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RUSSIAN FEDERATION AND REPRESENTATIVE OF THE STATE
DUMA TO THE CONSTITUTIONAL COURT, ON “LAW AND THE
AUTHORITIES IN COMBATING XENOPHOBIA, RACISM AND
OTHER FORMS OF ETHNIC DISCRIMINATION — RUSSIA’S
EXPERIENCE”**

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Dear friends,

I find myself departing for the first time from my usual habit in addressing an international OSCE audience with these words rather than with my customary words “distinguished participants”. In Russia, people say: “You know who your friends are at a time of trouble”. In these tragic days for Russia, following the events in Beslan, you have acted as our friends. On behalf of ordinary Russian men and women, I want to thank you for the support and solidarity you showed us so spontaneously and sincerely.

1. Before I begin with my report, I should like to enter three reservations:
 - (1) In my report I shall deal only with ethnic discrimination as a variety of discrimination because this form of discrimination poses the greatest danger to society. Even if an isolated act of ethnic discrimination is directed at a specific individual, it affects many people for the reason that every person who regards himself or herself as belonging to that or another ethnic group feels degraded and humiliated. In this sense, ethnic discrimination always affects an indeterminate circle of persons. What is more, ethnic discrimination is closely associated with nationalism and patriotism. Frequently, ethnic discrimination takes on extremist, including terrorist, forms. We do not have to look far for examples, no further than the recent events in Beslan in North Ossetia. There were even political forces who read into these acts of terrorism and violence and of unprecedented cruelty against children national liberation motives.
 - (2) This report makes use of a generic concept, that of ethnic discrimination, taken to mean (in line with the International Convention on the Elimination of all Forms of Racial Discrimination, approved under United Nations General Assembly resolution 2106 A (XX) of 21 December 1965) the violation of human and civil rights and freedoms and legitimate interests on the basis of a person’s race, nationality, language, origin or attitude towards religion. Forms of ethnic discrimination include xenophobia, racism, anti-Semitism and ethnic extremism. Although xenophobia would not seem to fall under that list since it literally means “fear of the stranger” and

describes an attitude rather than an ideology, still, once it has penetrated the social consciousness and has begun to spread within it, xenophobia becomes an integral part of that consciousness, determining society's ideology and behaviour and its attitude towards ethnic discrimination. In any case, those against whom xenophobia is directed perceive it precisely as a humiliation and infringement of their human dignity.

In general, it should be noted that as far as combating ethnic discrimination is concerned, the international community has not made much progress in systematizing the various categories and in standardizing and delimiting the most important concepts. However, each of these concepts provides an important methodological basis for organizing and co-ordinating efforts to combat ethnic discrimination.

One would imagine that the concept of "fascism" is clear to everyone: an ideology based on the presumed racial superiority of Aryans over other races and peoples. This ideology may be seen in very specific material incarnations, for example the symbols and other trappings of Nazism. In any case, when the Russian law on countering extremist activities was adopted, despite rabid opposition on the part of a number of left-wing political parties in the State Duma, a provision was included in Article 1 of that law prohibiting Nazi propaganda or the public demonstration of the outer trappings or symbols of Nazism or of outer trappings or symbols so similar to those of Nazism as to be confused with them.

If a similar definitiveness with regard to the concept of "fascism" also existed under international law, the ceremony marking the inauguration of the memorial to the soldiers of the Twentieth Estonian SS Division in the Estonian village of Likhula in August of this year in commemoration of the restoration of Estonian independence would hardly have been possible. And this took place in a country that has recently become a member of the European Union and NATO. As far as I am aware, it was only the Russian public and the Russian authorities who raised their voices over this issue. Indifference on the part of international organizations to facts of this kind is a splendid argument for those political forces in Russia who argue that Russia has no friends in the West and is surrounded only by enemies.

- (3) My report draws on Russian experience, based on national law, in combating ethnic discrimination. This is not because this phenomenon is encountered more frequently in Russia than elsewhere; rather quite the opposite. Since its very beginnings, Russia has been a multi-ethnic country. A multitude of peoples have lived here peacefully side by side for many centuries. We are talking about something else. One may confidently include among the challenges of the twenty-first century the spread not only of international terrorism and of trafficking in narcotic drugs and human beings but also of xenophobia, racism, ethnic extremism and ethnic discrimination. Xenophobia and ethnic extremism are increasingly becoming systemic factors defining the direction of social development not only in Russia but also in many European countries as well. In my view, the reasons for this phenomenon are connected:

— First, with the fact that, following the collapse of the Soviet Union, the borders of States that had been part of the so-called socialistic camp — borders that for decades had been hermetically sealed — were opened, resulting in a sharp

increase in migration flows. The authorities not only in Russia but also in many countries of the European Union were tangibly confronted with the problems of spontaneous migration, the disaffection of the ethnic majority in the face of this influx of migrants and an increase in the number of conflicts arising on ethnic grounds. In public opinion, social problems more and more frequently began to be not politicized (when responsibility is placed on the authorities) but ethnicized (when responsibility is shifted to “alien” ethnic communities);

- Second, with the fact that at a time when European countries and the United States of America are experiencing powerful industrial growth and when the processes of pan-European integration are being actively expanded, there has been an intensification of trends towards social stratification not only within society but also between different States.

What is typical of Russia can be observed in other countries as well. For that reason, one may validly seek to identify certain common problems and formulate recommendations, taking Russia’s experience as one of the countries in the OSCE area as a point of departure.

2. This report consists of two parts:

- (1) The fundamental legal principles for combating ethnic discrimination in Russia and their practical application;
- (2) Some recommendations for international co-operation in this area.

3. The bases for legally countering ethnic discrimination in Russia are the provisions of Article 19 of the Constitution of the Russian Federation. Part one of that Article establishes equality before the law and the courts; part two reads: “The State guarantees the equality of human and civil rights and freedoms regardless of sex, race, nationality, language, origin, property status and official position, place of residence, attitude towards religion, convictions, affiliation with public associations and other circumstances as well. Any limitation of civil rights on the basis of social, racial, national, linguistic or religious affiliation is prohibited.” However, beginning in 2002, Russia undertook a number of serious initiatives to combat various forms of ethnic discrimination at the legal level. Among these, the following should be mentioned:

- Federal Law No. 114-FZ of 25 July 2002 “On countering extremist activities”, which for almost ten years the State Duma refused to adopt even at its first reading. It was only in 2002 that, thanks to the fact that this law was reintroduced by the new President of Russia, Mr. Vladimir Putin, it was adopted;
- Amendments to the Criminal Code of the Russian Federation in 2002 and particularly in 2003;
- Amendments to the Code of Administrative Infractions.

The most important legislative innovations in the law “On countering extremist activities” include the following:

- (1) The concept of extremist activities (Article 1), which includes also the activities of religious associations or other organizations or media or physical persons in planning, organizing, preparing and carrying out actions aimed at inciting racial, ethnic or religious discord and also social discord, involving violence or calls for violence; the humiliation of national dignity; the propagandizing of the exclusivity, superiority or inferiority of citizens on the grounds of their attitude towards religion or their social, racial, ethnic, religious or linguistic affiliation; Nazi propaganda and the public demonstration of the outer trappings or symbols of Nazism or of outer trappings or symbols so similar to those of Nazism as to be confused with them; the financing of the aforementioned activities or the abetting in other ways of their commission, inter alia by making available for the commission of the aforementioned activities financial resources, real property, training and printed materials, logistic support, telephone, fax or other means of communication, information services and other material and technical facilities.

I might mention that there is always a political or ideological slant to contemporary xenophobia. The latter is closely linked with nationalism and patriotism. Moreover, contemporary nationalism is in effect an expression of xenophobia and a form of xenophobia.

It is clear that the feeling of belonging to a nation or an ethnic group along with a sense of national pride is normal and ineradicable. An exaggerated or distorted sense of national pride, which lies at the heart of nationalism, is something else altogether. Between what is national and what is nationalistic there is a very fine line, which is not fixed and is frequently imperceptible, and between the two there are a great many points where one can cross from one to the other. However, these are two qualitatively different phenomena. One cannot renounce the national, while the nationalistic is dangerous (including for those who espouse it). What is national is open and friendly; what is nationalistic is closed and aggressive. Patriotism differs fundamentally from nationalism. Patriotism is above all a love of one's homeland, of one's people. Nationalism is above all a hatred of another people's homeland and other people (or peoples). The language of patriotism is the language of love; the language of nationalism is the language of hostility.

However, patriotism is one of the preferred "cloaks" used to disguise nationalism. It is the favourite mask worn by nationalists. Theirs is rabid patriotism. It is not a manifestation of love of country, but a school of hatred — hatred for enemies, within and without, who, in the opinion of the nationalists, dream of nothing other than how Russia might be destroyed, dismembered or, at the very least, turned into a colony. "The only thing that can weld together a nation are enemies." This is how Umberto Eco described the psychology of nationalists. It is important to learn how to expose xenophobes, anti-Semites and nationalists posing as patriots. And here, we shall not be able to do without openness, an exchange of information and the establishment of unified legal standards to make it possible to distinguish these phenomena. We in Russia have become acutely aware of the need to establish a special independent expert centre. Possibly, the establishment of this kind of centre at the international level as well would also be justified.

- (2) The drawing up of a “federal list of extremist material”. This kind of list must be compiled up on the basis of court rulings classifying information material as extremist and, therefore, unsuitable for dissemination on the territory of the Russian Federation. A list of this kind could be useful in order to avoid having on every individual occasion to conduct a detailed analysis as to whether or not “*Mein Kampf*” or the forgery known as the “Catechism of the Jews” falls under the category of forbidden material.
- (3) The establishment, under a court order, of restrictions on access to government, municipal and certain other jobs for persons who have participated in the carrying out of extremist activities (Article 15).
- (4) The vesting of the Prosecutor General of the Russian Federation and of the relevant public prosecutors subordinate to him with the authority to issue warnings on the inadmissibility of extremist actions. In addition, a warning of this kind may serve as grounds for dissolving a public association or for terminating the operations of a media enterprise (Articles 7 and 8). It is true that the statistical data on the work of the Office of the Public Prosecutor does not yet contain a special section providing statistical information regarding warnings of this kind. But we are aware of a number of facts. For example, under the federal law of 10 October 2002 on 4 September 2002* the Omsk regional court agreed to hear a suit brought by the Office of the Public Prosecutor of the Omsk region and declared invalid the registration of the Omsk branch of the Russian National Unity party since, in the opinion of the court, its actions contravened the following laws: “On public organizations”, “On countering extremist activities” and “On perpetuating the memory of the victory of the Soviet people in the Great Patriotic War”.

On 2 October 2003, the Public Prosecutor of the Krasnodar region (kray) applied to the Krasnodar regional court to ban the activities of the religious group known as the Krasnodar Orthodox Slavonic Communion “VEK RA” (Vedic Culture of Russian Aryans), which was using symbols of particular solar signs (swastikas) similar to Nazi symbols or external trappings. Under a ruling of the Krasnodar regional court of 24 October 2003, this application was accepted for action by the court, and under a determination dated 18 November 2003 a comprehensive expert panel, including a group of specialists in the fields of linguistics, religion and history, was appointed. A final decision on this matter was not handed down only because on 8 April of this year the organization in question appealed to the Constitutional Court of the Russian Federation on the grounds that the federal law on countering extremist activities was unconstitutional. The Constitutional Court refused to hear this complaint, pointing out that the matter in question fell within the competence of the court of general jurisdiction (lower court). Accordingly, it is expected that this matter will be finally resolved in the very near future.

- (5) The obligation of public associations to disassociate themselves with extremist statements by members of their governing bodies, lest otherwise such statements be regarded as an indicator of extremist activity on the part of the organization as a whole (part 3, Article 15).

* Translator’s note: *sic* in the original.

- (6) A provision stipulating that, with the adoption of the law, the activities of a public or religious association may be stopped through an administrative procedure, albeit only until the court has considered the question of the association's dissolution (Article 10).
- (7) The introduction of accountability on the part of officials not only for statements of an extremist nature but also for their failure to take, in accordance with their powers, measures to put an end to extremist activities (Article 14). If even a very short time ago someone had told me that an official could be removed from his or her post in Russia for having made anti-Semitic comments, I would not have believed it. Today this is already a reality. In April of this year, the Deputy Prime Minister of the Republic of Gornii Altai was sacked for "conduct not in keeping with his official position" after, in an interview with one of the local newspapers, he referred to Prime Minister Fradkov as a non-Russian. The Office of the Public Prosecutor of the Republic began an inquiry into the incident to determine whether or not the Deputy Prime Minister's remarks contained an incitement to ethnic discord and arranged for a psycho-sociological expert examination at one of the leading institutions in Novosibirsk. Of course, it is not yet the case that everywhere in Russia public prosecutors are acting in such a principled way in applying the law. However, legal precedents already exist.

The Criminal Code of the Russian Federation contains a set of provisions aimed at combating ethnic discrimination:

- Article 63 (part 1, paragraph (e)) includes among the aggravating circumstances the commission of a crime for reasons of ethnic, racial or religious hatred or hostility, out of revenge for the lawful actions of others, or for the purpose of concealing another crime or abetting its commission.
- Article 105 (part 2, paragraph (l)) includes among the defining attributes of premeditated murder killing on the grounds of ethnic, racial or religious hatred or hostility or blood revenge. Murder on ethnic grounds is understood as referring to murder committed out of the murderer's conscious dislike of the nationality or race of the victim.

We should make it immediately clear, however, that accurate statistics on murders of this kind do not yet exist, since until recently Russian law enforcement agencies were not interested in having material on murders of this kind show up in their reports. However, convictions handed down under articles of the Criminal Code providing for criminal responsibility for crimes on ethnic grounds are no longer a rarity.

Most of the cases of murder on ethnic grounds have been recorded in recent years in St. Petersburg. Moscow is in second place and Volgograd in third. Murders on ethnic grounds have also been recorded in other Russian cities. If we look at the ethnic breakdown of those murdered, immigrants from the Caucasus (11 persons) are in first place, followed by natives of Central Asia (eight persons). Accordingly, the absolute majority of the victims were former Soviet citizens or their direct descendants. In addition, among the victims were Afghans (two persons), Koreans (two persons), Africans (two persons) and also Syrians, Indians and Nentsi (one each).

- (3) To Article 136 “violation of the equality of human and civil rights and freedoms” of Federal Law No. 162-FZ of 8 December 2003 there has been added the word “discrimination”. For the first time, the actual concept of “discrimination” has been included in the law and is gradually beginning to find its way into our legal system. The maximum punishment provided for under this article is two years’ imprisonment or, if the offence involved an abuse of official position, five years’ imprisonment.
- (4) Article 282 of the Criminal Code of the Russian Federation “incitement to ethnic, racial or religious hostility” has been amended by Federal Law No. 162-FZ of 8 December 2003.

The definition of the crime has not only been expanded by including such attributes as sex, language, origin and affiliation with a social group but, in addition, such behaviour as humiliating the dignity of the victim is now regarded as a criminal act for all the attributes listed in the article and not only for the attribute of ethnic affiliation. Of particular importance is the expansion of the “range” of punishments in the first part of the article and especially in its second part, which previously provided only for imprisonment. All of this is entirely proper, since what is involved is a non-violent crime, which in addition may involve very different degrees of danger to society. A sizeable fine may prove to be a more effective measure in the case of publishers of newspapers or brochures with a racist content than a prison sentence, which is almost always commuted to a suspended sentence.

According to figures released by the Office of the Prosecutor General of the Russian Federation, 17 crimes covered by Article 282 of the Criminal Code of the Russian Federation were recorded in 2000, with eight criminal cases referred to the courts. In 2001, the figures had already risen to 32 crimes on ethnic grounds, with six cases referred to the courts, and in 2002 74 crimes, with 19 cases referred to the courts. In 2003, of the 72 crimes recorded only 11 reached the courts in the form of criminal cases. Unfortunately, in criminal cases of this category the courts make wide use of the practice of imposing suspended sentences in place of real sentences. There are frequent cases where judges reclassify ethnically motivated crimes as hooliganism. I should add that it is true that so far nothing has been done to provide a comprehensive study of judicial practice for this category of offences, although this would be most desirable.

- (5) Article 280 “public calls for extremist activity” (in the version of Federal Law No. 112-FZ of 25 July 2002) provides for a maximum punishment of up to three years’ imprisonment.
- (6) Article 282¹ “organization of an extremist community” was first introduced by Federal Law No. 112-FZ of 25 July 2002 and provides for a maximum punishment of up to six years’ imprisonment.
- (7) Article 282² “organizing the activities of an extremist organization” was introduced by Federal Law No. 112-FZ of 25 July 2002 and provides for a maximum punishment of up to three years’ imprisonment.

The Russian Code on Administrative Infractions was supplemented in 2002 by two new articles providing, in particular, for administrative accountability for Nazi

propaganda and the public demonstration of the outer trappings and symbols of Nazism.

As you can see, a sufficient legal foundation has been put into place in Russia for combating ethnic discrimination.

Obviously, the adoption of a law does not mean an immediate change in judicial practice and, far less, in social and legal consciousness. However, what until quite recently seemed impossible in Russia is today becoming a reality. In April 2003, a group of skinheads from Surgut were sentenced to terms ranging from four to eight years for kicking and beating a Tajik. Some of those convicted were also sentenced to compulsory psycho-neurological treatment. A trial is under way involving skinheads from Volgograd who have also been accused of murder on ethnic grounds. The office of the Lefortovo Interregional Public Prosecutor is investigating the case of the murder of Mr. E. Mamedov. In spring 2003, the 18th counter-extremism bureau was set up under the department for combating organized crime in St. Petersburg.

The murder of the nine-year-old Tajik girl, Khursheda Sultanova, drew a sharp response from the authorities. The Governor of St. Petersburg, Ms. Valentina Matvienko, demanded that the murderers be immediately found and brought to justice in a show trial so as to demonstrate the authorities' hardline approach to extreme manifestations of ethnic intolerance. The case of the murder of Khursheda Sultanova is being personally followed by Mr. Rashid Nurgaliev, the Minister for Internal Affairs of the Russian Federation.

4. What needs to be done to provide a systemic answer to contemporary ethno-extremist challenges?

It is well known that ethnic phobias (xenophobia) are extremely persistent and may continue to exist in the mass consciousness long after the actual political causes that gave rise to them have disappeared. For example, many experts believe that even if it proves possible over time to find satisfactory solutions to the problems of Iraq (and, in Russia, of Chechnya), their repercussions may be extremely long-lasting.

What is more, xenophobia is uncontrollable in the sense that it cannot be directed at any one single ethnic community alone but, as a rule, extends to an entire spectrum of "alien peoples".

According to the data of the All-Russian Centre for the Study of Public Opinion, it is no accident that during the period from 2000 to 2002 there was an increase in the expression of negative opinion in Russia not only towards the Chechens but also towards half of the ethnic groups listed in the Centre's questionnaires. The same phenomenon has also been observed in the United States of America, particularly with regard to Arabs, following the events of September 11th. This is not yet a trend but it is already a danger.

There is no way of eliminating xenophobia altogether, but it can be reduced to a more or less acceptable and safe level. This requires:

- A special educational programme in schools. You have to begin with the schools. Children need to be taught to respect the customs and culture of all nations and not

only of one, even if it is the largest one. They need to learn that without dialogue and mutual understanding between peoples of different nationalities there can be no normal life but only war of all against all, and that it is in our interests to allow others to be different. The diversity of nations, cultures and religions and the uniqueness of each of them is not a reason for clashes and conflicts but a possibility for mutual enrichment through new experience and new knowledge;

- Unified standards or approaches as to what constitutes “xenophobia”, “anti-Semitism”, “nationalism”, “ethnic extremism” and “ethnic discrimination” and as to what are possible forms of their existence and of their recognition (“what is equally unacceptable for all”);
- A methodological system for creating an atmosphere of ethnic tolerance;
- An international “blacklist” of political figures who have been guilty of racist, xenophobic or anti-Semitic utterances or actions;
- An international register of media that carry material of this kind;
- Monitoring (with the involvement of non-governmental organizations) and periodic reports by governments on their efforts to combat xenophobia, anti-Semitism, nationalism, ethnic extremism and other forms of ethnic discrimination. The OSCE could forward these reports to rapporteurs appointed from among international experts for analysis and the preparation of a consolidated report. This consolidated report could in turn be discussed at the conferences regularly convened by the OSCE, similar to the one in which we are participating in today;
- The standardization of national laws providing for measures to combat xenophobia and ethnic discrimination.

The most important thing, however, is the demonstration by the authorities of a strict rejection of any manifestations of ethnic discrimination. I am certain that there is a direct link between ethnic tolerance within society and the behaviour of the authorities. The more intolerant the authorities are towards manifestations of anti-Semitism, racism or xenophobia, the more tolerant and restrained towards one another will be the representatives of different ethnic and religious groups.

One final point. During my ten years of work for the OSCE Parliamentary Assembly, I have on many occasions taken part in the discussion and adoption of resolutions on the subject of ethnic discrimination. A strange kind of trend has emerged: The more frequently this problem is discussed, the faster it grows. However, the events of September 11th have made one fact clear. When the international community really wants to solve a problem, it can act energetically, quickly and in concert and by working together it can succeed in combating the challenges of the twenty-first century.

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