasons which make a limitation of religious liberty permissible. Article 18(3) of the ICCPR expressly lists “to protect **public safety, order, health, or morals or the fundamental rights and freedoms of others**,” while similarly Article 9(2) of the European Convention mentions “in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others” as such grounds.

The otherwise reasonable-sounding aim 'to prevent the misuse of church status for profit or other business benefits' is not listed among these aims expressly, and it is highly questionable whether it amounts to a 'public order' justification, and as such, is equally suspect.

Similarly, the **protection of the rights of traditional or historic churches from interference by newcomers or foreign religious movements is not an acceptable motivation for any limitation of religious liberty** (including access to legal entity status, missionary work / proselytism). The privileged status of a 'national' or 'historic' church is acceptable from an international human rights perspective to the extent it does not result in discrimination towards (and even less, persecution of) minority or lesser known faiths and communities.

Importantly, in addition to matching such a purpose, the limitation imposed must also be proportionate, and -equally importantly- **genuinely necessary** to achieve its stated aim. While religious extremism is admittedly a motivation for terrorist attacks in several member

states, imposing blanket bans or strict governmental approval regimes on select religious groups to curb such behavior appears to be not only disproportionate and ineffective, but also, prone to misapplication and abuse at the hands of executive or police officials.

The **protection of the rights of parents and children** has been invoked several times in order to prevent the involvement of children in religious communities and religious activities. A most severe form of such a prohibition bans children from any form of religious exercise altogether. Such a ban imposes a severe restriction not only on the child affected, but also on her entire family (who cannot celebrate a wedding or mourn their dead according to their preferences) – violating the religious freedom of children and adults alike. A seemingly less severe form of such a ban was seen to impose administrative or criminal sanctions on religious communities which (knowingly or by mistake) admit among their members children without 'properly expressed' parental consent. Therefore, religious communities admitting children to their events run severe risks, and will find it more appropriate to ban children from their services altogether – a clear instance of self-restraint in contravention of international standards.

In the domain of **prohibiting discrimination, preventing intolerance and promoting diversity and peaceful coexistence** the past few months also brought discomfoting developments. Various countries were seen to impose **limitations predominantly targeting Muslim communities**, including (i) limitations on religious attires in public places, (ii) prohibitions on ritual slaughter, and most recently, (iii) a prohibition of prayer in public. While the bans on head- and face-covers might serve public safety and public order consideration in certain settings (such as, during airport security checks), a wholesale ban in public spaces not only imposes a limitation on the free exercise of **-mostly female-**believers, but also sends a message of intolerance towards intercultural and religious difference.

In societies, where such measures complement already **existing sect monitoring schemes**, such measures have the potential to **induce a general suspicion** (and ultimately, hostility) towards religious minorities which effectively undermines any attempt to build bridges in a multi-ethnic and multi-religious community for lasting peaceful coexistence. Such bans are also problematic because they spark tension and harsh disagreement between dominant majorities and less powerful minorities, inducing contestation. The resulting protests are likely to be bitter and angry, and -- trigger further restrictions on a wide range of fundamental human rights, including those rights which enable participation in the public discourse outside the parliamentary framework.

Furthermore, in other member states several examples of **criminal legislation aimed at curbing religious extremism** can be cited to prove that while such solutions are ultimately ineffective in reducing terrorist violence, -due to their most flexible terminology- they are suitable instruments of wiping out dissent and political disagreement. In addition, such measures were seen to contribute to an **atmosphere of fear of the government** surrounded by **societal distrust** which lead to further ostracization of unpopular religious minorities and was also used to legitimize a wide range of even further restrictions on individual rights.

The problems mentioned in this presentation are serious. Their resolution calls for further open discussion. Let me wish you a most successful dialogue with the words of the Astana Commemorative Declaration Towards a Security Community (2010), reminding ourselves that:

**“Mistrust and divergent security perceptions must be overcome. . . . Respect for human rights, fundamental freedoms, democracy and the rule of law must be safeguarded and strengthened. Greater efforts must be made to promote freedom of religion or belief and to combat intolerance and discrimination.”**  
(para 7.)

Thank you for your kind attention!