



CIVIL SOCIETY RECOMMENDATIONS TO THE PARTICIPANTS OF THE OSCE MINISTERIAL COUNCIL MEETING IN DUBLIN, 6-7 DECEMBER 2012

On 5 December 2012 the Civic Solidarity Platform, a network of more than 50 human rights NGOs from throughout the OSCE region¹, has organized 2012 OSCE Parallel Civil Society Conference on the margins of the Dublin Ministerial Council meeting.

Building upon the tradition of the OSCE parallel civil society conferences in Astana in 2010 and Vilnius in 2011, the Civic Solidarity Platform developed a set of documents with civil society recommendations to the participants of the Ministerial Council meeting in Dublin on 6-7 December. These documents contain civil society analysis and recommendations on thematic priorities of the Irish OSCE Chairmanship (freedom of expression and racism and xenophobia), other alarming human dimension issues across the OSCE region, human dimensions issues in Ukraine in light of the country's upcoming OSCE Chairmanship, and civil society recommendations on reform of the OSCE human dimension process.

The documents are addressed to governments of the OSCE participating States and all OSCE institutions working in the human dimension, including the current and the upcoming Chairmanships, the Permanent Council, the Human Dimension Committee, ODIHR, the OSCE Secretariat, the OSCE Parliamentary Assembly, the OSCE High Commissioner on National Minorities, the OSCE Representative on Freedom of the Media, and the OSCE field missions, offices and centres.

Activists from Azerbaijan, Belarus, Belgium, Georgia, Ireland, Lithuania, Moldova, the Netherlands, Norway, Russia, Serbia, Sweden, Turkmenistan, Ukraine, the United Kingdom, and other countries have discussed the documents and formally adopted them at the OSCE Parallel Civil Society Conference on 5 December in Dublin. The documents will be submitted to the Irish Chairmanship for distribution among the participants of the Ministerial Council meeting.

We hope that this analysis and recommendations will be studied carefully, used during discussions in Dublin and in the work of OSCE thereafter, and look forward to reaction of all interested stakeholders. While some of our recommendations may be implemented immediately, others require consistent efforts during a longer period of time as they relate to systemic problems. Therefore, we would like to draw attention to these recommendations of Ukraine, Switzerland and Serbia as the upcoming OSCE Chairmanships. We express our commitment to continued active engagement of civil society in the work of OSCE in the spirit of the Helsinki Principles and our determination to contribute towards full realization of respect for human rights and fundamental freedoms, democracy and the rule of law.

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¹ The Civic Solidarity Platform was established in December 2011 in Vilnius on the eve of the OSCE Parallel Civil Society Conference which was held on the margins of the OSCE Ministerial Council meeting. For more information about the Civic Solidarity Platform please visit the Platform's web site civicsolidarity.org. The core group of the founders of the Platform had organized earlier the OSCE Parallel Civil Society Conference in Astana on the margins of the OSCE Summit in December 2010. For outcome documents of the OSCE Parallel Conferences in Astana and Vilnius please visit parallelosceconference.org.



Freedom of Expression Situation in Europe and Central Asia

EXECUTIVE SUMMARY

Ahead of the meeting of the OSCE Ministerial Council in Dublin the Civic Solidarity Platform highlights with concern that the right to freedom of expression has been, and continues to be, restricted in OSCE participating States throughout Europe and Central Asia in 2011-12.

Participating states have committed themselves through key international and European treaties to safeguard freedom of expression as a fundamental human right. However, many states continue to take actions that undermine this right or fail to take action when required to protect it. This document gives a number of examples where states are falling short of the OSCE's own human dimension commitments on free expression² and provides recommendations for addressing them.

The right to freedom of expression and the right to information, which are also incorporated in these commitments³, continue to be undermined in member states through: harassment and even killing of journalists and civil society activists, more often than not with impunity; politically motivated arrests; crackdowns on the rights to freedom of assembly and association; the lack of free and independent media; the continuing criminalization of defamation and other unnecessary interferences by states incompatible with a democratic society.

Key recommendations to OSCE participating States for addressing these problems include:

- Take effective measures to enable journalists, civic activists, and opposition figures to express themselves freely and to prevent the killing, disappearances of/attacks against journalists, media workers, and other civil society activists and when such attacks do take place, ensure effective investigation and swiftly bring the perpetrators to justice.
- Identify all instances where people have been arbitrarily arrested or detained – in particular for expressing alternative opinions – and ensure thorough and impartial investigations of the charges.

² For example: Concluding Document of Budapest, 6 December 1994 (hereafter referred to as Budapest 1994) (Decisions: VIII. The Human Dimension):

36. The participating States reaffirm that freedom of expression is a fundamental human right and a basic component of a democratic society.

³ Concluding Document of Vienna – The Third Follow-up meeting, Madrid, 6 September 1983 (hereafter referred to as Vienna 1983) (Co-operation in Humanitarian and Other Fields):

(34) (...) in accordance with the International Covenant on Civil and Political Rights, the Universal Declaration of Human Rights and their relevant international commitments concerning seeking, receiving and imparting information of all kinds, [the participating States] will ensure that individuals can freely choose their sources of information. In this context they will (...)

• allow individuals, institutions and organizations, while respecting intellectual property rights, including copyright, to obtain, possess, reproduce and distribute information material of all kinds.

To these ends they will remove any restrictions inconsistent with the abovementioned obligations and commitments.

- Promote the development of a pluralistic media environment and ensure that the right to freedom of opinion and expression applies as much online as offline.
- Decriminalise (or prevent the re-criminalisation of) defamation.
- Ensure that citizens, including those who belong to the LGBT community, are free to peacefully assemble and protest, without aggressive police intervention.
- Repeal provisions that criminalize the public denial of the crimes of genocide, to ensure that historical debate can take place without individuals being held criminally liable for such a denial.
- Take effective measures to protect the right to access information, and refrain from punishing people for legally obtaining and disseminating information of public interest.

Key recommendations to the OSCE institutions, including the OSCE Representative on Freedom of the Media, the Chairmanship, the Permanent Council, the Human Dimension Committee, ODIHR, and the OSCE Parliamentary Assembly are to thoroughly examine the situation with freedom of expression throughout the OSCE region; work with independent experts and civil society to develop guidelines on the implementation of OSCE commitments on freedom of expression; assist the participating States in drafting new legislation and amending existing legislation to make it compatible with OSCE commitments and international standards; and raise concerns about important cases of violation of freedom of expression.

EXAMPLES

The following are key examples of trends and incidences that members of the Civic Solidarity Platform believe have been damaging for freedom of expression in the past year, and legal provisions or developments that do not adequately protect, or in fact go against, this freedom.

1. Impunity in the Cases of Murdered Journalists and Civil Society Activists

Sadly, in both 2011 and 2012 more names were added to the list of journalists and civil society activists murdered in connection with their professional duties. The investigations into their killings are often marred by delays, obstruction and lack of political will to investigate potential links between these crimes and the victims' professional activities. It often takes years before suspects are identified and captured, if they are at all. Importantly, the continued impunity surrounding these murders has an on-going chilling effect on the media and civil society.

- On 15 December 2011, the journalist Khadimurad Kamalov was shot dead in Makhachkala, **Russia**⁴. Kamalov was a well-known journalist and civil activist, who in 2003 founded one of Dagestan's only independent newspapers – *Chernovnik*. From 2005-2006 he worked as the chief editor of the newspaper and remained its publisher until his death. *Chernovnik* regularly reported on corruption and violations of human rights by law enforcement officials in the region. Following his murder, family members and *Chernovnik* employees reported that Kamalov regularly received threats regarding his work. In fact, his name had been on a "death list" published anonymously in 2009, which included eight journalists who were targeted as revenge for a spate of attacks on police officers and peaceful citizens⁵.

⁴ Russia: Newspaper publisher killed in Dagestan on journalist remembrance day, Press Release, 16 December 2011, <http://www.article19.org/resources.php/resource/2904/en/russia:-newspaper-publisher-killed-in-dagestan-on-journalist-remembrance-day>

⁵ On 3 September 2009, hundreds of leaflets written on behalf of previously unheard of "Relatives of Policemen killed in Dagestan" were distributed throughout Makhachkala. The leaflets stated that "the relatives" would avenge those responsible for "the terrorist acts and killings of officers of law enforcement authorities and civil citizens" and accused human rights defenders, journalists and civil society representatives of supporting so-called Islamist insurgents and terrorists. The threats were made against 250 individuals; 16 people on the "execution list" were identified by name, among them eight journalists. These were the founder of Chernovnik newspaper, Gadzhimurad Kamalov, as well as journalists Nadira Isayeva, Artur Mamayev and Timur Mustafayev;

A witness recounted that Kamalov was shot 14 times by a masked gunman as he left the *Chernovnik* office on 15 December 2011. In May 2012, it was announced that the Investigative Committee of the Russian Prosecutor-General's Office would be taking over the investigation into Kamalov's murder, which had reportedly stalled. However, since then no tangible results have been realised.

- On 1 August 2012, Volodymyr Honcharenko, a well-known environmental activist who was critical of the **Ukrainian** authorities for their lack of accountability with regards to environmental safety and security, was stopped at a road block and severely beaten by a group of unidentified men⁶. He remained conscious long enough to explain what had happened, but later died in a hospital on 3 August. At his last appearance at a press conference on 27 July, Honcharenko warned of a potential "chemical time bomb" in the Saksaganskyi Region of Kryvyi Rih, where Honcharenko and his colleagues had discovered that 180 tons of chemically-contaminated and radioactive scrap metal was being moved around freely. While an investigation was opened into his death, no progress has been made. The Ministry of the Interior and the First Krivorozhskiy TV channel discredited the murder allegations by suggesting Honcharenko was involved in a car accident. Local authorities also immediately reported after his death that an investigation into the alleged illegal transportation and storage of toxic waste in Kryvyi Rih proved Honcharenko's claims to be unfounded.

2. Attacks and Harassment of Journalists and Civil Society

Journalists and civil society activists voicing their opinions or exercising their right to freedom of expression are often subject to harassment or attack. In some instances these attacks are perpetrated by the authorities whose duty it is to protect them⁷, but instead utilise methods such as the threat of arrest or investigation to put pressure on those they want to silence. Other perpetrators include organised crime groups or individuals acting in response to perceived insults to their religion or other specific issues. States continue to take limited action in investigating these cases of harassment or attacks and there is very little attempt to provide redress to victims. As in the examples below, an apparent connection with the harassment itself means that the authorities are often not working in the interests of the victim.

- Over the past year, numerous cases of violence against journalists and civic activists in **Kazakhstan** have resulted in serious injury. In April 2012, Lukpan Akhmedyarov, one of the country's most prominent journalists, who works for the weekly *Uralskaya nedelya*, survived a brutal attack by three men, during which he was stabbed and shot eight times⁸. The criminal investigation into the attack has not led to any results. Akhmedyarov is known for his criticism of the government and participation in protests and was later found guilty of insulting a local official in West Kazakhstan Oblast and ordered to pay the

Svobodnaya Respublika journalist Zaura Gaziyeva; publicist Zubair Zubairov; Kavkazskiy Uzel correspondent Ahmednabi Ahmednabiyev and Novoye Delo journalist Natalia Krainova. Subsequently, Dagestani President Mukhu Aliyev reportedly requested law enforcement officers to provide protection to those mentioned in the "execution list" but this protection has not ever been provided. A criminal case was opened and has been passed onto the third official since its opening. No suspects have been identified so far.

⁶ Ukraine: Government must condemn killing of ecologist as crime against freedom of expression, ARTICLE 19 Press Release, 14 August 2012, <http://www.article19.org/resources.php/resource/3410/en/ukraine:-government-must-condemn-killing-of-ecologist-as-crime-against-freedom-of-expression>

⁷ Budapest 1994 (*Decisions: VIII. The Human Dimension*): 37. *They condemn all attacks on and harassment of journalists and will endeavour to hold those directly responsible for such attacks and harassment accountable.*

Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, Moscow, 3 October 1991 (hereafter referred to as Moscow 1991): (34) *The participating States will adopt, where appropriate, all feasible measures to protect journalists engaged in dangerous professional missions, particularly in cases of armed conflict, and will co-operate to that effect. These measures will include tracing mission journalists, ascertaining their fate, providing appropriate assistance and facilitating their return to their families.*

⁸ Kazakhstan: Prominent journalist stabbed and shot in suspicious circumstances, ARTICLE 19 Press Release, 23 April 2012, <http://www.article19.org/resources.php/resource/3061/en/kazakhstan:-prominent-journalist-stabbed-and-shot-in-suspicious-circumstances>.

official five million tenges (\$32,800). In August 2012, Ularbek Baytalak⁹, was brutally attacked and left for dead covered with stones in a symbolic grave. Baytalak is an investigative journalist who works for newspapers *Dat* and *Tortinshi bilik* and takes a critical stance towards the current government.

- In Istanbul Airport, **Turkey**, on his return journey from Vilnius (Lithuania) to Baku (Azerbaijan) on 6 December 2011, Azerbaijani human rights lawyer Intigam Aliyev was detained for more than twenty-four hours at Ataturk airport, and beaten.¹⁰ The head of the airport police ordered Aliyev to be arrested after he refused to apologise to a customs officer who had been disrespectful and taken away Aliyev's passport and ticket. Aliyev was then kept in a closed room for four hours, during which time he was insulted and intimidated by police officers and refused access to a lawyer. In a medical check-up, police officers tried to silence Aliyev for asking the doctor to record the psychological pressure he had been subjected to during those four hours. While still in custody, Aliyev was then beaten and injured by police officers and threatened to convince him not to speak out. In fact, Aliyev contacted the Human Rights House Foundation who called for his release and demanded documents to be issued explaining the reasons for his deportation from Turkey on 7 December 2011. No such documents were issued meaning that Aliyev's complaint to the Turkish Prosecutor's Office about the deportation and beatings was rejected on grounds of lack of evidence, even though a medical examination carried out in Baku on 7 December following his release showed that Aliyev had marks on his face and body. In early July 2012, Aliyev was called to the Nasimi District Court and the Yasamal District Court in Azerbaijan where he was informed that criminal charges were brought against him by the Prosecutor's Office of Bakirkoy for obstructing the officer from performing his duties (art. 265.1 of the Criminal Code of the Republic of Turkey), insult (art. 106.1), and threats (art. 125.3a) on the basis of the complaints of immigration officers Servet Erkaraca, and Alaittin Sarikaya, and customs officer Huseyin Kunt. It later became known that the criminal case had been opened against Aliyev on 6 December 2011 when he was detained at the Istanbul Ataturk Airport. He and his lawyers in Turkey had not been informed about it and did not receive any written information about these charges until 6 July 2012.
- On 7 March 2012, Khadija Ismayilova, one of the few independent investigative journalists in **Azerbaijan**, received envelopes containing intimate photographs of herself engaged in sexual activity with her boyfriend along with a note that stated "Whore, behave or you will be defamed"¹¹. One week later, after Ismayilova had gone public with the blackmail attempt, a one minute film from which the photographs had been taken was posted on a fake news website making it appear to be linked to an opposition party. Ismayilova, who has investigated several cases of high-level corruption, reported the crime to the police and an investigation was opened. However, little progress was made with police focusing their questioning on Ismayilova's friends and family, about whom the authorities later released information. A significant lead the journalist uncovered herself regarding how the camera came to be placed in her home, including identifying an employee of the cable company who admits laying extra cables outside of her apartment, were seemingly ignored by investigators and no perpetrators have been identified.
- The Azerbaijani journalist Idrak Abbasov was brutally assaulted on 18 April 2012, while filming the demolition of a house by the State Oil Company of **Azerbaijan** (SOCAR) in the village of Sulutapa. SOCAR employees grabbed the journalist's camera and beat him unconscious¹². This happened just weeks after Idrak received the Guardian journalism prize at the Index on Censorship free expression awards for his brave journalistic reporting and for standing up to state intimidation in Azerbaijan.

⁹ Kazakhstan: Yet another attempt to kill an opposition journalist, Ularbek Baytalak, ARTICLE 19 Press Release, 14 August 2012, <http://www.article19.org/resources.php/resource/3416/en/kazakhstan:-yet-another-attempt-to-kill-an-opposition-journalist,-ularbek-baytalak>

¹⁰ <http://humanrightshouse.org/Articles/18413.html>.

¹¹ Azerbaijan: In Solidarity with Khadija Ismayilova, ARTICLE 19 Press Release, 15 March 2012, <http://www.article19.org/resources.php/resource/2994/en/azerbaijan:-in-solidarity-with-khadija-ismayilova>

¹² Azerbaijan: Index award-winning journalist Idrak Abbasov brutally beaten Index of Censorship Report, 18 April 2012 <http://www.indexoncensorship.org/2012/04/azerbaijan-idrak-abbasov-beaten/>

- At least seven journalists (Aliaksandr Barazenska, Sergei Grits, Vasil Fiadosenka, Tatsiana Ziankovich, Vasil Padabed, Dzmitry Rudakou and Aliaxey Akulau) were attacked and detained on 18 September 2012 in **Belarus**, while covering an opposition street performance in Minsk¹³. Sergei Grits, an officially accredited photographer of the Associated Press, received serious facial injuries during the attack. The authorities refused to launch criminal proceedings on the illegal attack on journalists. The police replied to Sergei Grits' appeal that "none of the policemen used force or physical violence against him".
- In **Uzbekistan** the online discussion forum arbut.com was closed down by its administrator in December 2011 out of concern for the safety of its users. Earlier a number of users who had actively participated in the discussion on threads devoted to politically charged issues were arrested by the security services.¹⁴

3. Politically motivated arrests of journalists and civil society activists

Critical journalists and outspoken activists remain a target across Europe and Central Asia and there have been unprecedented numbers of arrests over the last year. Investigations that cut too close to the bone or the desire of the authorities to suppress alternative viewpoints are often the real reason behind the arrests of journalists and activists who find themselves detained, often for long pre-trial detention periods, on trumped up charges ranging from terrorism to hooliganism to drugs and gun possession. In such instances the independence of the judiciary is of utmost concern, as this should form part of the safeguards against arbitrary detention and arrest.¹⁵

The impact of an arrest often goes beyond the personal situation of the journalist or activist, limiting the amount of information available on a certain issue or restricting the availability of alternative opinions. It also has an effect on the work of others working in the same profession as fear of being targeted may cause them to stop their activities or introduce self-censorship.

- **Turkey** continues to arrest journalists on politically motivated charges, in particular those working for pro-Kurdish media outlets. The first trial hearing of 44 journalists, 36 of whom have been in detention since December 2011, began on 10 September 2012, all of whom are currently on hunger strike. According to the Turkish government, these journalists are not on trial for their work in the press - instead, they face terrorism charges and are accused of backing the KCK (Kurdistan Communities Union), an illegal pan-Kurdish group. Yet, there are indications that the arrests and trial are politically driven, with statements by government officials such as the Minister of Interior, Idris Naim Sahin claiming that there was no difference between the articles written by these journalists and the bullets

¹³ Belarus's illusion of democracy Report, 25 September 2012 <http://www.indexonensorship.org/2012/09/belarus-lukashenko-election-censorship/>

¹⁴ Uzbekistan: Submission to the UN Universal Periodic Review 16th Session (October 2012), Initiative Group of Independent Human Rights Defenders of Uzbekistan, International Partnership for Human Rights and the Netherlands Helsinki Committee http://www.iphronline.org/uploads/9/0/2/7/9027585/eng_uzb_upr_submission_oct_2012.pdf

¹⁵ Vienna 1989 (*Questions Relating to Security in Europe: Principles*) (23) *The participating States will (23.1) - ensure that no one will be subjected to arbitrary arrest, detention or exile;*

Moscow 1991 (23.1) *The participating States will ensure that*

(i) no one will be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law;

(vii) effective measures will be adopted, if this has not already been done, to provide that law enforcement bodies do not take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess, or otherwise to incriminate himself, or to force him to testify against any other person;

(ix) a detained person or his counsel will have the right to make a request or complaint regarding his treatment, in particular when torture or other cruel, inhuman or degrading treatment has been applied, to the authorities responsible for the administration of the place of detention and to higher authorities, and when necessary, to appropriate authorities vested with reviewing or remedial power;

(x) such request or complaint will be promptly dealt with and replied to without undue delay; if the request or complaint is rejected or in case of inordinate delay, the complainant will be entitled to bring it before a judicial or other authority; neither the detained or imprisoned person nor any complainant will suffer prejudice for making a request or complaint;

fired by the Kurdistan Workers' Party (PKK). During a further trial hearing on 12 November, the court initially allowed the defendants to give their address in Kurdish unlike in previous hearings. However, as one defendant sought to raise the on-going hunger strike this was denied on the grounds that it was a political issue. When the journalist's lawyers protested this decision, the gendarmerie forced them to leave the room, leaving a near empty court room.¹⁶

- In **Kazakhstan**, since the Zhanaozen riots in December 2011, during which police opened fire on striking oil-workers killing at least 16 people, the Kazakh government has used the context of this violence to silence its critics. On 15 June 2012 theatre director Bolat Atabayev and public activist Zhanbolat Mamai, both of whom had presented critical views and publicly supported trade unions and labour rights, were arrested on accusation of inciting social discord¹⁷. Following his release, Atabayev reported that he had been severely beaten by Armanzhan Nurgaliyev, an officer of the National Security Committee (KNB)¹⁸. Although Mamai was also subsequently released¹⁹, the imprisonment of oil-workers and others linked to the protests in Zhanaozen, their arrests have instilled a climate of fear in Kazakh civil society and others to raise employment disputes and publicly demonstrate. This is exemplified by the case of the leader of Kazakh opposition party Alga!, Vladimir Kozlov, who was sentenced to 7.5 years imprisonment for inciting social hatred" and "calling for the violent overthrow of the constitutional order" as part of an organised crime group in the context of the December 2011 riots in Zhanaozen. Two other opposition politicians Akjanat Aminov and Serik Sapargali received conditional sentences of three years. Independent trial monitors considered the trial proceedings flawed and with a clear political bias. Aminov was a leading figure in the peaceful oil worker strike that preceded the violence in Zhanaozen in December 2011, whereas opposition members Kozlov and Sapargali publicly supported the striking workers and visited the region during the strike. According to the indictment, the three men used "radical" and "extremist" media including the newspapers Vzglyad, Golos Respubliki and Obchestvennaya Pozitsiya and satellite channel K+ in order to pursue their "extremist" plans. In late November, the Prosecutor's Office suspended and sued to close Respublika, Vzglyad, K+ and more than 20 related websites for their links with "extremist groups" (i.e. Kozlov). On November 28, court bailiffs raided the offices of Respublika and Vzglyad, confiscating documents and computer equipment.
- On 24 November 2011, the Minsk Peshamaiski District Court in **Belarus** sentenced human rights defender Ales Bialiatski to 4.5 years imprisonment and confiscation of all his properties, on charges of large scale tax evasion²⁰. Bialiatski is the deputy chair of the International Federation for Human Rights (FIDH) and the president of one of Belarus' best known human rights organisations, *Viasna* (Spring). Following years of repression and continuous clampdowns, *Viasna* is one of the only remaining organisations in Belarus openly speaking out about human rights violations within the country. In late November, the organization was evicted from its offices. Bialiatski's imprisonment should be seen as part of a broader campaign of the Belarusian authorities to persecute its critics, paralyse the organisations they work for and prevent them from performing their legitimate role as watchdogs – holding the government to account for its actions. Simultaneously state media and online resources such as *predateli.com* (a site about 'traitors of Belarus') publish defamatory information about Bialiatski and other civil society activists and politicians, some whom serve long-term prison sentences on politically motivated charges following the 19 December 2010 presidential elections.

¹⁶ KCK trial held in absentia of suspects, Hurriyet Daily News, <http://www.hurriyetdailynews.com/kck-trial-held-in-absentia-of-suspects.aspx?pageID=238&nID=34532&NewsCatID=338>

¹⁷ Kazakhstan: Activists arrested on charges of inciting hatred, ARTICLE 19 Press Release, 15 June 2012, <http://www.article19.org/resources.php/resource/3332/en/kazakhstan:-activists-arrested-on-charges-of-inciting-hatred>

¹⁸ Kazakhstan: "I wanted them to judge me after my death" says released theatre director Bolat Atabayev, Press Release 5 July 2012, <http://www.article19.org/resources.php/resource/3360/en/kazakhstan:-%E2%80%9Ci-wanted-them-to-judge-me-after-my-death%E2%80%9D-says-released-theatre-director-bolat-atabayev>

¹⁹ Kazakhstan: Public activist Zhanbolat Mamai released, ARTICLE 19 Update, 16 July 2012, <http://www.article19.org/resources.php/resource/3373/en/kazakhstan:-public-activist-zhanbolat-mamai-released>

²⁰ Belarus: Condemn the sentence for Ales Bialiatski, ARTICLE 19 Advocacy Letter, 24 November 2011, <http://www.article19.org/resources.php/resource/2874/en/belarus:-condemn-the-sentence-for-ales-bialiatski>

- Anton Suryapin, a young freelance photographer and journalism student, was arrested in **Belarus** on 13 July 2012 as a suspect in a criminal case on “illegal trespassing of the state border”²¹. Suryapin’s only “guilt” was posting pictures on his blog of teddy bears that had been dropped by parachute over Belarus by a Swedish public relations company in a protest against the absence of media freedom in the country. He was arrested and detained at the KGB detention centre in Minsk until 17 August, when he was released while still being accused in the criminal case.
- In **Russia**, the period 2011-2012 saw multiple violations of journalists’ rights due to their efforts to collect information and report on mass protests demanding fair elections. For example, on May 6, 2012, when the March of Millions was held in Moscow, and over the following two days, approximately 40 journalists and reporters were detained, many of them violently, which prevented the media from covering these events objectively²².
- In **Azerbaijan**, the number of journalists and human rights defenders in detention has grown steadily over the past year, both in the build up to and after the Eurovision Song Contest, which was hosted in Baku in May 2012. ARTICLE 19 currently counts seven journalists, human rights activists or bloggers imprisoned, six detained awaiting trial and two charged but not detained. In many cases there appears to be a clear political motivation for the arrests as an attempt to silence those who speak up on human rights issues, or publicly criticise the Azerbaijani authorities. Below are some examples of the many on-going cases, more information about which can be found at www.azerbaijanfreeXpression.org – the website of the International Partnership Group for Azerbaijan, a coalition of international NGOs coordinated by ARTICLE 19 – working to promote and protect freedom of expression in Azerbaijan.
 - On 12 June 2012, Mehman Huseynov, a videographer and photographer with the Institute for Reporters’ Freedom and Safety (IRFS) and Turan News Agency, was one of the first to be arrested post-Eurovision²³. Huseynov had also been very involved with the Sing for Democracy Campaign, which highlighted human rights abuses in Azerbaijan in the run-up to the song contest. On 21 May 2012, Huseynov was taking photos of an opposition protest in Baku in his professional capacity as a journalist when he got into an altercation with a police officer, who Huseynov says attacked and insulted him and broke his camera. He was charged with hooliganism, held in custody for nearly 24 hours until being released on 13 June 2012 with the provision that he must not leave Baku for two months while the investigation continues. He has since been called in for questioning, but the charges have not been dropped.
 - On 12 September 2012, Ilham Amiraslanov, an activist with Kur Civil Society and head of the Sarisu Regional Social Initiatives Public Union, was sentenced to two years in prison on gun possession charges. Amiraslanov had been arrested on 8 June 2012 by officials of the Ministry of Internal Affairs’ Anti-Organised Crime Unit. A letter written by Amiraslanov, circulated by the Azerbaijani media on 19 June 2012, described how he was tortured by the officials, who beat and kicked him, attempted to choke him, and threatened him with rape. He also reported that the officials planted a gun on him and forced him to sign a confession stating that the weapon was his. Officials later reportedly found additional weapons at his home. He was convicted after only two hearings in which the judge refused to hear testimony from the defendant’s witnesses. Amiraslanov’s colleague, Ogtay Gulaliyev, coordinator of the Kur Civil Society group, also faces imprisonment on charges of hooliganism although he was released from pre-trial detention on 13 June 2012.

²¹ Belarus declares war on teddy bears, Index on Censorship Article, 26 July 2012

<http://www.indexoncensorship.org/2012/07/belarus-declares-war-on-teddy-bears/>

²² Civil and Political Rights. Materials of Russian NGOs for the Universal Periodic Review of the Russian Federation in the United Nations Human Rights Council in 2013. Center for the Development of Democracy and Human Rights, 8 October 2012.

²³ Azerbaijan: Freedom of expression situation worsens in aftermath of Eurovision, ARTICLE 19 Statement, 25 June 2012, <http://www.article19.org/resources.php/resource/3346/en/azerbaijan:-freedom-of-expression-situation-worsens-in-aftermath-of-eurovision>

- The trial of Avaz Zeynalli, editor-in-chief of independent newspaper *Khural*, is currently underway in Baku. Zeynalli was accused by Gular Ahmadova (a Member of Parliament) of attempting to blackmail her and now faces charges of extortion and tax evasion. Having been in detention since October 2011, Zeynalli now faces up to 12 years' imprisonment.

4. Lack of free independent media

Restrictions on freedom of expression also include the lack of free independent media²⁴, which remains an issue throughout the OSCE region. While some states attempt to portray themselves as becoming progressively democratic, unless there is truly pluralistic and free media this progress will stall. Over recent years there has been a trend towards the use of modern technology as a means of censorship, particularly with the discriminatory awarding of digital frequency licenses and increasing proposals for curbs on Internet freedom.

- In **Azerbaijan**, the threat of closure of the opposition *Azadliq* newspaper demonstrates that the freedom of expression situation is deteriorating. The acting editor-in-chief Rahim Hajiyev was told that *Azadliq* must pay a debt of 25,000 AZN (approximately 20,000 GBP) by 3 September 2012, otherwise *Azadliq* would be forced to vacate its offices in a state-owned printing house. The newspaper cannot pay due to the inability of its distribution company to pay its larger debt to *Azadliq*. In addition to this recent pressure, *Azadliq* has been subjected to persistent state-interference over recent years: printing and distribution facilities are state-controlled, as is advertising, and the newspaper has been fined in numerous defamation cases. Also, at a protest in May 2012 prior to the Eurovision Song Contest, Islam Shixli (a journalist for *Azadliq*) was amongst the 70 people detained, even though he was wearing his yellow press officer jacket.
- In **Hungary**, the activities of the National Media Infocommunications Authority over the past year have demonstrated that media freedom and pluralism is under constant threat. In December 2011, the independent radio station *Klubrádió* was threatened with closure. *Klubrádió* uses interactive phone-in debates to create a wide platform for political discussion, so it is highly likely that the threat of closure was politically motivated. In March 2012, an appeal court in fact overturned the decision to hand *Klubrádió's* license to another station, but the Media Authority's licensing powers remain extensive. Earlier in 2011, the ruling coalition of Fidesz and the Christian Democratic People's Party centralized all media using the Electronic Communication Law and enabled the National Media and Telecommunication Authority (NMTA) to preside over the media regulatory system. Furthermore, new legislation was set up so that the head of the NMTA would remain in office for nine years, so a change of government coalition can bring no immediate change to the media monopoly.

5. Restrictions on Internet Freedom

The EU remains a trendsetter in terms of legislative developments as is particularly visible in relation to **internet freedom** with the ACTA proposal on intellectual property rights and freedom of the internet. With

²⁴ Document of the Sixth Meeting of the Ministerial Council, Copenhagen, 19-19 December 1997 (hereafter referred to as Copenhagen 1997) (*Annex 1: Permanent Council Decision No. 193, Mandate of the OSCE Representative on Freedom of the Media*) 1. *The participating States (...) recall in particular that freedom of expression is a fundamental and internationally recognized human right and a basic component of a democratic society and that free, independent and pluralistic media are essential to a free and open society and accountable systems of government.*

Istanbul Document, Istanbul, 19 November 1999 (hereafter named Istanbul 1999) (Charter for European Security: III. Our Common Response)

26. *We reaffirm the importance of independent media and the free flow of information as well as the public's access to information. We commit ourselves to take all necessary steps to ensure the basic conditions for free and independent media and unimpeded transborder and intra-State flow of information (...)*

the internet also playing an ever increasing role in social and political activism in authoritarian regimes, users remain particularly vulnerable in countries like Uzbekistan, Turkmenistan and Belarus.

- Ahead of the September 2012 elections several moderators of groups on the Russian version of Facebook, *Vkontakte*, were targeted by the State Security Committee (KGB) in **Belarus**, who beat at least two of them to receive passwords to their accounts. The police also arrested a number of moderators of online communities. They interrogated them, searched their apartments and confiscated their laptops. Pavel Yeutsikhiyev, a moderator of the “We’ve had enough of this Lukashenko” group on the Russian social network *Vkontakte* and Andrey Tkachov, another moderator, were then sentenced by Minsk’s Kastychnitski district court to five and seven days administrative detention respectively for “disturbing public order”. The government is also reported to have hacked into a number of online discussion forums to remove content and to libel forum administrators.
- The **United Kingdom’s** draft Communications Data Bill contains draconian proposals that will facilitate the blanket storage of information on British citizens’ emails, text messages and internet activity. Companies would have to collect data they do not currently retain, and the Home Secretary would have the power to request communications equipment manufacturers install hardware to make surveillance easier. Index on Censorship has raised concerns that the proposals are so broad they could be used for total population surveillance with the data stored “mined” by public agencies to build a picture of the behaviour of the population: this would be a gross invasion of privacy with a corresponding impact on freedom of expression²⁵. Such proposals are likely to breach both Article 10 and Article 8 of the European Convention on Human Rights.
- The possible implementation in the **United Kingdom** of default filtering of “adult content” on the Internet would compromise freedom of information in the country²⁶. In April 2012, following a cross-party parliamentary inquiry chaired by MP Claire Perry, a report was released that recommended that Internet Service Providers should be able to block access to content which they consider inappropriate for children. The Department of Education then launched a public consultation on parental Internet controls, examining the possible implementation of default blocking of ‘adult content’ on the internet. A coalition of NGO’s warned that the over-blocking of legitimate sites would erode all citizens’ choices while doing little to empower parents or ensure that children stay safe online.
- In **Switzerland**, authorities in January 2011 refused to allow a public billboard campaign by the Raeliens - a religious group based in Switzerland that believes mankind was created by extra-terrestrials. The advert displayed a large invitation to visit their website, yet the website contained no mention of “geniocracy” or human cloning (which the Swiss authorities deem immoral activities) – it only contained hyperlinks to information relating to these topics. In its submission to the Grand Chamber of the European Court of Human Rights, ARTICLE 19 called on the Court to recognise both the importance of the internet as a medium for sharing and disseminating ideas and the role hyperlinks play in facilitating this process. The Court should have regard to the fact that hyperlinks are primarily used for reference purposes and that users have a free choice as to whether or not to follow them.
- In the **United Kingdom** the conviction of Paul Chambers was only quashed on appeal on 27 July 2012 by a Divisional Court’s judgment that his Tweet in January 2010 in which he jokingly threatened to blow up Nottingham’s Robin Hood airport was not objectively “menacing” contrary to section 127 of the Communications Act 2003. In May 2010, Chambers was convicted in the Doncaster Magistrates Court and fined £385 and ordered to pay costs of £600. ARTICLE 19 made a written submission in the appeal concerning the right to freedom of expression in the context of jokes and mock threats. In its submission, ARTICLE 19 said that the freedom to express ideas and information, opinions and beliefs includes the freedom to do so using humour; it necessarily includes the freedom to joke, to make light

²⁵ Index on Censorship submission to the UK Parliament’s Joint Select Committee on the draft Defamation Bill:

<http://www.parliament.uk/documents/joint-committees/communications-data/Written%20evidence%20vol.pdf>

²⁶ UK: ‘Adult’ filtering by default violates free speech, Advocacy Letter, 06 September 2012,

<http://www.article19.org/resources.php/resource/3429/en/uk:-%27adult%27-filtering-by-default-violates-free-speech>

of serious things, to jest, to exaggerate, to trivialise, to satirise, parody and mock; and it does not matter that some people may believe a person's attempt at humour is unsuccessful²⁷.

- In February 2012 the **Russian** government's anti-drugs agency ordered the blocking of the website of a public health organization, the Andrey Rylkov Foundation, for discussing the addiction medicine methadone. The order states that the move is due to "placement of materials that propagandize (advertise) the use of drugs, information about distribution, purchasing of drugs and inciting the use of drugs." Methadone, which the World Health Organization classifies as an essential medicine for the treatment of opiate dependence, is illegal in Russia. International human rights and health organisations condemned the censoring of the organisation as unacceptable and evidence of the Russian authorities' on-going resistance to internationally accepted methods of HIV prevention and international standards for freedom of expression²⁸.
- There is significant evidence that the **Russian** government's new internet law — "amendments to the federal law on protecting children from information harmful to their health and development" is already having a chilling effect on online freedom of expression. The law stipulates Russian websites can be blocked without judicial decision with law enforcement authorities able to notify a host and/or telecom access provider that a website is blacklisted. Index on Censorship has raised concerns²⁹ that the vagueness of the definitions in the provisions, in particular the ability to block "extremist materials," could be used to take down critical public interest discussions or political material in breach of Article 19 of the UNDHR and Article 10 of the ECHR. What is unclear is whether providers will limit access to banned materials by blocking the exact webpage or the entire website or internet service that could host millions of web pages. Such IP-address blocking without a relevant court decision may affect many legitimate internet sources. The problem of implementing this law rests not only in the subjective nature of decision making outside the normal judicial process, but also in the fact that if banned materials appear as comments to otherwise legitimate content (in the absence of post-moderation it is possible to post such comments without the knowledge of the website owners), practically every website runs the risk of being blocked. Andrei Soldatov has outlined for Index on Censorship a number of recent cases including: the blocking of the Jehovah's Witnesses website (jw.org) on 28 September by a district court, the Prosecutor General Office's instructions to Internet Service Providers to block the film "Innocence of Muslims" prior to the new law being enacted while the Prosecutor's Office of Kungur in the Perm region has ordered the blocking of content from schools³⁰. Since the "black list" of banned sites came into force on November 1, 2012, several popular internet resources were shut down by the authorities without notifying the owners even though in each case only a single web-page was a matter of concern. Affected sites including Lurkmore, a popular a Wikipedia-like compendium of articles on Internet culture and memes³¹, and Librusek, a popular online library³².
- Another serious cause for concern regarding unwarranted restrictions on the freedom of speech and information in Russia is the State Duma's discussion of a legislative initiative by the ruling United Russia Party that proposes to prohibit anonymity of internet users and introduces administrative and criminal punishment for any crimes committed with the help of the internet. This initiative runs counter to the position of the Council of Europe on similar issues clearly articulated in the recent recommendations of its Committee of Ministers, adopted on April 4, 2012 ("Recommendation of the Committee of Ministers to member States on the protection of human rights with regard to search

²⁷ England and Wales: Court overturns absurd conviction for Twitter joke, ARTICLE 19 Press Release, 27 July 2012

www.article19.org/resources.php/resource/3394/en/england-and-wales:-court-overturns-absurd-conviction-for-twitter-joke

²⁸ Russia: Government Shuts HIV-Prevention Group's Website, ARTICLE 19 Press Release, 08 February 2012,

<http://www.article19.org/resources.php/resource/2959/en/russia:-government-shuts-hiv-prevention-group%E2%80%99s-website>

²⁹ Putin's grip on the internet, 29 August 2012, <http://uncut.indexoncensorship.org/2012/08/putins-russia-internet-censorship/>

³⁰ What does Russia censor?, 19 October 2012, <http://uncut.indexoncensorship.org/2012/10/russia-web-censorship-report/>

³¹ Lurkmore or Lurkless? The Russian Internet Blacklist In Action. Global Voices, 14 November 2012,

<http://globalvoicesonline.org/2012/11/14/lurkmore-or-lurkless-the-russian-internet-blacklist-in-action/>

³² File hosting service Rutracker and online library Librusek were blocked as websites, on which dangerous materials were found.

ITAR-TASS News Agency, 13 November 2012, <http://www.itar-tass.com/en/c32/570736.html>

engines” and “Recommendation of the Committee of Ministers to member States on the protection of human rights with regard to social networking services”)³³.

6. Legislation restricting the right to freedom of expression

In the last few years there have been extensive legislative reforms throughout the OSCE region and its participating states which had an impact on freedom of expression. As a rule this trend materialises in the form of separate legislation or amendments to existing legislation, which has resulted in substantial restrictions to free speech, the right to access to information and distribution of information. In a number of countries this legislation clearly does not comply with existing OSCE commitments and standards.

- Recognized as one of the most restrictive regimes, legislative initiatives in **Turkmenistan** are not based on any legislative procedures, as mere comments by President Berdymukhamedov in itself, considered ‘verbal law’ and duly implemented by those government institutions involved. Fear for dissidents’ safety increased in particular after President Berdymukhamedov called on the Ministry of National Security (MNS) in September 2010, to fight those who, according to the government website, “defame our democratic law based secular state and try to destroy the unity and solidarity of our society.” At the same time a 2003 decree, criminalising ‘attempts to sow doubts in peoples’ mind about internal and external presidential policies’ remains in place.

7. Criminal Defamation

Despite calls for defamation to be de-criminalised across Europe, it remains a criminal offense in many countries and 2012 has seen a trend to re-criminalise it in countries that had previously removed it. Civic Solidarity considers the criminalisation of defamation inherently harsh and having a disproportionately chilling effect on free expression.

The potential for abuse, particularly amongst the authorities, remains potent and individuals face the constant threat of being arrested, held in pre-trial detention, subjected to expensive criminal trials, and then saddled with a criminal record, fines and imprisonment, and the social stigma associated with this.

- On 17 September 2012, the OSCE Representative on Freedom of the Media, Dunja Mijatović, called for the decriminalization of defamation in **Poland** following the criminal conviction of Robert Frycz, editor of the Antykomor.pl website. Despite international recognition that people should not be criminally prosecuted for criticising public officials in a modern democracy, the Polish Constitutional Court upheld Article 135 of the Criminal Code, sentencing Frycz to ten months of community service for publishing satirical materials about President Komorowski.
- In **Italy** a court decision in June 2012 resulted in prison sentences on defamation charges for journalist Orfeo Donatini and the former director of the newspaper *Alto Adige*, Tiziano Marson.³⁴ An earlier defamation case in May 2011 of journalists Walter Nerone and Claudio Lattanzio and the former director of *Il Centro of Pescara*, Luigi Vicinanza, had also highlighted the need for serious reform of the country’s criminal defamation legislation. The Mayor of Sulmona claimed that an article published in *Il Centro of Pescara* in 2007 was untrue and defamatory. The article in question stated that the Italian financial police had initiated an investigation of the Mayor concerning a dispute with a local entrepreneur. The accused journalists argued that they were reporting on an investigation, not accusing the mayor of committing a crime. However, on 10 May 2011 Nerone and Lattanzio were sentenced to one-year imprisonment and ordered to pay €12,000 for compensation and legal costs.

³³ Civil and Political Rights. Materials of Russian NGOs for the Universal Periodic Review of the Russian Federation in the United Nations Human Rights Council in 2013. Center for the Development of Democracy and Human Rights, 8 October 2012.

³⁴ Italy: Prison sentences for defamation violate freedom of expression, ARTICLE 19 Statement, 08 August 2012, <http://www.article19.org/resources.php/resource/3403/en/italy:-prison-sentences-for-defamation-violate-freedom-of-expression>

- In December 2011, former President Dmitry Medvedev downgraded defamation from a criminal to an administrative offence by removing it from the Criminal Code. This was a minimal step, insofar as defamation remained a punishable offense in **Russia** – thus inhibiting the right to freedom of expression – yet it reduced the fines to 3,000 rubles and removed the threat of prison sentences. However, a recent legislative move has reversed the changes instigated under Medvedev’s influence: on July 30, 2012, the President signed into law amendments that again make defamation a criminal offense . Although imprisonment is no longer on the list of punishments for defamation, financial sanctions have been beefed up significantly: fines have increased from 180,000 rubles to the astronomical sum of 5,000,000 rubles, which is ruinous not only for rank-and-file citizens, but also for many media outlets³⁵ .
- In **Ukraine** a draft bill which would make defamation a criminal rather than civil offence passed its first reading in the Ukrainian parliament on 18 September 2012. Subsequently the bill was withdrawn, but if it had passed, defamation offences would have carried much higher penalties including up to five years in prison. Dunja Mijatovic, OSCE Representative on Freedom of the Media, urged Ukrainian lawmakers to reject the proposed bill stating, “Criminalizing speech in a modern democracy means stifling debate and protecting public officials from criticism, and can only lead to self-censorship on the part of the media.”³⁶ In her statement, Mijatovic noted that Ukraine was among the first countries in the OSCE region to decriminalize defamation in 2001.
- In **Serbia**, in October 2012 the governmental working group on amendments to the criminal code announced that it was dropping plans to decriminalize libel and slander. Journalists’ associations protested this move away from earlier announcements that decriminalization would be introduced. Journalist Laszlo Sas had started serving a 150 days prison sentence in July 2012 on a conviction for insulting a politician.
- In **Belarus** a journalist Andrzej Poczobut faces criminal charges for libel against the president of the country. Investigators found the supposed libel in more than 20 articles written by the reporter³⁷. Poczobut also has a suspended sentence for exactly the same crime – libel against the president, which he received a year ago. As Index on Censorship has reported, a guilty verdict in the new case will automatically mean suspension of the previous sentence being “delayed” – and Poczobut will go to prison for up to five years. This example shows how libel laws are used to silence critical voices in Belarus. There are still six articles in the Criminal Code that provide for criminal liability for libel and defamation in the country.
- In the **United Kingdom**, the government is taking seriously the civil society campaign to reform the country’s archaic libel laws, where costs in defamation cases are in excess of 100 times the European average and defences for journalists, NGOs, and scientists are limited. The government’s Defamation Bill is a significant improvement on the current common law, but has (to date) failed to provide a strong “public interest” defence.

8. Unnecessary Interference Incompatible with Democratic Society

While much of the focus has been on the negative developments in Eastern Europe and Central Asia, Western European countries have also taken actions in the last year that Civic Solidarity perceives to be incompatible with democratic society.

³⁵ Civil and Political Rights. Materials of Russian NGOs for the Universal Periodic Review of the Russian Federation in the United Nations Human Rights Council in 2013. Center for the Development of Democracy and Human Rights, 8 October 2012.

³⁶ Ukraine plans to re-criminalize defamation a ‘setback’, warns OSCE media freedom representative, OSCE Press Release, 19 September 2012, <http://www.osce.org/fom/93840>

³⁷ Guilty of calling Europe’s last dictator a dictator, Index on Censorship Article, 25 October 2012 <http://uncut.indexoncensorship.org/2012/10/guilty-of-calling-europes-last-dictator-a-dictator/>

- In February 2012, ARTICLE 19 welcomed the decision of the Constitutional Court in **France** that a law criminalising public denial of crimes of genocide would be unconstitutional and incompatible with the Constitution's guarantees to the right to freedom of expression³⁸. A genocide-denial law would hold an individual criminally liable for denials of historical events, yet there is no need to suppress historical debate in a democratic society - therefore such a law would violate both the International Covenant on Civil and Political Rights and the European Convention on Human Rights. Yet, on 7 July 2012 the current French President Francois Hollande announced his plans to develop a new law that would punish any denial that the 1915-16 killing of Armenians was genocide.
- In **Greece**, National Day saw the arrest of investigative journalist Kostas Vaxevanis, whose "Hot Doc" magazine published a leaked list (nicknamed the "Lagarde list") of over 2,000 names of Greeks with bank accounts in Switzerland. Although Vaxevanis was eventually cleared after an international outcry, including an appeal by NGOs including Index on Censorship³⁹, another journalist Spiros Karatzaferis was later arrested on an outstanding criminal libel charge after he claimed he would publish classified documents relating to Greece's financial bailout.⁴⁰

Recommendations to the OSCE Participating States

1. Take effective measures to enable journalists, civic activists, and opposition figures to express themselves freely and to prevent the killing, disappearances of, and attacks against journalists, media workers, and other civil society activists. When such acts have occurred/do occur:
 - (i) Carry out thorough and impartial investigations with a view to bringing the perpetrators to justice;
 - (ii) Make public new developments/information related to these impartial investigations.
2. Thoroughly investigate, with a view to providing redress to the victims, all instances in which the journalists and civil society figures may have been targeted for expressing opinions and information freely, and take appropriate measures to prevent such pressure, harassment, threats of arrest, or attacks taking place in the first instance.
3. Identify all instances where people have been arbitrarily arrested or detained – in particular for expressing alternative opinions – and ensure that an independent judiciary thoroughly and impartially investigates the charges brought against them, with a view to exposing and dropping all charges that have been fabricated on politically-motivated grounds. Ensure that these investigations are also carried out efficiently, in order to avoid unnecessarily long periods of pre-trial detention.
4. Promote the development of a pluralistic media environment in which all media, including new technologies and the Internet, can operate freely in the interest of the public, independently of government interests, and without censorship or threats that could lead to self-censorship. Ensure that:
 - (i) State media companies do not compete unfairly with private media companies;
 - (ii) The allocation of digital frequency licenses is carried out impartially;
 - (iii) The content of foreign media channels is not changed or blocked; reverse all bans that prohibit foreign entities from broadcasting on national frequencies.

³⁸ France: Genocide-denial law declared unconstitutional, ARTICLE 19 Press Release, 29 February 2012, <http://www.article19.org/resources.php/resource/2976/en/france:-genocide-denial-law-declared-unconstitutional>

³⁹ Greece: Free speech faces abyss, Index on Censorship, 31 October 2012, <http://www.indexoncensorship.org/2012/10/censorship-greece-press-freedom/>

⁴⁰ Greece: Another journalist arrested as crackdown continues, Index on Censorship, 31 October 2012, <http://www.indexoncensorship.org/2012/10/greece-journalist-arrested/>

5. Ensure that the right to freedom of opinion and expression applies as much online as offline and ensure that any limits on access, blocking, filtering, and takedowns of internet materials are judicially authorized and based on international freedom of expression exemptions.
6. Take effective measures to ensure that legislation with overly broad definitions, such as legislation governing protests, non-commercial organisations, internet and extremism is amended in line with international standards and take immediate steps to ensure that nobody is detained or harassed for the peaceful expression of ideas.
7. Decriminalise (or prevent the re-criminalisation of) defamation. In cases where charges of defamation are levied ensure that:
 - (i) Trials are carried out efficiently, to avoid unduly long pre-trial detentions;
 - (ii) Investigations are carried out impartially, making sure that the judges are trained on international standards of defamation and that they take into account the importance of freedom of expression and the potential negative effect that the charge of criminal defamation could have.
8. Repeal all laws and draft laws which compromise the rights of the LGBT community to freely assemble, freely protest, and openly express their opinions. As part of this, amend legislation which uses overly broad definitions of “propaganda” to restrict the freedom to promote, express, and protect LGBT rights. Prioritise the prevention of discrimination, harassment, and attacks against this community, and make sure that investigations are carried out thoroughly, efficiently, and impartially when such prevention has not been possible.
9. Repeal provisions criminalising the public denial of the crime of genocide or mention of the word genocide to ensure that historical debate can take place without individuals being held criminally liable.
10. Take effective measures to protect the right of access to information, and refrain from punishing people for legally obtaining and disseminating information of public interest.

Recommendations to the OSCE Institutions

We recommend that the OSCE institutions, including the OSCE Representative on Freedom of the Media, the Chairmanship, the Permanent Council, the Human Dimension Committee, ODIHR, and the OSCE Parliamentary Assembly, take the following steps:

1. Focus on these areas of concern by continuing to thoroughly examine the situation with freedom of expression throughout the OSCE region and in particular participating States.
2. Work with independent experts and civil society to develop guidelines on the implementation of OSCE commitments on freedom of expression.
3. Strengthen the assistance to the participating States in drafting new legislation and amending existing legislation to make it compatible with OSCE commitments and international standards.
4. Raise concerns about important cases of violations of freedom of expression through communications with governments of participating States, at human dimension events and at meetings of the Permanent Council.



Racism and Xenophobia in the OSCE Region

In recent years much has been said and written about the rise of racism and xenophobia in Europe and the OSCE region. In addition to this, we see a rise of various forms of intolerance, notably homophobia. These phenomena are closely inter-related, as they are equally used by the extreme far-right groups and populist politicians.

Within this overall pattern we see several trends that need to be addressed through different approaches.

The first trend is the rise of political parties and movements spreading racism and xenophobia.

Racist attitudes, expression and even violence affect societies at every level. Populist parties blame minority groups for the complex social and economic problems societies are facing. This spreads a culture of hate and fear at the local community level. And sometimes it goes far beyond that. The Breivik case in Norway and the serial murders of Turkish Germans in Germany by a far-right group are both well known.

Golden Dawn, the Greek neo-Nazi party, attacks migrants and other minority groups on the street with vigilantes seeking to rid Greece of what their party leader calls “the scourge of the country” through vandalism, terror and violence. This party’s members of Parliament are openly involved in these acts. The link between economic recession, the marginalisation of minority groups and the rise of far-right populist parties is an alarming trend in Europe, one which fuels the “us versus them” mentality that in turn feeds xenophobia, racism, Islamophobia and other forms of religious intolerance.

Public authorities need to speak out strongly and immediately against these developments.

Another trend is the lack of appropriate response to racist incidents.

An act of violence can be treated as such. But when there is a racist motive it calls for a different approach. Police officers often lack knowledge about what discrimination is or how to deal with it under the administrative procedures of their own organisation. Authorities and police have difficulties finding answers to hate crimes and sometimes simply fail or are unwilling to recognize a racist context or motive.

Anti-discrimination organisations and other NGOs report frequently that they only see the tip of the iceberg, if that. Authorities across Europe find it difficult to collect reliable and comparable statistics. The systems and criteria vary from state to state, and the data (and its availability) ranges from basic to comprehensive details. This is problematic, as trends and developments could be overlooked because of the lack of data, and it makes it difficult to monitor and find fitting policy responses.

Many NGOs that are active in hate crime monitoring also run services for victims of hate crime, such as counseling and legal assistance. Working within affected communities and at grassroots level, NGOs are well positioned to serve as bridges between victims, police and community leaders.

Victims often feel more comfortable reporting hate crimes to NGOs rather than to the police, and then reporting to police if a NGO representative is present if they choose to take that step. The trust placed in NGOs and the access they have to data may be the key to strengthening monitoring, advocacy and the

development of common standards and policies across member states.

At present, NGOs working in the field lack sufficient support and opportunities to share data and expertise with intergovernmental organisations. In many countries, such as Russia and other post-Soviet countries, there is a lack of transparency in the work of state authorities. This makes cooperation and the establishment of shared platforms difficult.

The state authorities and NGOs actually have complementary interests. Authorities have an interest in gaining a better understanding of racism and racist trends in society. NGOs have an interest in a better trained police force that is able to provide effective responses. And they have an interest in seeing fitting policies implemented. In this situation, additional cooperation and better use of the mutual possibilities of national/international bodies and NGOs may lead to better results.

A third trend is the mainstreaming of racism and xenophobia.

The general tone of the debate about minorities, migrants, racism, Islamophobia, etc. has changed in the last decade. It is more out-spoken and less prudent. What used to be extremist has become mainstream. To counter this development requires a different policy than the ones above. It requires for an anti-racism approach that fits society in general. Its aim should be to stop further fuelling of extremist developments. NGOs have developed anti-racism education that is incorporated within a human rights framework. The general public should be reached by this education.

The fourth trend is the lack of effective models of inclusion of migrants.

Though many migrants rise in the ranks of society, there is still a lack of positive migrant role models. Still the best way to promote inclusion is the example of the migrant practitioner, the migrant lawyer, the migrant teacher. They are there but hardly seen or heard. They could be the best voices against racism and xenophobia.

A fifth trend is the rising level of discrimination against LGBT people.

We are concerned about the growth of violence against LGBT people and restrictions of the freedom of expression of the LGBT community.

A number of violent acts towards peaceful demonstrations, gay clubs and activists is constantly increasing in many countries, especially in Russia, Ukraine and Serbia. Court hearings and investigations of these acts are not taking into account homophobia and transphobia as a motivation.

Actions taken by the legislative bodies of Russia and Ukraine to adopt laws banning “propaganda of homosexuality” will result in violations of the freedom of information and the exclusion of the LGBT community from public discussions of issues vital to LGBT people. In nine Russian regions where such laws have already been adopted, they are used to target human rights defenders and restrict their rights to freedom of speech, assembly and association.

Homophobic and transphobic bullying of LGBT young people in schools is of particular concern. Such bullying can seriously affect young people's education and health, and can be a causal factor in self-harm and attempted suicide. Such bullying is often compounded by lack of support from teachers and non-inclusive school curriculum.

Recommendations

To the OSCE participating States

- Publicly condemn and take action against political parties and movements inciting discrimination, hate and violence.
- Investigate and document racially motivated attacks and incidents.
- Systematically track and prepare in advance for activities initiated by far-right groups.
- Establish cooperation between law enforcement and local authorities for the removal and cleaning of hate graffiti and symbols in public places.
- Establish and maintain effective systems for collecting and sharing data on hate crime for the purpose of developing counterstrategies.
- Train police and public bodies to investigate hate crimes and intervene to mitigate their destructive effects on victim groups and the wider society, including by creating dedicated teams to work in this field.
- Train police and public authorities to deal respectfully with victims and build positive trusting relationships by providing counseling and support.
- Establish platforms and mechanisms for cooperation between intergovernmental, state and civil society organisations.
- Provide more support for NGOs by allocating resources and creating opportunities to share expertise.
- Facilitate cooperation between NGOs, community groups, legal bodies, police and policy-makers.
- Provide support, capacity building and leadership training for victim groups.
- Develop inclusion and integration programmes for migrant and minority groups, prioritising their participation in such programmes.
- Train housing, education, employment and healthcare providers to identify discriminatory practices and introduce antidiscrimination measures.
- Mainstream racism and xenophobia prevention into youth work and youth policy.
- Reposition antidiscrimination education within a human rights framework, addressing the root causes of racism and xenophobia.
- Publicly reject and condemn hate crimes and speech against LGBT.
- Adopt measures for the effective and timely investigation of hate crimes against LGBT people and examine motives of transphobia and homophobia
- Adopt laws banning so-called "propaganda of homosexuality" and take them off the books in case they already have been adopted.
- Take actions to provide for safe education for LGBT students and combat homophobic and transphobic bullying in schools.

To the OSCE institutions

1. Strengthen cooperation with other relevant intergovernmental bodies addressing the issues of racism and xenophobia (EU Fundamental Rights Agency, European Commission against Racism and Intolerance, etc.).
2. Open up and democratise agenda-setting to allow NGOs more influence by building stronger

communication channels.

3. Combine the efforts of the relevant OSCE institutions (including Representative on Freedom of the Media and ODIHR Tolerance and Non-Discrimination Department) in discussing the role of the media in the discourse about minorities and exploring ways of preventing hate speech.

To the upcoming Ukrainian Chairmanship

1. Initiate, jointly with ODIHR, research and develop a body of good practice for innovative informal anti-racist and anti-discrimination education, with an effective cross-disciplinary approach.



Alarming Trends with Fundamental Human Rights in the OSCE Region

In 2012 we have seen a number of negative developments and trends across the OSCE region in implementation of the OSCE commitments in the sphere of fundamental freedoms. Civil society organizations' ability to operate through exercise of the fundamental **freedoms of assembly, association and expression** (freedoms that in fact constitute the very modes of existence for civil society initiatives) have been severely limited in a number of countries through both legislative measures and administrative practice. **Human rights defenders** have been threatened and attacked. **Torture** has continued to be widespread. Lack of independence of the judiciary has limited the remedies available to people for human rights violations and to counter authoritarian tendencies of the executive power.

Against the background of these negative developments, we are particularly alarmed by the fact that some participating States have repeatedly claimed that expression of concern and criticism of problems in implementation of human dimension commitments in individual countries constitutes “interference in domestic affairs” and an erosion of sovereignty. However, we insist that human dimension issues are, according to the Helsinki principles solemnly reconfirmed by participating States as recently as 2010, are “a matter of direct and legitimate concern of other participating States”⁴¹. We are equally disturbed by the increasing use by participating States of security arguments as a justification for legal restrictions of fundamental rights and freedoms and an excuse for human rights violations.

Freedom of Assembly

Freedom of assembly is increasingly violated and unjustifiably restricted across the OSCE region, East and West. Public outrage about and mass protests against lack of government accountability, corruption, manipulated elections, abuse in the law enforcement system, and cuts in social obligations in the course of implementing austerity measures are confronted with new legal restrictions on freedom of assembly, denial of this right in practice and violence by the police in many OSCE participating States. Unfair and excessive restrictions on freedom of assembly undercut citizens' ability to express their opinions, go against OSCE commitments and have a worrying effect on democracy.

2012 has been a year of mass protests, starting in the shadow of Zhanaozen, Kazakhstan, then going from the “Arab spring” to mass demonstrations in Russia against electoral fraud. The changing form and style of assemblies and the globalization of protest has led to the rise of a number of new challenges in this sphere.

Major problems include:

- legislation that is not in accord with international human rights standards and governments' lack of will to change the situation;
- authorities abusing legally required notification procedures for assemblies, turning them into de-facto authorization procedures, in particular by denying permission to hold assemblies within the “sight and sound” of the target audience and sending the organizers to unpopulated remote areas;

⁴¹ 2010 Astana Commemorative Declaration, <http://www.osce.org/cio/74985>

- banning of assemblies of “unpopular” minority groups such as LGBT on security grounds or to “protect public morals”;
- use of preventative detention of assembly organizers on the eve of the demonstrations to prevent them from taking place;
- transfer of state responsibilities to organizers or requirements that organizers carry the burden of payment for law enforcement, medical, cleanup and other services;
- disproportionate use of force by law enforcement agencies to disperse peaceful assemblies;
- administrative and criminal prosecution (arrest and enormous fines) of organizers and participants for alleged violations of the procedures for organizing and carrying out assemblies;
- absence of clear standards for the legal use of force by law enforcement agencies in regard to participants and organizers of assemblies.

Among new challenges are the following:

- 1) Permanent or semi-permanent encampments and long lasting events (notably the Occupy movement in the U.S. and a number of European countries) that continue to redefine the presumption of the temporary nature of protests and often result in violent dispersals;
- 2) Cases of disproportionate use of force, tightening administrative regulations and impunity of police officers that lead to authoritarian states employing larger scale violence, and the implementation of additional systemic restrictions on freedom of assembly (see, for example, Protest and Assembly Rights Project's report "Human Rights Violations in the U.S. Response to Occupy Wall Street"⁴²);
- 3) Increased use of new social media, which introduces new dimensions to the notion of organizers and notification, creates greater uncertainty in the number of participants and in turn, in a number of countries, can lead to an increase in preventive detentions and repression against “potential participants” or “organizers”;
- 4) “Kettling” techniques, used in a number of countries to the West of Vienna, notably in the U.S. and a number of EU states, which create uncertainty regarding the legal status of those kept within barriers and limited in movement and that violate their rights without effective remedies;
- 5) Increased use of allegations of “mass riot” against events that involved outbursts of violence. The very term is vaguely defined in most jurisdictions and could be used against either all participants of assemblies or those arbitrarily chosen, regardless of whether or not they actually participated in acts of violence.

Many governments have adopted new legal restrictions on freedom of assembly, in particular, Azerbaijan, Russia, Belarus, Poland, the Canton of Geneva in Switzerland, and Quebec province in Canada. In many cases these amendments have introduced extremely high financial penalties for organizers of demonstrations for minor administrative offences or for holding an assembly without notification, raising them by several hundred times. This effectively serves as a deterrent to holding assemblies. Restrictive initiatives have also been discussed in Ukraine, Moldova and other countries.

Gay pride marches have been prohibited in 2012 in cities in Russia and Serbia. In Kiev, the 2012 march had to be cancelled when police did not effectively protect the marchers against violence from the part of nationalist and anti-gay groups.

⁴² See report “*Human Rights Violations in the U.S. Response to Occupy Wall Street*”
<http://www.chrgj.org/projects/suppressingprotest.pdf>

In reaction to unprecedentedly massive protests in Russia after last year's parliamentary and this year's presidential election, new restrictive legislation on assemblies was hastily passed this summer with no public discussion. The amendments introduced very high fines for violations related to assemblies that are equivalent to or sometimes even higher than sanctions for criminal offenses without the rights guaranteed for the accused in the criminal process. The regulations on assemblies introduce en masse blanket bans on assemblies near administrative buildings, in parks, on the roads and sidewalks, etc. This makes protests in almost all relevant places illegal. People with an active record of conviction who have committed crimes against state security or public order or an administrative offense while conducting public events within one year prior to a planned demonstration can no longer participate in organizing public events. Meanwhile, the official investigation of the events of May 6 on Bolotnaya Square in Moscow, where a mass protest culminated in the police beating of the demonstrators and journalists, clashes with the police and detention of several hundred people, has been both non-transparent and questionable.⁴³ We have seen how a similar approach in Belarus to the events of December 19, 2010 led to unfounded allegations of mass riot against opposition leaders, resulting in prison sentences for most of them,⁴⁴ in trials that have been widely criticized as falling short of international fair trial standards.

In Azerbaijan authorities introduced regressive amendments to the Law on Freedom of Assembly in autumn 2012 which dramatically increase the penalties for organizing or participating in unsanctioned protests. Under the new provisions, protest participants could be fined between 500 and 1,000 AZN (increased from 7 to 13 AZN under the previous legislation), and organizers could be fined between 1,500 and 3,000 AZN if they are ordinary citizens, or between 3,000 and 6,000 AZN if they are officials. If the organizer is a legal entity – such as a political party or an NGO – it could be fined between 15,000 and 30,000 AZN.⁴⁵ In light of the financial hardships faced by many activists and NGOs, as well as the fact that critical groups are rarely granted permission to hold demonstrations, this scandalous amendment will have a serious chilling effect on freedom of assembly in the country. This is a particularly ominous move in light of the upcoming 2013 presidential election.

When protestors in many countries have their notification for a demonstration turned down or face unjustified restrictions on location, time, or number of participants, they often come out onto the streets anyway. Such demonstrations are routinely dispersed, often with the use of brutal force and arrests in Russia, Belarus, Azerbaijan, Kazakhstan, and many other countries. The same happens to spontaneous assemblies.

In an increasing number of countries law enforcement officers have resorted to disproportionate use of force and violence when dispersing demonstrations in the absence of any threat to public order on the part of the protesters. Violence and unjustified arrests have often extended to journalists covering the event and monitors of assemblies. This has been the case both in the Eastern part of the OSCE region – Russia, Belarus, Azerbaijan, Kazakhstan – and in the West, where people demonstrating peacefully in some European Union countries have been beaten, kicked, shot at and wounded with rubber bullets and sprayed with tear gas, in particular in Greece, Spain and Romania,⁴⁶ where unidentified police beat peaceful demonstrators with batons and threatened journalists covering the events. Excessive use of force by police went uninvestigated and unpunished.

Similarly, the New York police department's response to Occupy Wall Street protests included use of unnecessarily aggressive force, pervasive surveillance of peaceful political activity, unjustified closure of

⁴³ See Ovdinfo.org "Thirteen Prisoners" <http://ovdinfo.org/resource/thirteen-prisoners>

⁴⁴ See Human Rights Assessment of the event of Dec. 19 by the Special Rapporteur of the Committee of International Control over the Human Rights Situation in Belarus <http://hrwatch-by.org/en/special-rapporteur>

⁴⁵ See: <http://bit.ly/WQhqPA>

⁴⁶ See *Don't beat protesters EU countries warned*. Amnesty International, 25 October 2012, <http://www.amnesty.org/en/news/dont-beat-protesters-eu-countries-warned-2012-10-25>

public spaces, obstructing and arresting independent legal monitors and journalists, and arbitrary and baseless arrests of peaceful demonstrators. Equally important, authorities failed to ensure transparency about their policies and accountability for those allegedly responsible for abuses⁴⁷.

One of the most worrisome tendencies is the use of violent episodes at mass rallies as justification for large-scale criminal persecution of participants, organizers and opposition leaders, often with very few guarantees of transparent and impartial investigation or evaluation of the nature of the events, responsibility of the authorities, violations and excessive force on the side of the police, etc.

The most alarming example of this is the reaction of Kazakhstani authorities to a protest of oil workers in Zhanaozen, which led to clashes with the police, the declaration of a state of emergency, allegations of mass torture and the holding of politically motivated trials against opposition leaders (notably, Aizhangul Amirova and Vladimir Kozlov of the Party “Alga!” and Serik Sapargali of the People’s Front) on charges of inciting “social discord”.⁴⁸ Most recently the Prosecutor General has moved to shut down eight newspapers and 23 web-based news outlets, claiming they are intent on “inciting social unrest” and “overthrowing the government and undermining state security” in connection with the Zhanaozen events.⁴⁹

Recommendations to the OSCE institutions and participating States:⁵⁰

- 1) Encourage the monitoring functions of the OSCE ODIHR Group of Experts on Freedom of Assembly as well as its role in disseminating and distributing guidelines on freedom of peaceful assembly. Involve civil society groups from throughout the OSCE space in monitoring and promotion of the Guidelines.
- 2) Mandate ODIHR to respond to requests to provide legal analyses of laws and draft laws not only by governments, but also from civil society groups.
- 3) Include in the next edition of the Guidelines best responses to new challenges and provide an analysis of terms that are not clearly defined in legislation, notably the term “mass riots.”
- 4) Create a specific OSCE mechanism to evaluate and assess the implementation of laws on assembly that are critical to the work of human rights defenders and coordinate with relevant bodies of the Council of Europe and the UN Special Rapporteurs.

Freedom of Association

As concerns implementation of the OSCE commitment to freedom of association, there is no single document laying out guiding principles and standards. State parties enjoy a broad field for discretion, which in many cases leaves freedom to associate void of any meaning.

We have observed in many OSCE participating States increasing legal restrictions on freedom of association and growing repressive practices in the whole cycle of exercising this right – from establishment of an association to its ability to operate, raise funds, advocate for its cause, reach out to the public, engage with the public authorities, promote policy and legislative recommendations, and, finally, to its dissolution.

The main problems include:

- legal responsibility for participation in the activities of unregistered associations, either criminal (as in

⁴⁷ Human Rights Violations in the U.S. Response to Occupy Wall Street, <http://www.chrgi.org/projects/suppressingprotest.pdf>

⁴⁸ See Human Rights Watch Report “Striking Oil, Striking Workers: Violations of Labor Rights in Kazakhstan’s Oil Sector “ <http://www.hrw.org/sites/default/files/reports/kazakhstan0912ForUpload.pdf>

⁴⁹ See Norwegian Helsinki Committee: Kazakhstan moves to shut down independent media

http://www.nhc.no/no/nyheter/Kazakhstan+moves+to+shut+down+independent+media.b7C_wlbWYE.ips

⁵⁰ For further recommendations see the report of the SHDIM on freedom of assembly and association that took place in Vienna on 8-9 November, 2012 and the recommendations of the Civil Society Forum that preceded it.

Belarus) or administrative (as in Kazakhstan, Uzbekistan), and repeated administrative offences leading to criminal charges;

- repression for participation in the activities of legal groups, including for trade union activity;
- bans on access to internal and/or external financing without prior permission;
- unwarranted use of legislation regarding the fight against terrorism and “extremism”; and
- onerous demands in the process of registering public associations.

OSCE participating states have continued to introduce and enforce indirect limitations on the right to organize, connected with NGO activities that go beyond the classic scope of freedom of association standards — notably on the right to seek and secure resources. In the conditions of weak international standards in this sphere, states justify limitations on foreign funding with references to state sovereignty and worst, rather than best, practices from the established democracies.

The notorious law on “foreign agents”⁵¹ adopted in Russia in July 2012 requires NGOs that receive foreign funding and engage in “political activities” to apply to be included in the special register of “foreign agents.” It defines “political activity” in very broad terms as “actions aimed at changing government policies or shaping public opinion” which is a natural mode of operation for almost any NGO. These organizations are obligated to label any published material, speech, presentation, event, or consultation as originating from a “foreign agent.” Failing to follow this requirement can lead to a ban on the NGO’s activities without a court decision, huge fines potentially leading to bankruptcy, and, finally, criminal charges against leaders that may result in up to two years in prison. Aside from that, NGOs receiving foreign funding will be subject to excessive reporting and audits. Provisions of the law are so broad that they create fertile ground for selective and arbitrary application based on political bias rather than for legal reasons. The law in effect incites the public against civic organizations, misleads the public and forces NGOs to recognize themselves as “foreign agents,” which is not what they are. In the Russian language this term is synonymous with the terms “enemy” and “spy.”⁵² Other countries and self-proclaimed authorities of disputed or occupied territories in the post-Soviet space, including the Transnistrian region of Moldova⁵³, look at this experience and introduce similar restrictive laws and regulations. Leading Russian human rights organizations have vowed to boycott the law in “foreign agents” despite the severe sanctions as they consider it discriminatory, unconstitutional and contrary to Russia’s international obligations.⁵⁴

Governments are increasingly demonstrating hostile attitudes to independent civil society groups engaged in international cooperation and receiving funding from abroad in many OSCE participating States. NGOs supported by international donors are often branded as puppets in the hands of hostile foreign governments and traitors and are subjected to smear media campaigns in government-controlled media. In Turkmenistan all foreign donations have to be approved by the government, and they always end up in the hands of government-controlled NGOs. In Belarus at the end of 2011, violation of regulations on the use of foreign donations was criminalized – clearly a disproportionate measure. Changes in the law prohibit the use of foreign funds for a “mass work with the public,” including holding seminars⁵⁵.

⁵¹ The Federal Law of July 21, 2012 "Introducing Amendments to Legislative Acts of the Russian Federation in Part Regulating Activities of Non-commercial Organisations, which Carry Functions of Foreign Agents".

⁵² See “Civil and Political Rights. Materials of Russian NGOs for the Universal Periodic Review of the Russian Federation in the United Nations Human Rights Council in 2013”. Center for the Development of Democracy and Human Rights, 8 October 2012.

⁵³ See <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-114082>.

⁵⁴ See Andrey Yurov “Seven Theses on Proposed Changes to Russian Legislation on NGOs” <http://www.rightsinrussia.info/archive/comment/yurov/new-ngo-bill>; “Some Russian Rights Groups Vow To Ignore ‘Foreign Agent’ Law” <http://www.rferl.org/content/russian-rights-groups-to-ignore-foreign-agent-law/24777663.html>

⁵⁵ See “Challenges to Implementation of Freedoms of Assembly and of Association in the OSCE Region and Strategies of Civil Society. Keynote address by Yuri Dzhibladze at the OSCE Civil Society Forum “Freedom of Assembly and Association,” Vienna, 7 November 2012, <http://civicsolidarity.org/content/civic-solidarity-platform-position-freedoms-assembly-and-association-presented-osce-civil>

Enforced closing of NGOs on formal grounds remains widespread, including in Belarus, where many organizations' applications to re-register have been repeatedly denied, including the Human Rights Center "Viasna". The liquidation of NGOs for violation of their own statutes or failure to comply with regulations that do not constitute serious breaches of public security or do not lead to significant economic losses is a disproportionately severe measure that most recently has been used in recent liquidation of the human rights organization "Platform" in Belarus (for using an allegedly "incorrect" legal address and untimely reporting)⁵⁶ and the young lawyers association Amparo in Tajikistan (for allegedly not notifying the authorities of an address change, running a web-site without proper registration, carrying out activities outside of its home region and conducting education activities without a proper license).⁵⁷

Among other worrying and continued tendencies are the refusals in a number of participating States to register or recognize the work of NGOs, including trade unions, environmental and LGBT organizations and other groups working on minority rights. In Turkmenistan, independent NGOs are not able to function at all; No independent NGO has been registered since 2003. In other places, like Belarus, Uzbekistan or Kazakhstan, it is very difficult or close to impossible to register a new organization if the government considers its objectives undesirable.

There have been a number of cases of discrimination against associations advocating for minority rights, especially of the LGBT community. For many years in a number of countries they have faced problems with registration on the grounds of public morals but it is the recent adoption of infamous laws banning so-called "propaganda of homosexuality" in Russia and some other countries that associations of LGBT community have started to face more systematic impediments to their ability to operate without fear of reprisals.

In a number of countries, including the Central Asian states and Russia, so called anti-extremism legislation is increasingly used to curb freedom of association through the issuance of warnings to organizations, penalizing them for incitement to social hatred where criticism of public authorities is interpreted as social hatred, and closing them down. The definition of extremism in these laws is vague and unclear allowing for politically motivated persecution.

Recommendations to the OSCE institutions and participating States:⁵⁸

- 1) Establish a group of experts within ODIHR on freedom of association and prepare, in close consultations with civil society, guidelines on freedom of association, which would strengthen general international standards, notably regarding the freedom of operation for non-registered civil society groups⁵⁹.
- 2) Develop a set of common standards on freedom of association and on the functioning of civil society institutions, not only a compilation of best practices.
- 3) Create international and national expert working groups and groups to monitor the situation of civil society in the OSCE participating states.
- 4) Strengthen the OSCE institutional framework in this field by establishing a mandate for a Representative on Freedom of Association or a Representative on Freedoms of Association and Assembly.

⁵⁶ See Observatory for the Protection of Human Rights Defenders Urgent Appeal <http://www.fidh.org/Belarus-arbitrary-closure-of-the-12285>

⁵⁷ See Observatory for the Protection of Human Rights Defenders Urgent Appeal <http://www.omct.org/human-rights-defenders/urgent-interventions/tajikistan/2012/11/d22017/>

⁵⁸ For further recommendations see the report of the SHDIM on freedom of assembly and association that took place in Vienna on 8-9 November, 2012 and the recommendations of the Civil Society Forum that preceded it.

⁵⁹ Quite extensive recommendations have been made by civil society recently at the Supplementary Human Dimension Meeting on freedom of assembly and association in Vienna on 8-9 November, 2012, <http://www.osce.org/odihr/97042>.

Human Rights Defenders

OSCE participating States have committed to protect human rights and basic freedoms, with an emphasis on the importance of educating people of these rights and protecting those who carry out this educational work.

The key role of human rights defenders in protecting human rights has been repeatedly recognised in OSCE documents for more than two decades. The ability of OSCE to implement its human dimension commitments is undermined when human rights defenders are targeted for persecution for their legitimate work, convicted on the basis of fabricated charges for crimes they have not committed, physically attacked and even murdered, and when the lack of effective investigation and impunity for perpetrators prevail.

It is important to note that OSCE participating States should ensure that all those who carry out human rights work enjoy the protections afforded to human rights defenders in the documents of the UN and other international organizations.

The following are cause for particular concern in the area of protecting human rights defenders:

- physical assaults, attacks or threats;
- restrictions on their freedom of association;
- restrictions on their freedom of expression;
- failure to respect their freedom of assembly and inability to protect this freedom;
- serious restrictions on their freedom of movement;
- the use of tax, administrative and other legislation in order to intimidate and prosecute human rights defenders; and
- limitations on international and trans-border human rights activity designed to monitor the implementation of state parties' international legal obligations and OSCE commitments (in particular, limitations on entry into a country, refusal of visas, etc.).

While in 2012 the authorities of Kazakhstan released Evgeny Zhovits, the country's most well-known human rights defender on amnesty after more than two years imprisonment, they also pressed criminal charges against Vadim Kuramshin, a defender of prisoners' rights⁶⁰ and Alexander Osadchenko, a defender of social and economic rights.⁶¹

Two other respected human rights defenders who remain behind bars are Ales Bialiatsky from Belarus and Azimzhan Askarov from Kyrgyzstan. Bialiatsky was sentenced to 4.5 years in prison, charged in a highly resonant case on blatantly biased grounds for "concealment of profits on an especially large scale" for his human rights work and is now subjected to numerous arbitrary disciplinary sanctions by the facility's administration.⁶² His property was confiscated, including on November 26 his apartment, which had served as the office for the Human Rights Center "Viasna" for more than twelve years⁶³. Askarov, an investigative

⁶⁰ See Front Line statement: <https://www.frontlinedefenders.org/node/20810>

⁶¹ See Front Line statement: <http://frontlinedefenders.org/node/20505>

⁶² See Observatory for the Protection of Human Rights Defenders statement <http://www.fidh.org/Belarus-With-the-one-year-12487>

⁶³ See the statement of the Civic Solidarity Platform, "Further crackdown in Belarus: Office of Viasna confiscated and sealed," 28 November 2012, <http://civicsolidarity.org/content/further-crackdown-belarus-office-viasna-confiscated-and-sealed>

reporter and human rights defender, has been sentenced to life, on what are widely regarded as fabricated charges and has been subject to beatings, inhuman and degrading treatment while in prison.⁶⁴

Recommendations to the OSCE institutions and participating States:

- 1) Create a group of experts to work on consolidating existing international norms and standards in this sphere - with the goal of creating guiding principles on the protection of human rights defenders with the participation of relevant international institutions, international experts and representatives of human rights organizations. These norms should be further strengthened by adopting a new OSCE commitment on protection of human rights defenders.
- 2) Institutionalize an instrument on protection of human defenders within the OSCE institutions — a Special Representative with a mandate similar to that of the Representative on the Freedom of the Media. This mechanism should complement and bolster the work of the UN Special Rapporteur on human rights defenders and bring the OSCE region into step with African and Inter-American regional bodies that have already created such mechanisms.
- 3) Include in the standard agenda of Human Dimension Implementation Meeting a session on the situation of human rights defenders.
- 4) Devote a Supplementary Human Dimension Meeting to this subject.

Freedom from Torture, Cruel, Inhuman and Degrading Treatment

In spite of the fact that there is an absolute ban on torture and other forms of cruel, inhuman or degrading treatment in all OSCE participating States, this right continues to be violated in a majority of the countries of the region. In a number of States law enforcement agencies exert psychological pressure as a form of torture of both the detainees and their relatives, through the threat of the use of force and violence against them.

Human rights organizations have identified the following causes of continued use of torture:

- inadequate training of law enforcement officers that does not match contemporary standards based on respect for human rights and dignity;
- the existing system of management and performance assessment of the police that is based on in-house statistics and emphasizes positive numbers in solving criminal cases, but turns a blind eye to the quality of police work;
- an absence of effective investigative procedures in torture and ill-treatment cases, regular violations of such investigative principles as promptness, thoroughness, independence, and access to the investigation for the victim; and
- courts that rarely identify and rule out evidence obtained under torture.

National Preventive Mechanisms (NPM) created in accordance with the provisions of the Optional Protocol to the UN Convention against Torture (OPCAT) are an effective means of fighting this negative phenomenon throughout the world. While in past years we have been pleased to observe the establishment of National Preventive Mechanisms (NPM) in a growing number of countries in the OSCE area, an alarming number of NPM are either not truly independent or their establishment helped close the space for independent NGO monitoring. At the same time torture and ill-treatment remains a major problem in most countries of the region.

⁶⁴ See report of the Committee to Protect Journalists: <http://cpj.org/reports/2012/06/in-kyrgyzstan-injustice-and-torture-in-askarov-cas.php>

NGO monitoring of places of detention is an important safeguard against torture. NGOs can only fulfill their mandate to monitor human rights in places of detention if they are given access to them and the possibility to conduct meaningful research. In most countries of the region, it is impossible or very problematic to obtain reliable data from governmental sources on the extent of torture and ill-treatment, in places of detention and NGOs continue to be an important source of information for the public and the media on violations of conditions of detention or ill-treatment of detainees. However, the extent of independent civil society access is left to individual governments' discretion and often restricted by legal provisions or in practice, while in some countries detention monitors and detainees have to face retribution for their activities in combatting torture and ill-treatment. Despite the impressive body of international norms related to the prevention of torture, prison conditions and pre-trial detention, there are no binding international standards for access of NGOs to places of detention.

Despite the fact that some international organizations, such as the UN Committee against Torture, the Organization for Security and Cooperation in Europe and the African Commission on Human and People's Rights have encouraged states to allow access to NGOs to their places of detention for the purposes of human rights monitoring, many have failed to do so. Experience over the past years shows that governmental resistance to NGO access to these institutions goes hand in hand with unwillingness to base the governance of closed institutions on the principles of transparency and the rule of law.

During Ukraine's OSCE chairmanship we recommend to pay particular attention to the issue of developing national systems for monitoring places of detention (custodial settings) that will safeguard independent NGOs monitoring, an evaluation the effectiveness of existing systems, thus creating a body of best practice standards, and stimulating ratification of OPCAT by all OSCE participating States and its full implementation.

Recommendations to the OSCE institutions and participating States:

- 1) Conduct monitoring of the implementation of participating States' obligations under OPCAT.
- 2) Create under the OSCE a permanent system for discussion by representatives of NPMs and staff of closed facilities regarding international standards for the prevention of torture and cruel treatment.
- 3) Initiate a process of creating OSCE guidelines on the functioning of National Preventive Mechanisms and on best practices in the sphere of torture prevention.
- 4) OSCE and other international organizations should continue to call for the establishment of NPMs, but at the same time develop and ensure the endorsement of member states of additional commitments to preserve access of independent NGOs to places of detention.
- 5) Devote a Supplementary Human Dimension Meeting to this subject.



Human Dimension Issues in Ukraine, Requiring Special Attention

The Civic Solidarity Platform believes that a special responsibility rests on the State exercising the Chairmanship role to implement OSCE commitments in an exemplary way and serve as a model to other participating States by taking active steps to remedy gaps in its compliance with OSCE commitments and guidelines. We are advocating for such a program of steps to be adopted addressing legislation, policies and practices of the State in question. This has up till now not been done, but it is in this spirit that we are submitting a number of observations and recommendations on human dimension issues, requiring special attention in the upcoming Chairmanship State, Ukraine.

The Civic Solidarity Platform is working together with the NGO Coalition on Ukraine's 2013 Chairmanship of the OSCE. At present, NGOs from 11 OSCE countries have joined the coalition, launched in Warsaw on 27 September 2012.

The Coalition's goals are to strengthen the role of civil society in all OSCE processes and to assist Ukraine as the Chairmanship country in its efforts to develop and increase the effectiveness of the organization as well as to improve the implementation by all participating States of their human dimension commitments. The Coalition believes that Ukraine should use its chairmanship to improve the human rights situation and to resolve existing human dimension problems both throughout the OSCE region and at home in Ukraine.

The areas covered are among those where clear improvements are required, but the selection is not exhaustive. In the year 2013, we endeavor to issue more detailed analysis and recommendations on a number of issues.

Politically Motivated Administrative and Criminal Persecution of Civic Activists, Journalists and Politicians

In Ukraine in 2011, human rights NGOs documented more than 100 cases of persecution and harassment of civic and human rights activists and reporters on civic and human rights issues both through judicial or administrative procedures and via actions of an extra-legal nature, including threats and physical assault.

Criminal cases were instituted against 70 persons (not counting representatives of the opposition) while 13 administrative cases and two civil actions were begun. In one case a decision was levied requiring involuntary medical treatment. Approximately 25 people were deprived of liberty for varying lengths of time while some 16 people were the victims of physical assault. Two people were forced to seek political asylum abroad.

A number of illustrative cases can shed light on some of the mechanisms of persecution and harassment:

- On 15 October 2010 the police raided an apartment of Dmytro Groisman, Vinnytsia Human Rights Group coordinator, and the office of this organization, as a part of criminal investigation upon the alleged distribution of pornography in online "LiveJournal". As a result of the raid, the police seized computers, all paper records with personal data of refugees the organizations works with, as well as all financial records of the organization. Thus, the Centre for refugees and asylum seekers maintained by Vinnitsa Human Rights Group was paralyzed for nearly five months, and the records about the asylum seekers were returned only in March, 2011.

- Yuri Kosarev, member of the Human Rights Group NGO in Luhansk, who was working on the defense of workers' employment rights of the Uspenskyi Karier enterprise, was beaten up together with his colleague Sergei Ignatov by the director of the enterprise and by police officers in the yard of his house on 22 May 2011. The scene of beating was captured on video and is available online. At the same time, a criminal proceeding for resisting police officers was initiated against Yuri Kosarev and his friend. Now they are in the investigation cell hospital, where Yuri got in after depletion due to starvation, and Sergei after the surgery caused by injuries.
- The case of the secretary of the Medzhlis (a self-organized organ representing the interests of the Crimean Tartars) Zair Smedlyaev is also well-known. In 2011 he was sentenced to five months of arrest for resisting law enforcement officers trying to disrupt a peaceful demonstration by the Crimean Tartars that took place six years ago. This case is a cause for concern even though Smedlyaev did not have to serve his sentence because the statute of limitations had expired.
- A number of leading politicians who had served in the government headed by Yuliya Timoshenko were indicted for actions they had taken as ministers. Former Prime Minister Timoshenko herself was sentenced to seven years in prison on 11 October 2011 by a Kyiv court for signing a multi-million dollar energy contract with Russia in January 2009. The charges against her were politically motivated. The judge in her case was on a temporary contract. She is facing new charges for alleged financial abuses 15 years ago.
- There were repeated instances of illegal shut downs of broadcasts by regional television companies that had criticized the authorities. The only national TV station which is not influenced by the government and does not present pro-governmental positions, "TVi," was subjected to repeated checks by the tax authorities, criminal complaints, and illegal shut downs in the regions.

Recommendations

1. Stop the practice of politically motivated judicial and extra-judicial persecution and harassment of civic activists, journalists and politicians.
2. Immediately review all the cases where politically motivated conviction is alleged, ensuring impartial and fair trial.
3. Bring policies and practices of the state bodies into accordance with the standards on the protection of human rights defenders enshrined in the UN Declaration on Human Rights Defenders.
4. Form a civil society monitoring group on political persecution under the aegis of Parliament or the Ombudsman's Office in order to explore cases in which there is reasonable suspicion that they are of a political nature.
5. Invite ODIHR and OSCE PA monitoring missions to explore the current situation.

Limits on the Right to Freedom of Peaceful Assembly

Ukrainian legislation regulating peaceful assemblies is neither accurate nor unambiguous. On the one hand, freedom of peaceful assembly is regulated by Article 39 of the Constitution, which requires notifications with respect to meetings and specifies that restrictions of this freedom be by court order exclusively under specific circumstances spelled out by law. The relevant special law, however, has never been adopted. Hence there are unjustified restrictions of this freedom, as courts can interpret the provision at their own discretion. On the other hand, contrary to the Constitution, the practice of adopting local normative and legal acts regulating the freedom of peaceful assemblies by local state administrations and local self-governments is very popular. As a result, the scope of the freedom is unreasonably and unjustifiably narrowed.

The courts widely apply the Order of the Plenum of the Supreme Council of USSR Presidium of July 28, 1988

“On procedure for organizing and conducting meetings, rallies, parades and demonstrations in the USSR”. But this order contradicts Article 39 of the Constitution. Exercising the right to peaceful assemblies becomes rather complicated under these circumstances.

In the vast majority of cases, judges limit freedom of assembly for reasons that are not acceptable according to international standards and obligations. Appeal procedures against court decisions restricting the freedom of peaceful assembly do not guarantee that appeals will be heard before the date of the planned demonstration.

There have been cases of the disproportionate use of force and special measures by law enforcement personnel against participants of peaceful assemblies. Law enforcement officials are practically never held responsible for abuse of power or for exceeding their powers in illegally obstructing peaceful assemblies. This is explained by the fact that the prosecutor’s office never investigates properly cases of human rights’ violations committed by law enforcement personnel.

In cases in which quarrels or brawls arise in the course of peaceful gatherings, or provocations are initiated by adversaries, police officials often fail to act, thus creating a threat to the health and life of participants.

The practice of dispersing peaceful assemblies without due cause and with the subsequent detention of their participants has become widespread. In these cases there is almost never an appropriate court warrant and no immediate threat of crimes or mass riots. Law enforcement personnel justify the dispersing of peaceful gatherings by referring to isolated incidents of offenses by participants, although often not a single participant is later prosecuted due to the absence of any real offense.

Law enforcement officials often tend to favor one of the participating parties and to take sides if counter-demonstrations are being held by political adversaries.

Recommendations

1. Develop, with input from human rights groups, and promulgate a special law on freedom of peaceful assembly that will be in complete accordance with the norms of international law and OSCE commitments, paying particular attention to the OSCE/ODIHR Guidelines on Freedom of Peaceful Assembly.
2. Bring the content of Ukraine’s legislation into accordance with international standards (including by removing Art. 185-1 of the Criminal and Administrative Code), and by revoking unconstitutional ordinances adopted by local authorities limiting the right to freedom of peaceful assembly.
3. Improve the appeal procedure with respect to court decisions restricting the right of peaceful assembly so that appeals are heard prior to the start of an event.
4. Systematically and regularly train law enforcement officials and judges on international norms with respect to freedom of peaceful assembly with the participation of experts from international human rights organizations.

Freedom from Torture, Cruel, Inhuman and Degrading Treatment

The results of monitoring of illegal use of force by Ukraine’s internal security organs point to a stubbornly increasing trend in the number of cases of torture and ill-treatment by the police (militia). According to research, in 2009, an estimated 604,000 people were the victims of illegal violence by the internal security organs; in 2010 the number was 780-790,000; and in 2011 it was 980,000.

Among the factors that influence the widespread use of illegal violence by the internal security organs is the lack of a system of effective investigation of such allegations. The only organization empowered by

Ukrainian law to investigate complaints of cruel treatment by law enforcement personnel is the prosecutor's office. But the prosecutor's office is not capable of carrying out effective investigations of complaints because of its dual responsibility: on the one hand, it is responsible for verifying the legality of the police's actions, but on the other it supports indictments in court and thus maintains close operational relations with police employees.

As a result of recent negative changes in the text of Article 127 of the Criminal Code of Ukraine, which set out criminal liability for torture, the special subject of the crime – the "official" – has been removed and with it the core of the qualifications and meaning of the term "torture" as it is set out in Article 1 of the UN Convention Against Torture.

In Ukraine there is a tradition of widespread use of illegal methods of interrogation and investigation of suspects with the goal of forcing them to confess to a crime. On November 19, 2012 a new Criminal Procedural Code came into force, in accordance with which no testimony will have legal force if it was received outside the court proceedings. This is a positive step as it should make it senseless to use violence or other means of force as an instrument in interrogations and investigations. Nevertheless, there is still an unresolved question of reviewing cases and sentences in cases in which testimony was gathered with the use of torture. There is also concern about how effectively this provision of the new code will actually be implemented.

An important step towards preventing torture and ill-treatment in Ukraine was the adoption on October 2, 2012 of a law creating a National Preventive Mechanism, which will use the "Ombudsman +" model, calling for the participation of NGO representatives in regular visits to places of detention.

Recommendations

1. Create an independent body within the law enforcement system to effectively conduct criminal investigations of claims of torture and ill-treatment by law enforcement officials.
2. Create a separate statistical register for crimes that include the elements of torture as laid out in Article 1 of the Convention against Torture and other forms of Cruel, Inhuman and Degrading Treatment and Punishment.
3. Introduce amendments to Article 127 of the Criminal Code to bring it into conformity with the demands of the UN Convention against Torture.
4. Ensure support at the governmental level for the regular participation of NGO representatives in the work of the National Preventive Mechanism.

Right to a Fair Trial

The situation surrounding the right to a fair trial has significantly deteriorated in recent years. In the period of May-June 2010 a judicial reform was carried out, representing the most important event in the legal sphere in recent years. In parallel, judges have become more politicized and dependent on politicians, among other things because of the selective nature of the criminal justice system.

While this reform was awaited for many years, it has not significantly improved the situation. Particularly important unresolved problems include: the issue of financial and administrative dependence of judges; the violation of reasonable time limits for hearing cases; the massive failure to carry out court decisions, particularly in cases in which the state, the organs of power or the state corporations are one of the parties (almost 70% of cases); the unfinished nature of the reform of criminal law: the code of administrative violations was adopted in the Soviet times and its conceptions and provisions contradict many human rights standards; the over-burdening of courts and the lack of transparency of their work; insufficient funding of the judicial authorities; the insufficient level of qualifications of a significant part of the corps of

judges and the lack of effectiveness of the system for holding judges professionally responsible; and the high level of corruption of judges.

On October 15-16 2011, the Venice Commission of the Council of Europe confirmed its conclusions regarding the new law on courts and the status of judges, which was passed in 2010. The Commission cited as positive the automatic distribution of cases in the courts, the transfer of the control of the judicial system to the State Judicial Administration, and the liquidation of military courts. But in addition to these positive elements, the conclusions list more than 30 serious reservations and recommendations for changes in this law. This disproportion in the conclusions is an evidence of negative over positive evaluations of these changes. The Venice Commission's recommendations have yet to be implemented.

The increase in the role of the Higher Council of Justice, which is still formed by the political organs, and the narrowing of the role of the Supreme Court, are serious problems in terms of judicial independence. The Higher Council of Justice has taken on extremely important functions: it plays a key role in appointing and dismissing judges; its members have the right to institute disciplinary actions against judges and have wide powers to requisition any documents; and it appoints chief judges of courts. The influence of the Council has resulted in a significant loss of judges' independence and an increase in their politicization and the extent to which they are controlled from outside. Among other instances, the influence of the Council can be seen in the dismissal of judges for violating their oaths. There have been numerous cases when the prosecutor's office, through its representatives on the council, has initiated disciplinary actions against judges who have ruled against the prosecutor for violating their oaths. It is worth noting the most famous example, when the General Prosecutor of Ukraine initiated an action in the Council against all judges of the Supreme Court's Judicial Chamber for Review of Criminal Cases with the goal of influencing the choice of the Chief Justice of the Supreme Court, who these justices were soon to choose.

The Higher Council of Justice is an extremely politicized structure. It is made up of 20 members. The Supreme Rada, the President, and congresses of judges, lawyers, and representatives of law schools each name three members of the Council, while the conference of employees of the prosecutor's offices names two. The Chief Justice of the Supreme Court, the Minister of Justice and the Prosecutor General are ex officio members. In order to change the procedures for forming the Council it would be necessary to change the Constitution. But this by no means justifies giving the Council such authority. If a majority of parliamentary deputies and the president represent one political camp they have control over the naming of all officials of the executive branch (including the rectors of law schools, ministers, the prosecutor general, etc.), leaving no more than four members of the Higher Judicial Council as even potentially independent.

The judicial reform has not resolved long time problems of courts. The length of time it takes to resolve cases has increased dramatically beyond all reasonable limits, as has judges' case load. On average the case load for local judges has grown to 130 cases per year, and for judges of the Higher Administrative Court to 138. The situation regarding failure to carry out court decisions in cases where the state is a party has also deteriorated. On average, in a given year some 60-70% of decisions in civil or administrative courts are not implemented. Nor has corruption among judges declined, and public opinion holds judges among the highest ranks for degree of corruption, while the number of complaints against them increases every year. The quality of judges has not improved, which demonstrates the low quality of judicial education provided by law schools, which are part of the executive branch.

The European Court of Human Rights has ruled that violations of reasonable terms for resolving cases and non-implementation of court decisions represent systemic violations, for the resolution of which systemic remedies should be adopted. But for three years Ukraine has not implemented the pilot laid out by the European Court in the case of *Ivanov v. Ukraine*, and all cases against Ukraine in these areas are again being actively considered. However, Ukraine has still not resolved these problems.

Recommendations

1. Change the method of forming the Higher Council of Justice without delay, possibly through its formation by a congress of judges, or liquidate it and transfer its functions to other bodies that meet the criteria for the independent formation of judicial organs.
2. Increase the responsibilities of the Supreme Court of Ukraine.
3. Improve the procedures for reviewing cases of administrative violations, creating a guarantee of a fair trial as foreseen in Article 14 of the International Covenant on Civil and Political Rights and Article 6 of the European Convention on Human Rights.
4. Prepare legislative norms that guarantee cases are heard within a reasonable period of time. It is also essential to review the possibilities for compensating persons for violations of their right to have their cases heard within a reasonable period of time.
5. Include in the state budget a separate line for funds to implement the decisions of Ukraine's courts in cases in which the state, organs of state power, and state organizations are ordered to pay money.

In addition, we have a general recommendation to the government of Ukraine to send an official request to OSCE/ODIHR to conduct a wide-ranging evaluation of the Ukrainian legislation and the legislative process with the goal of increasing its quality and compliance with OSCE commitments.

This document is not exhaustive but it includes the key questions whose resolution will have a significant impact on the general human rights situation in the country.



Civil Society Proposals on Reform of the OSCE Human Dimension Mechanisms

I. Introduction: The main directions of reform of the OSCE human dimension mechanisms

We propose the following four main directions of reform aimed at making the OSCE work in the human dimension more effective. They are:

1. Establishment a regular annual cycle of human dimension events which should be much more focused on monitoring of implementation of commitments by participating States and a process of follow-up to discussions at human dimension events aimed at the elaborating practical, forward-looking recommendations and plans of actions addressing the identified problems.
2. “Emergency and crisis response”: Develop a set of mechanisms and tools ensuring the OSCE’s ability to effectively respond to emergency and crisis situations in the human dimension or prevent such situations from developing.
3. Strengthening the role of autonomous OSCE institutions, including ODIHR, the High Commissioner for National Minorities, the Representative on Freedom of the Media, the Special Representative on Human Trafficking, and OSCE Parliamentary Assembly, and increasing the role of independent experts in both the human dimension meetings and the development of human dimension standards and guidelines.
4. Enhancing the role of civil society in all activities in the human dimension and in interaction with the full range of OSCE institutions.

II. The Annual Cycle of Human Dimension Events

1. Main directions of reform of the OSCE’s human dimension activities

Any changes in the OSCE’s human dimension events should strengthen the organization’s work in the human dimension by making the events more focused, more attractive, and more effective. To increase the effectiveness of the events, reform should focus on the following changes:

- a) A more logical annual cycle of human dimension events should be established, starting early in the year with HDIM and continuing with strong follow-up activities throughout the year, including SHDMs, HDC meetings, PC meetings, and Ministerial Council meetings, with these activities throughout the year focusing on issues raised, concerns expressed, and recommendations made at HDIM held in the beginning of the year.
- b) Activities throughout this annual cycle of human dimension events should focus on adopting concrete recommendations, decisions and action plans aimed at improving the participating States’ implementation of human dimension commitments and on assessing implementation of decisions adopted by OSCE bodies in the past.
- c) The role of independent OSCE institutions in the cycle of the human dimension events should be strengthened.

- d) The role of independent experts in preparing human dimension events, holding them, and developing follow-up actions should be increased; independent experts should be tasked with developing recommendations for action rather than “observations.”
- e) Civil society participation in human dimension events should be secured and civil society organizations’ substantive input increased at all stages of the human dimension events cycle throughout the year.

2. Changes in timing and order of the human dimension events

- a) We suggest HDIM be moved from autumn to spring, preferably as early as March. This would provide sufficient time for work to be taken forward on the recommendations emerging from HDIM, particularly those that might be the subject of Ministerial decisions at the Ministerial Council. This would allow all three Supplementary HDMs to be held after the HDIM. This change of timing and sequence would help to establish a logical year-long cycle of review and follow-up action on human dimension commitments, including leading to a possible assessment meeting of all the year’s activities at the end of the year. It would also enable more systematic engagement by a new Chairmanship from the very start of the year and give it sufficient time to develop follow-up plans for the rest of the year.
- b) We suggest abolishing the Human Dimension Seminar but retaining three Supplementary HDMs. The selection of topics for the SHDMs should remain a prerogative of the Chairmanship and, as a general rule, topics for the three SHDMs should be taken from one of the three pillars of the human dimension. As indicated earlier, we believe all three SHDMs should be held after HDIM and that their topics should be chosen on the basis of issues raised at HDIM.
- c) A special assessment meeting at the end of each Chairmanship should also be held to assess progress made during the year in addressing the problems identified at HDIM.

3. Standing agenda of HDIM

- a) A standing agenda for HDIM should be established, obviating the need for annual decisions that hold back effective preparation for the meeting. The standing agenda should be based on the existing provision contained in PC Decision 476, with some minor amendments.
- b) Each of the fundamental freedoms should be allocated a dedicated working session. In the current HDIM agenda fundamental freedoms are squeezed together into too short a time, thus preventing the kind of meaningful discussion that these commitments require given the increasing problems we are witnessing in a number of OSCE participating States. Specifically, we think it is necessary to allocate separate half-day sessions for freedom of assembly and freedom of association instead of discussing them together. They are equally important freedoms in their own right, each requiring proper attention, as much as other vital freedoms such as freedom of expression, freedom of movement, and freedom of thought, conscience, religion or belief. Fundamental freedoms are all important and should not compete with each other.
- c) An agenda item explicitly focusing on “security of human rights defenders” should be added to the agenda. This growing problem has been reflected in the work of the UN and the Council of Europe but not so much at the OSCE. This item could be discussed separately or added to freedom of association or the role of civil society in protecting human rights.

- d) Items under the third pillar (Democratic Institutions, Rule of Law I and Rule of Law II) should be moved up in the agenda so that they come immediately after items under the first pillar of fundamental freedoms. These two pillars are closely related, and this change in scheduling would make it easier for specialized NGOs and experts to stay at HDIM for sessions on these items.

4. A new format of HDIM sessions

- a) We believe that at HDIM the focus should be less on presenting information and recommendations by reading prepared statements and more on discussing these recommendations and how to remove obstacles to their implementation. We suggest that NGOs and governments could be asked to submit their information and recommendations as much as four weeks in advance of HDIM to allow for a shift of focus at HDIM. This would ensure better preparation for HDIM sessions.
- b) Discussions at HDIM could be prepared by independent experts who would make presentations on key issues and recommendations raised in participating States' and NGOs' preliminary submissions and ensure that discussions are focused on recommendations and follow-up actions. These experts could be recruited from academia, National Human Rights Institutes or civil society, as do the current presenters at HDIM whose contributions currently are rarely taken up for further discussion. Their proposals could be delivered either in the form of a presentation or a panel discussion of more than one expert, as was suggested in the Irish Chairmanship's Perception Paper in July 2012. Information from ODIHR and other specialized OSCE agencies could also be taken up in such presentations and discussions, as could relevant information from the human rights mechanisms of the United Nations and the Council of Europe.
- c) We suggest that those State delegations and NGOs that have submitted papers in advance should have priority in signing up to the speakers' list at each working session. However, a certain amount of time should be also allocated for shorter statements addressing issues that have arisen after the deadline for submission of advance written statements, and for statements within the moderated discussion.

5. Focus on follow-up to HDIM

- a) A regular review of shortcomings in the implementation of human dimension commitments is an indispensable part of a process of stimulating compliance with human dimension commitments. In our view, HDIM should not be a stand-alone event but should be embedded in an ongoing process of review, generation and realization of plans for improved implementation of commitments and feedback on steps taken to follow-up on such plans. We strongly believe that HDIM outcomes must lead to tangible follow-up by participating States, OSCE institutions, the Permanent Council and the Ministerial Council.
- b) We suggest that a reinforced Permanent Council meeting in Vienna be held a few weeks after HDIM specifically devoted to the implementation of human dimension commitments, with the participation of Human Rights Directors and relevant senior officials and heads of OSCE institutions. They should present their priorities for the future as well as their assessment of recommendations made during the HDIM.
- c) In order to prepare for the discussion at the Reinforced Permanent Council, in addition to the official Summary of HDIM proceedings traditionally prepared every year by ODIHR, the Chairmanship should prepare a perceptions paper that would be circulated in advance of the Reinforced PC meeting.

The perception paper would summarize the main findings and recommendations made at HDIM, identify key issues and topics requiring follow-up action by participating States and OSCE institutions, including the Permanent Council and the Ministerial Council, and propose concrete follow-up actions. The Chairmanship should involve independent experts and civil society representatives in preparing this follow-up perception paper.

- d) The Reinforced PC meeting should be devoted to a forward-looking discussion with a view to fostering implementation of human dimension commitments as well as elaborating recommendations necessary to meet new risks and challenges. The PC would discuss proposals made in the Chairmanship's perceptions paper and provide direction on follow-up actions and recommendations with regard to preparations for the OSCE Ministerial Council Meeting at the end of the year.

6. Developing a more systematic monitoring of human dimension commitments implementation

- a) Development of mechanisms for regular monitoring of implementation of human dimension commitments is one of the key means to increase the efficiency of OSCE in the human dimension. Adopting decisions and developing specific mechanisms may take several years but discussions and practical steps should start right away. Monitoring could focus on implementation of a particular human dimension commitment across the OSCE region or on implementation of one or several commitments in a particular country.
- b) Towards this goal, action plans adopted as a follow-up to HDIM should be less vague and more specific, identifying countries concerned and encouraging them to voluntarily report on improvements and problems in implementation of commitments at subsequent HDIMs, PC meetings, HDC meetings, or other possible multilateral meetings such as special events convened by the Chairmanship or autonomous OSCE institutions.
- c) Further on, participating States could be encouraged to voluntarily present implementation plans on how they intend to address shortcomings in human dimension implementation identified during discussions at HDIMs and other human dimension events.
- d) We support voluntary country reporting on implementation selected OSCE commitments which has already been introduced in the Human Dimension Committee. We propose that HDC and ODIHR jointly and in consultation with civil society elaborate guidelines for such reporting by State delegations. Country reports and a summary of discussion of these reports at HDC meetings should be made public.
- e) On the basis of lessons learned from voluntary country reporting at HDC we propose to move in the future towards mandatory reporting by participating States.
- f) We believe that a country that holds the Chairmanship of the OSCE should expect closer scrutiny of the way it fulfills its OSCE commitments and that it therefore has a particular responsibility to provide a good example to other participating States with regard to respecting these commitments. We therefore call upon the OSCE to introduce an official review mechanism to assess participating states for a potential Chairmanship role, including evaluating the candidate country's implementation of its OSCE human dimension commitments. This review should be carried out before any decision on the matter of future Chairmanships is made. Initially this could be done on a voluntary basis, in order to strengthen the international standing of the Chairmanship. Civil society reports should be an important part of this assessment process.

- g) In addition to country reporting, the process of reviewing the implementation of human dimension commitments should include regular special meetings of the Permanent Council and/or the Human Dimension Committee focusing on specific human dimension issues across the OSCE region. Summary reports from HDIM and SHDMs should be used to prepare such discussions. These meetings should be open to civil society representatives and the media, beyond what is foreseen by the current Rules of Procedure.

III. Crisis response, emergency and prevention

1. Wider application of non-consensual mechanisms

We believe that OSCE should ensure that investigations and preparation of decisions for swift OSCE actions in response to human rights emergencies and situations of persistent, large-scale human rights abuses or imminent threat of such violations cannot be held up by a veto by any one participating State. All existing OSCE mechanisms for dealing with emergency situations should be applied in cases of clear and gross violations of OSCE human dimension commitments, including the Berlin Mechanism, the Prague “consensus minus one” procedure, and the Moscow Mechanism.

2. Application of the Berlin Mechanism in the human dimension field

In particular, we suggest that the Berlin Mechanism should be used in the human dimension. The Berlin Mechanism was adopted in 1991 as a Mechanism for Consultation and Cooperation with regard to emergency situations. It was used three times in the 1990s: twice in the first dimension and once in the second dimension, including, for example, in addressing the situation in Nagorno-Karabakh, where it eventually resulted in the establishment of the Minsk group. Therefore, it is traditionally perceived as a mechanism for the first and second dimensions. However, nothing in the OSCE documents prevents the Berlin Mechanism from being applied in the third dimension. As described in the Berlin document of 1991, this mechanism can be used in instances when “a serious emergency situation ... may arise from a violation of one of the Principles of the Final Act or as the result of major disruptions endangering peace, security or stability.” We believe that gross and persistent violation of Principle VII of the Helsinki Final Act (respect for human rights and fundamental freedoms) falls into the category of situations where the Berlin Mechanism could be invoked.

The Berlin Document provides that “the participating States will in accordance with the following provisions, consult and co-operate with each other” concerning such emergency situations. The document further provides that if any participating State concludes that such an emergency situation is developing, it may seek clarification from the State or States involved, who should provide within 48 hours all relevant information in order to clarify the situation. Should the situation remain unresolved, any participating State involved in the procedure may table the situation at a meeting of the Permanent Council.

3. Development of follow-up instruments to the Moscow Mechanism

Existing OSCE documents do not envision any specific follow-up steps after the release of reports produced by rapporteur(s) in the framework of the Moscow Mechanism and its presentation at a meeting of the Permanent Council. We believe that such specific instruments for follow-up steps should be developed and tested, taking into consideration, inter alia, lessons learned from past applications of the Moscow Mechanism. Skepticism about the Moscow Mechanism is often caused by frustration about the lack of impact it has on the situation on the ground if the country in question is not willing to cooperate.

Strong analysis and recommendations contained in a Moscow Mechanism report remain unutilized while the situation on the ground may continue to remain very problematic or even deteriorate. Therefore, we believe that follow-up instruments need to be developed and tested which would provide for continued OSCE attention to the situation that originally caused the invocation of the Moscow Mechanism, monitoring of new developments and consistent efforts to negotiate implementation of recommendations contained in the Moscow Mechanism report with the authorities of the participating State concerned.

The OSCE Rules of Procedures of 2006 give the OSCE decision-making bodies, the Chairpersons of decision-making bodies, and the Chairpersons of informal subsidiary bodies the power to set up or dissolve ad hoc/thematic open-ended informal working groups, open to the participating States.⁶⁵ This means that delegations of participating State, the OSCE Chairmanship, and Chair of the Human Dimension Committee can all play a role in establishing and applying follow-up instruments to the release of the Moscow Mechanism report. In particular, the OSCE Chairmanship may, upon the request of a number of concerned countries, establish a working group to follow up on a Moscow Mechanism report. Similarly, the Chair of the Human Dimension Committee may take such a decision. The mandate of such a working group could include monitoring, assessment of the situation, presentation of regular reports to the Permanent Council, elaboration of recommendations, and interaction with the other relevant international organizations dealing with the human dimension situation in the country concerned such as bodies of the UN, the Council of Europe and the Inter-American Commission on Human Rights.

When a decision by the OSCE Chairmanship or the Chair of the Human Dimension Committee is not possible, the States concerned about an emergency situation or a case of systemic and gross human rights violations should react beyond issuing statements at meetings of the Permanent Council or HDIM, currently the only action regularly undertaken by concerned State delegations. We believe that the countries that initiated the Moscow Mechanism bear particular responsibility for follow-up actions. They may establish their own working group on the human dimension situation addressed in the Moscow Mechanism report and/or appoint their own Special Rapporteur. Other concerned countries could join them.

4. Actions by the Chairmanship in emergency human dimension situations

In emergency human dimension situations, when a decision to invoke a non-consensual mechanism is taking too long, the OSCE Chairmanship could take its own action. For example, it could dispatch a high-level special envoy chosen from among eminent persons with high international standing and task ODIHR to prepare a public report on the alleged serious violations with a view to presenting it in the Permanent Council. As a follow-up, the Chairmanship could establish a special rapporteur or an informal working group.

5. Emergency contact point in the OSCE Secretariat and the Taskforce of the Chairmanship

Currently there is no specific contact point for emergency situations in the human dimension, unlike for security issues in the first dimension where the Situation Centre in the OSCE Secretariat serves this function. Civil society representatives send alerts on emergency situations in the human dimension on an ad hoc basis to ODIHR and the delegations of participating States, but no response mechanism exists. We suggest that an emergency contact point be established in the OSCE Secretariat and the Taskforce of the Chairmanship and that a relevant response mechanism be developed.

⁶⁵ OSCE Rules of Procedures (2006): "II (A) 8. The decision-making bodies, the Chairpersons of decision-making bodies, and the Chairpersons of ISBs in close consultation with their superior decision-making body, may set up or dissolve ad hoc/thematic open-ended informal working bodies, hereinafter referred to as informal working groups (IWGs), which shall not have a decision-making capacity as specified in paragraph II(A)1 and which shall be open to all the participating States."

IV. Strengthening the role of autonomous OSCE institutions⁶⁶

1. The role of autonomous OSCE institutions, including ODIHR, the High Commissioner for National Minorities, the Representative on Freedom of the Media, the Special Representative on Human Trafficking, and OSCE Parliamentary Assembly, should be strengthened.
2. The role of independent experts, including representatives of academia and civil society, in both the human dimension meetings and the development of human dimension standards and guidelines, should be increased.
3. We suggest that expert groups on fundamental human rights comprised of experts from the academia and civil society, modeled after the ODIHR panel of experts on freedom of assembly, be established at ODIHR or other OSCE institutions. These expert groups could elaborate human dimension standards, guidelines, and recommendations on implementation of existing human dimension commitments.
4. In addition, these expert groups could be mandated to research and draft recommendations or guidelines on new OSCE commitments in response to emerging challenges in the human dimension, such as the issue of protection of human rights defenders.

V. Enhancing Civil Society Input in OSCE Human Dimension Activities

1. General approaches

- 1) Over the 35 years of the organizations' existence, a number of OSCE documents, beginning with the 1975 Helsinki Final Act, have spoken of the importance of civil society participation in OSCE activities. These documents also call for the development, enhancement and exploration of new means of civil society involvement in OSCE work, especially in its Human Dimension activities. Not much, however, has been done in the OSCE in the last decade to enhance and develop new means of civil society participation.
- 2) OSCE documents refer to civil society groups as important actors in the implementation of OSCE commitments and call on the OSCE institutions and participating States to cooperate with NGOs. We believe that civil society's potential is largely untapped by the OSCE, with many NGOs at the local, national, and international levels having increased their expertise over the last decade. This is particularly important in light of the uneven record of implementation of human dimension commitments across the OSCE region and new human dimension challenges. It is important for the OSCE to include NGOs as full-fledged partners for dialogue, especially in cases of anti-democratic backsliding and human rights crises.
- 3) At the same time we see alarming initiatives coming from the governments of some OSCE participating States aimed at limiting civil society's role in OSCE activities and even instances of pressure on NGOs for their engagement with the OSCE and other international organizations. We consider it of paramount importance for the OSCE to firmly adhere to the general principle of inclusive NGO participation spelled out in OSCE documents, in particular, the Helsinki Document of 1992 and the Budapest Document of 1994, and ensure the safety of those NGOs and activists that experience pressure for their engagement with OSCE.
- 4) However, simply preserving the status quo is not enough. In order for the OSCE to become more

⁶⁶ More detailed proposals on strengthening the role of autonomous OSCE institutions will be developed by civil society in the near future.

effective, it is important to enhance civil society participation in the organization's activities. To make this possible, a more systematic approach to NGO involvement needs to be developed in OSCE.

- 5) The OSCE could benefit by looking at best practices of other inter-governmental organizations, including international financial institutions and the UN bodies. In these organizations, systematic engagement with NGOs, requesting their input in the preparatory stage of meetings and in drafting documents, and holding consultations with NGOs in all stages of work have become not only a written rule but standard practice.
- 6) NGOs' detailed and often unique knowledge of human dimension issues is based on their work on the ground and, in particular, with victims of human rights violations. NGOs are able to provide valuable input at different stages: from monitoring implementation of OSCE commitments to problem identification, goal setting, suggesting new mechanisms and procedures, developing policy advice, drafting documents, elaborating new normative approaches, participating in the implementation of programs and activities, assessing their efficiency, building capacity and doing trainings to raise awareness of OSCE principles and activities. Therefore, NGOs should be involved in all stages of the OSCE's human dimension activities.
- 7) We suggest the following general principles for civil society involvement in the work of OSCE:
 - inclusiveness and non-discrimination (excluding only those who support violence and terrorism);
 - security for NGOs and activists engaged with the OSCE;
 - recognition of the pluralistic and non-hierarchical nature of civil society;
 - involvement of NGOs in all stages of human dimension activities and with all OSCE institutions;
 - equality of NGO and non-NGO experts; and
 - openness and responsiveness by OSCE institutions to civil society's proposals.
- 8) A study drawing lessons from and summarizing the existing experience of civil society engagement in the work of the OSCE and looking at the experience of other intergovernmental organizations may be useful for preparing next steps in enhancing civil society participation in OSCE work. However, new approaches to enhanced NGO engagement should be tested without delay, first on an ad hoc basis, with a view to analyzing feedback and adopting new procedures based on successful experiences.

2. Civil society participation in the annual cycle of human dimension events

1) *General approach to all human dimension events*

- a) The OSCE should ensure robust civil society participation in the whole cycle of human dimension activities throughout the year, beginning with preparation for the HDIM (or SHDMs, whichever comes first) and ending with the meeting of the Ministerial Council.
- b) The role of independent experts, including NGO representatives, in preparing different human dimension events, holding them, preparing reports on them, and developing follow-up actions, should be increased.
- c) A transparent procedure should be developed in cooperation with civil society representatives whereby OSCE decision-making bodies could consider and respond to NGO appeals, reports and recommendations, presented in the context of HDIM or other human dimension events, about systemic problems in human dimension areas and emergency situations.
- d) Independent experts, including NGO representatives, when asked to prepare a report, make a presentation, or give remarks, should be tasked with developing specific recommendations for OSCE actions rather than "making observations."

2) HDIMs and SHDMs

- a) Independent experts from civil society should be involved in preparing the agenda for the HDIM and SHDMs.
- b) Experts from civil society should be regularly invited to serve as introductory speakers, moderators and panelists at HDIM and SHDM plenary sessions.
- c) Experts from civil society should be engaged by the Chairmanship in preparing a Chairmanship “perceptions paper” which would be used in discussions at the follow-up reinforced Permanent Council meeting, should such a reinforced PC meeting be introduced.
- d) It is important to ensure that a Reinforced Permanent Council meeting is open to civil society representatives as a matter of a standard procedure rather than on an ad hoc basis by invitation of the Chairmanship-in-Office.

3) Permanent Council and Human Dimension Committee meetings

- a) It is important to increase the openness of the Permanent Council (PC) and the Human Dimension Committee (HDC) to civil society, for example, by introducing the practice of regularly inviting civil society experts to address these meetings and propose recommendations in the human dimension to participating States and OSCE institutions.
- b) At least certain parts of Permanent Council meetings – certainly the part related to the human dimension – should be open for observation, for example, through Internet streaming and close-circuit TV, with a view to moving in the future to opening most or all PC meetings for direct observation by civil society representatives present in the meeting room.
- c) Should the practice of holding a Reinforced Permanent Council meeting as part of the follow-up process to HDIM be adopted, these sessions should be treated as a special case and always include participation of civil society to discuss the outcomes of HDIM and recommendations for further OSCE actions.
- d) All meetings of the Human Dimension Committee should be open for observation. Ideally, tentative agendas and work plans for the HDC for the upcoming year should be set not only as a follow up to HDIM, but also in consultations with civil society. For this goal, a special meeting including the HDC Chair, interested State delegations and civil society representatives can be held.
- e) Should the emerging practice of participating States’ voluntarily reporting at HDC meetings on implementation of selected human dimension commitments continue, the HDC Chair and reporting State delegations should invite to these meetings NGOs working in related geographic and thematic areas and take their recommendations into account.

4) Ministerial Council meetings and Summits

- a) Civil society organizations should continue to be able to hold their preparatory and parallel meetings on the eve of the Ministerial Council meetings and Summits and elaborate recommendations to participants in these meetings. This practice needs to be recognized as a regular element of the cycle of human dimension activities.
- b) An NGO representative should be invited to present civil society recommendations at a plenary session

of the Ministerial Council meeting or a Summit. Copies of civil society recommendations should be distributed among all State delegations participating in these meetings.

- c) A meeting of NGO representatives with representatives of the Troika should be held on the margins of the Ministerial Council meeting or a Summit to discuss the results of human dimension activities during the year and prospects for the coming year.

5) Interaction with the Chairmanship-in-Office, the Troika, and the Helsinki+40 process

- a) NGO opinions should be taken into account in assessing potential candidates for the OSCE Chairmanship and in possible elaboration of criteria for assessing candidates for the Chairmanship role.
- b) If a country that has already been appointed to hold an upcoming Chairmanship accepts the NGO-advocated idea of a voluntary self-assessment of its performance in implementation of OSCE commitments, it should consult NGOs and invite them to make recommendations.
- c) The incoming Chairmanship should begin consultations with civil society on its thematic priorities early on, both in-country and OSCE-wide. Selection of the Chair's priorities in the Human Dimension area should be based on an analysis of HDIM and SHDMs summary reports and consultations with NGOs across the OSCE region.
- d) An incoming Chairmanship should appoint an NGO liaison person within its Task Force. Among other duties, this person should serve as contact point in case of emergencies, receiving NGO communications on human rights violations and reporting them to the Chair. Alternatively, a Chairmanship could appoint a temporary Special Representative for interaction with human rights defenders and NGOs.
- e) We suggest that a briefing for civil society on the Helsinki+40 process and exchange of views take place as soon as possible with a view to establishing permanent consultations with NGOs on the Helsinki+40 process.

3. Civil society interaction with OSCE institutions

1) General proposals for all institutions

- a) All OSCE institutions should consult with civil society prior to developing their programmatic priorities and project activities.
- b) All OSCE institutions should involve civil society in the implementation of their programmatic activities to the maximum extent possible.
- c) Civil society should be consulted in the process of planning and preparing the agenda for special events held by OSCE institutions.
- d) All OSCE institutions should have an NGO focal point or an NGO liaison person.
- e) All OSCE institutions should build into their programs regular impact evaluations with substantive input from civil society.
- f) All OSCE institutions should establish a process of annual assessments of their activities with substantive input and recommendations from civil society.

2) ODIHR

- a) ODIHR should increase the level of awareness of OSCE standards and OSCE products (guidelines, legal opinions, handbooks) by increasing its outreach to civil society across the OSCE region, including by arranging meetings with civil society by officials from the OSCE institutions and departments that developed these products.
- b) ODIHR should develop educational modules about OSCE standards and institutions, including both historical and current perspectives, and engage civil society in dissemination of these products and in implementation of educational activities.
- c) ODIHR should expand existing and develop new educational programs for civil society organizations on how to use OSCE instruments more effectively.

3) OSCE Secretariat

- a) The OSCE Secretariat should develop its own mechanism for interaction with civil society. It could include, in particular, an NGO contact point for human dimension emergencies and crisis situations. This is especially important for the countries where there is no OSCE office, mission or center. Such an NGO contact point could be based in the Secretariat's crisis unit.
- b) The Conflict Prevention Centre at the Secretariat should engage civil society in increasing civilian observation capacity in response to early warning signs.

4) OSCE Parliamentary Assembly

- a) The OSCE Parliamentary Assembly should officially establish NGO engagement in its activities, moving from de-facto NGO participation as observers at its plenary sessions and meetings of its committees and working groups, and participation in side events to including NGOs as a separate registered category and including NGO participation in its Rules of Procedure.
- b) The OSCE PA should establish a process of preparing its draft resolutions with input from civil society.

5) Special Representative on Freedom of the Media / High Commissioner on National Minorities/ Representative on Combatting Trafficking in Human Beings

- a) Meetings with civil society should be a standard part of country visits by these officials and their staffs, including investigation and fact-finding missions.
- b) These officials might consider preparing country reports/country profiles with input from civil society.
- c) In addition, the High Commissioner on National Minorities should engage civil society to increase civilian observation capacity in response to early warning signs.

4. Civil society interaction with OSCE field missions, offices and centers

- 1) The human dimension should be an important part of the mandate of all OSCE field missions, offices and centers. Civil society organizations should be able to have input in discussions of their mandates.

- 2) Each OSCE mission, office and center should have an NGO liaison person. This is especially important for emergency situations related to gross human rights violations and persecution of human rights defenders.
- 3) All OSCE missions, offices and centers should establish annual assessments of their work with recommendations from and input by NGOs.
- 4) Field offices should regularly hold meetings with representatives of civil society to discuss possibilities for their engagement in the activities of the field offices and the OSCE in general.
- 5) Field offices should regularly brief civil society on the entire range of their activities and request feedback, including formal evaluations.
- 6) Mechanisms for civil society monitoring of and feedback on the situation in a country and of OSCE field activities should be institutionalized, especially on projects aimed at building the capacity of law enforcement and other governmental agencies.

5. Civil society participation in the observation missions

- 1) Civil society representatives should be included in the observation, investigation and fact-finding missions.
- 2) The OSCE should ensure active participation by civil society representatives in its election observation missions. In addition, civil society organizations' ability to conduct their own independent monitoring of elections and to assess OSCE election monitoring should be recognized as an important contribution to the implementation of OSCE commitments. Special attention should be paid to the protection and safety of NGOs and activists that face retaliation for their engagement in election observation.

6. Civil society engagement with other human dimension mechanisms

1) *Crisis response*

- a) Civil society representatives should be included in investigation and fact-finding missions in emergency and crisis situations and involved in preparing these missions' reports.
- b) Particular attention should be paid to those types of emergency and crisis for which there is no special OSCE representative or specialized institution, including instances of mass violence against participants in demonstrations and the persecution of human rights defenders.
- c) A contact point should be established to receive communications from NGOs in case of emergencies and crises. It could be located in either the OSCE Secretariat, the Taskforce of the Chairmanship, or another OSCE institution.

2) *Development of guidelines in human dimension*

Should new expert groups on fundamental human rights be established at ODIHR or other OSCE institutions, modeled after the ODIHR Panel of Experts on Freedom of Assembly, civil society representatives should play an important role in these groups.

3) *Monitoring implementation of human dimension commitments*

Should OSCE develop mechanisms for regular monitoring of implementation of human dimension commitments, civil society should be able to contribute to this process, including by elaborating recommendations for improving implementation of commitments.

4) *Civil society participation in discussions of OSCE reforms*

Civil society organizations should be consulted with and engaged in the process of discussing proposals on the review of human dimension mechanisms and any wider reform of the OSCE.