

HDIM 2013

Working session 9: Freedom of assembly and association (specifically selected topic, continued)

Freedom of Association

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Working session 9 focused on the fundamental freedoms of assembly and association with focus on the issues of association.

Introducing the session, ODIHR Director Ambassador Janez Lenarčič underlined that these freedoms were vital for the functioning of a democratic society. He stressed the importance of implementation of the relevant OSCE commitments, including Vienna Document from 1989, in which OSCE participating States committed to “respect the rights of their citizens to contribute actively, individually or in association with others to the promotion and protection of fundamental rights and freedoms.” He mentioned that legislation and regulations in the area of freedom of association should create a favourable climate for the activity of NGOs and should not be restricting as it was in number of cases in recent years. He paid attention to the NGOs’ access to donor funding, including foreign funds and called on participating States to find alternative solutions to ensure transparency without chilling effect on freedom of association. He also informed that ODIHR together with the Venice Commission would begin to elaborate guidelines on Freedom of Association this year.

The session introducer Ms. Feray Salman, General Coordinator of the Human Rights Joint Platform (IHOP) focused on freedom of assembly and association (FAA) based on the experience of one country. She stressed that State laws and regulations on civil society organizations should enable such organizations to form and operate freely, express their views, communicate and convene and seek resources. She mentioned that anti-terrorist legislation restricted actions of civil society organizations in some countries. She also underlined the problems of prohibition on activities of unregistered organizations, expensive and complex registration processes, vague grounds for denial of registration, regulations for international organizations to establish local office. She paid special attention to the implementation of a dialogue between authorities and civil society, including NGO participation in consensus building and identifying solutions.

The session moderator Mr. Cyril Ritchie, President of the Expert Council on NGO Law mentioned that a small paper was available through the distribution services which outlined the two principal actions of the Conference of INGOs. He also stressed that the choice of a competent ministry to deal with NGO issues was very important. He pointed that it would be better if that would be a Ministry of Justice rather than the force agencies such as a Ministry of Interior.

18 speakers took the floor during the session. They highlighted the following: fundamental character of FAA in any democracy; using different mechanisms for increasing the role of civil society in the decision-making process, including referendums; existing problems in the registration of NGOs; restrictions for some of the groups, including national minorities and LGBT; lack of notions of national minorities in the legislation and the prohibition of the use of certain words, which create problems in the registration of NGOs; limitations in conducting peaceful assemblies; disproportional use of force by police; persecution of organizers of rallies, imprisonment of demonstrators.

They also drew attention to the supremacy of international law over national law, including ECtHR decisions, scope and reasonability of state regulation and control of NGOs' activity, problematic laws on FAA, prohibition of NGOs from keeping funds abroad.

Participants also stressed lengthy, bureaucratic or financially restrictive character of the registration process, some cases of imprisonment of activists for exercising their rights to assemble and associate, several unreasonable refusals to organize an assembly on the pretext of the risk of counter demonstration conducted by anti-fascist movements.

Two delegations presented their experience of improving the legislation regarding the issue of FAA. One delegation expressed a concern on the use of a black list of civil society and of trade union activists; it was also concerned about the case of legalization of a pedophile group. The same delegation underlined the necessity and importance of governmental support to NGOs, including national funding. Two delegations discussed the parallels and differences between internal political activity and political lobbying provided by some of NGOs and application of "foreign agent" laws in different countries.

10 delegations used their rights to reply.

Recommendations to the OSCE participating States:

- Ensure the implementation of OSCE commitments regarding the freedom of association;
- Implement the ECtHR decisions regarding FAA;
- Join international human rights conventions, including the Council of Europe framework Convention on the protection of national minorities, if they have not done it yet;
- Provide simple, fair, prompt, inexpensive and transparent registration requirements;
- Ensure the non-discriminatory character of registration of associations, including on the basis of race, ethnicity, religion or gender;
- Promote that national laws provide associations with possibility to seek, receive and manage financial support from domestic, foreign and international sources without unreasonable restrictions;
- Engage in a dialogue with civil society and support the NGOs' activity in the areas of social, cultural and human rights;
- Include civil society organizations in decision-making process;
- Introduce programmes on human rights education in all sectors;
- Ensure effective implementation of hate crime legislation, including establishment of a hotline for victims;
- Lift the territorial limit to the authorization provided by civil society organizations;
- Ensure that peaceful assemblies take place without undue interference;
- Take into account the difference between violent and peaceful demonstrators. If intervention is legitimate, restrict the use of force to those participants that are violent and train police officers.

Recommendations to the OSCE and its institutions:

- Pay attention to the issues of ensuring the freedom of assembly and associations for the protection of civil, political, social, economic and cultural rights, including in the context of the global financial crisis in the OSCE region;
- Develop consolidated guidelines for NGOs in the area of freedom of associations;
- Ensure exchange of best practices of participating States on this issue, e.g. model laws, public discussions on draft laws, holding of referendums and other methods.