OSCE

Office for Democratic Institutions and Human Rights

BULLETIN

CONTENTS

Winter 1994/1995 **Vol. 3 No. 2**

WARSAW

A NOTE FROM THE DIRECTOR

We have a variety of articles for you in this publication of the Bulletin.

To mark the establishment of the Contact Point for Roma and Sinti Issues (CPRI), which is an important new development in our work, there are two articles on Roma, which should stimulate a lively debate. We will regularly have a Roma written article to assist us in establishing the clearing house functions of the CPRI. This exchange of information will, I am sure, make a significant contribution to the better understanding of Roma. We also publish in this edition the detailed description of the Contact Point - its role, function and planned activities for the future.

In this issue we explain our mandate in relation to media. At the Budapest summit we were asked to

"act as a clearing house for the exchange of information on media issues in the region." In order to fulfil this mandate it would be most helpful if "governments, journalists and NGOs" could provide us with information about the position of the media. We should like to hear from you on this.

Just before Easter we held a seminar on NGOs. This recognised the valuable role that NGOs can play in assisting governments with their roles. Not enough use has been made to date of NGOs expertise. We hope that ways can now be formed to enable them to play a greater role in the work of our Office and with the OSCE in general. We are pleased to reproduce the speech which the Head of the French delegation gave at the seminar on behalf of the European Union.

In line with the increased role that the Office was asked to play in election monitoring at Budapest, we have an article on the legal framework of the Russian electoral system. We are elaborating a framework to enable us to co-ordinate election monitoring with other institutions and organisations and we will give you more information about this in the forthcoming months.

We also have a substantial and fascinating article on judicial review which could promote some interesting reactions. Last, but not least, we are grateful to the Secretary General for allowing us to publish excerpts from his speech during the NATO Crisis Management Seminar, which illustrate the flexibility and adaptability of the OSCE in confronting the problems of crisis management.

Audrey Glover
Ambassador

NEW CHALLENGES ON THE OSCE CONFLICT RESOLUTION AGENDA

Dr. Wilhelm Höynck

Secretary General of the OSCE

Excerpts from the speech made during the NATO Crisis Management Seminar 1995
Brussels, 27 March 1995

The Budapest Summit held in December last year marked another step in the move towards consolidating the OSCE's capability to meet the challenges that have emerged on its agenda. The Conference on Security and Co-operation in Europe became the Organisation for Security and Co-operation in Europe. The new name reflects the growth in activities that has occurred in the past few years. It is also an expression of the participating States' belief in the "central role" of the OSCE in building a secure and stable OSCE community.

For nearly half a century, we lived with East-West confrontation as the dominant issue in almost all problems ranging from local conflict to global economic relations. Now we are faced with a great number of problems, conflicts and crises, some of which are clearly local or regional. How can we assess these problems properly? What should be the yardstick for deciding what is important and where the international community should be involved? These problems escape generalised responses and call for more specific, case-by-case solutions. To find answers to these questions, we are all still in the process of adapting and developing instruments and institutions. The OSCE is no exception: we are trying to find our place, our role, our contribution in anticipating, preventing, managing and solving crises. But crisis management is not the key issue. The main political task today is to build new stability--stability based on civil societies everywhere in the OSCE area; stability based on developing structures of co-operative and comprehensive security. No national or international community will manage to live without tensions. But we must develop our capacities to defuse tensions before they degenerate into conflict. In this area we lack experience, and new thinking is required. The Stability Pact is a successful example. We also still have to find the right place for enforcement action or, in other words, developing concepts of conflict prevention and crisis management that do not exclude enforcement but are no longer dominated by military options.

The Heads of State or Government at the Budapest Summit confirmed that "the CSCE will be a primary instrument for early warning, conflict prevention and crisis management in the region." This general political statement was accompanied by decisions that defined OSCE tasks with a view to concrete problems and crises. Of particular importance were the decisions on further OSCE efforts to find a solution to the Nagorno-Karabakh conflict. But there is much more on the agenda.

The OSCE's possibilities for conflict prevention and crisis management have been put to a serious test by the events in Chechnya. New OSCE activities aimed at solving problems of the past have been started in Estonia and Latvia. In the Balkans, the OSCE Mission in Skopje has been faced with an outbreak of violence, and our Mission in Sarajevo is helping to shape the new federal State. The OSCE Missions in Moldova and Georgia continue their efforts to find negotiated solutions.

SUCCESSFUL CONFLICT PREVENTION

The Helsinki Summit of 1992 called on the Russian Federation and the Baltic States to conclude

without delay, appropriate bilateral agreements, including timetables, for the early, orderly and complete withdrawal of foreign troops from the territories of the Baltic States. Six months later at the Ministerial Council in Stockholm, the CSCE underlined its readiness to "remain engaged in the implementation of these provisions." At the same time, the CSCE was seized with the problems of the large, in particular ethnic Russian minorities in Estonia and Latvia. Following an Estonian proposal, a resident OSCE mission was established in Tallinn to promote stability and dialogue between the Estonian- and Russian-speaking communities in Estonia. At the beginning of 1993 the newly appointed High Commissioner on National Minorities paid his first visit to the Baltic States, and in November 1993 a CSCE resident mission started its work in Latvia.

These were the major steps marking the beginning of specific OSCE contributions to developing comprehensive stability in the Baltic region. The withdrawal of the former Soviet troops and the integration of groups of the non-local ethnic population living in the Baltic States are key elements of stability-building of these States.

Thus, CSCE preventive diplomacy was first tested in the Baltic region. The OSCE was confronted with the difficulties and challenges involved in preventive action. After three years, OSCE efforts are starting to show the potential for success of such measures.

Withdrawal of foreign troops from the territories of the Baltic States.

1994 witnessed the conclusion and implementation of agreements providing for the complete withdrawal of Russian troops from the Baltic. But as the withdrawal was implemented, it turned out that a number of transitional problems had to be solved. The parties asked the OSCE for its help on these problems as well.

In Estonia the OSCE was requested to appoint a representative to the Governmental Commission on Military Pensioners of the Russian Federation living in Estonia. This Commission has to decide on very difficult status problems of these persons. In Latvia, OSCE assistance covers further areas. The OSCE has been asked to monitor the implementation of the agreement between Latvia and the Russian Federation on the Skrunda radar station during its temporary operation by Russia and its final dismantling. The OSCE will, through its representative to the Joint Committee established by the Parties, participate in discussions and decisions on the implementation of the Skrunda Agreement. By conducting periodic on-site inspections, the OSCE will help to monitor the implementation of the Agreement. The OSCE was invited to appoint a representative to assist in the implementation of another withdrawal-related agreement - that on the social welfare of retired military pensioners and their family members. The Joint Committee on military pensioners has meanwhile met four times and has begun discussing the first individual cases brought before it on appeal.

The OSCE has recently been involved in defusing a potentially explosive problem relating to the Russian military officers who were supposed to leave Latvia but continue to reside there illegally. It should be noted that both Russia and Latvia have displayed moderation in dealing with this matter. Extreme measures such as expulsions have so far been avoided. Informal discussions have taken place in Vienna and elsewhere, with OSCE assistance. The Parties have been encouraged to make full use of the advice and good offices of the OSCE, and, although the issue has not been completely resolved, more time has been allowed to find acceptable solutions.

Status of non-citizens and the integration of non-native speakers in Latvia and Estonia.

Through its most visible action in Latvia and Estonia, i.e. its resident missions, the OSCE has contributed to the solution of problems relating to the status of non-citizens and the integration of non-native speakers. Thus, tensions that have been troubling the relations between the Baltic States and Russia were defused, although the underlying problems are not yet definitely solved. There is a long list

of specific problems on which the OSCE has acted in the past two years in Estonia and Latvia, both through its missions and with the help of the OSCE High Commissioner on National Minorities. Recently, one of these problems concerned the new citizenship law adopted in Estonia in January 1995. The High Commissioner was able to express his views on this law at an early stage of its elaboration. Similarly, he expressed his views on the Latvian draft law on non-citizens while this was under consideration by the Latvian Parliament earlier this year. The OSCE was also involved in finding solutions to the problem of non-citizens travelling abroad and, in particular, crossing the border between Estonia and Russia.

The OSCE has tried to attract international attention to and resources for language training as a key to the integration of non-native speakers into Estonian and Latvian society. At the same time, in connection with the citizenship law adopted in Latvia in July 1994, the High Commissioner expressed his concerns over the far-reaching language requirements. The OSCE Mission in Latvia is therefore in close contact with the Naturalisation Board, responsible for language testing in the naturalisation process. With the consent of the Latvian authorities, Mission members monitor language examinations.

The OSCE experience in Estonia and Latvia shows that in such situations, broad and flexible mandates are useful to defuse problems that are directly or indirectly interrelated. At the same time, different instruments have to be used: the HNCM, resident Missions, ODIHR, Special Representatives and monitoring teams.

Such conflict prevention activities imply not only political persuasion as well as occasional mediation, legal and administrative advice and verification missions, but above all close contacts with the local partners to encourage political dialogue. The OSCE's role can be successfully played only with the active, visible political support of the OSCE States and in co-operation with other international organisations, such as the Council of Europe. Another key issue is of course resources: It is enough to note that the OSCE does not have an inspectors' corps of its own to send to the Skrunda site. These will be experts proposed, delegated and trained by the participating States.

As progress is made in developing solutions to the problems of the past, and as more specific tasks are given to the OSCE concerning military pensioners from the Russian forces and monitoring the Skrunda Agreement, the time will come when Resident Missions might be reduced. Together with the parties, finding the right timing for reducing and, eventually, transforming or ending a mission will be very important for the credibility of OSCE preventive diplomacy.

National Minorities Issues.

Apart from the OSCE field missions, it is the High Commissioner on National Minorities who epitomises the OSCE's preventive effort. Mr. Max van der Stoel's mandate is to assess and, where possible, defuse at the earliest possible stage tensions involving national minority issues which have the potential to develop into a conflict in the OSCE area. The countries where he remains engaged are: Albania, Kazakhstan, Kyrgyzstan, Estonia, Former Yugoslav Republic of Macedonia, Hungary, Slovakia, Romania, Latvia and Ukraine. He has also studied the situation of the Roma. His rapidly increasing activities underscore the crucial importance of questions related to national minorities for the maintenance of stability in the OSCE area.

The long-term promotion of stability through the High Commissioner is, however, a great challenge. Some participating States or national minorities may feel disappointed, having hoped for quick and far-reaching results and some may feel uncomfortable at having been exposed to constant attention. Such frustration or disappointment may jeopardise the High Commissioner's efforts. The necessary countermeasure is the continuation of the unequivocal, clear and visible support for his efforts by the OSCE participating States. It is important that the parties concerned feel, behind the High Commissioner's involvement, the full political weight of the OSCE community as a whole and of each

and every participating State.

CONFLICT IN THE RUSSIAN FEDERATION (CHECHNYA)

Several days after the Budapest Summit, the war in Chechnya broke out. Although it is clearly an internal conflict, the international community wanted to make direct contributions to solving it. As OSCE commitments were violated, the OSCE had formal reasons to become involved. One possibility was the activation of OSCE mechanisms. But these mechanisms are not very flexible and may lead into blind alleys. However, the OSCE Chairman-in-Office, Hungarian Foreign Minister Laszlo Kovacs, decided to offer the Russian Federation direct OSCE support.

The OSCE's role was not questioned. It has a formal mandate to intervene also in internal conflicts involving human rights abuses. The Helsinki Summit of 1992 had reiterated that "the commitments undertaken in the field of human dimension of the CSCE are matters of direct and legitimate concern to all participating States and do not belong exclusively to the internal affairs of the State concerned." The Code of Conduct on Politico-Military Aspects of Security, adopted at Budapest, was also an important point of reference. Russia had to account for the implementation of its provisions, in particular those relating to the use of armed forces in internal conflicts. The Hungarian Chairman established direct contacts with the Russian authorities. Russia confirmed the basis for OSCE involvement and agreed with the OSCE presidency on undertaking co-operative action to help solve the problems. Acting through his Personal Representative, Ambassador Istvan Gyarmati, and with the expert advice of the ODIHR, the Chairman promoted an active OSCE role in the stabilisation of the region. Through a number of visits to Moscow and the area of conflict, and in close co-operation with the Russian authorities, a step-by-step approach for OSCE support was developed. The OSCE Permanent Council decision of 3 February spelled out details of the OSCE's long-term operational involvement. The resolution was also important in a political sense. It addressed with Russia's consent the "disproportionate use of force by the Russian armed forces."

The OSCE mission which travelled to Moscow and Chechnya between 22 February and 1 March helped to formulate the most immediate tasks that could be fulfilled by the OSCE. These were: to facilitate delivery of humanitarian aid; to undertake new efforts for preventing human rights violations; to help re-establish governance and rule of law in the war-torn areas and to help prepare free elections. In talks between President Yeltsin and Hungarian Prime Minister Horn, Russia accepted the necessity of a "permanent" OSCE presence in the region to carry out these tasks. President Yeltsin also accepted "an OSCE presence" in efforts to achieve negotiated solutions. The next mission to the area on 20-27 March, led by Ambassador Gyarmati, helped to define the modalities for such an OSCE presence. An OSCE Assistance Group will deal with facilitating humanitarian aid, the restoration of democratic institutions and facilitating a lasting political solution.

Throughout the crisis the OSCE has underlined the co-operative character of any OSCE action. Persuasion and encouragement, as well as enlightened self-interest, elicited positive Russian responses. It was crucial that the actions of the Hungarian Chairmanship were coupled with the visible political support of the OSCE participating States. Obviously there has been considerable public pressure for early and tangible results of OSCE action, but we must assess the OSCE's possibilities realistically. Russia has come a long way. The possibilities for concrete action are improving. The prospects are good that OSCE involvement will make a difference, unfortunately not today but - hopefully - tomorrow. The precedent will be important.

CHALLENGES OF CRISIS MANAGEMENT

South Ossetia in Georgia and Transdniestria in Moldova are two areas of conflict with some similarities. Cease-fires have been established, essentially with the help of Russian forces, and the OSCE, through a permanent presence on the ground, tries to facilitate political settlements and to monitor the respective tripartite peacekeeping operations.

In Moldova the central issue is the Transdniestrian status within Moldova. Almost one year ago (28 April l994), following the good offices of the OSCE and Russia, the Moldovan President and the Transnistrian leader met for intensive talks and confirmed their resolve to seek a comprehensive solution to the problems. The progress towards settlement has, however, recently slowed down. However, with continuing OSCE and Russian support, the political dialogue at the highest level continues. The last summit meeting took place on 15 February 1995, and working-level contacts are in progress. A concept for Transdniestrian's status inside Moldova has been developed by the OSCE Mission and has been accepted as a basis for discussion. Still, despite periodic encouraging signals, no major political compromise on the issue has yet been registered.

The conclusion of an agreement on the withdrawal of the 14th Russian Army from Moldova in October last year was an important achievement both for Russia and Moldova, although the Russian Duma has not yet ratified it. Still, the agreement is opposed by the Transnistrian leaders. The decision of the Transnistrian authorities to hold a special referendum in that area on the withdrawal of the 14th Army was an unfortunate development. This will not contribute to the solution of the problem. It was encouraging to hear the Russian authorities state that the Referendum will not influence Russia's determination to proceed with troop withdrawal as agreed.

The OSCE was approached by the Government of Moldova to consider monitoring the withdrawal. But this idea can be followed up only if it is shared by the Russian Federation. Whatever the results of this initiative may be, it is important to note also in this context the potential of general consultations in the Permanent Council. The Budapest Summit clearly strengthened this function by explicitly declaring the OSCE as "a forum where concerns of participating States are discussed, their security interests are heard and acted upon."

In the present situation characterised by high complexity, clear signals from individual members of the OSCE community are of importance in helping to put the parties in a mood for compromise. Some of the OSCE members have a special potential in this regard. Their use in the OSCE framework can overcome the limitations of the OSCE contribution as such.

What can be said about the OSCE Mission to Moldova as of today? The OSCE helped to stabilise the political situation and eliminate the danger of a recurrence of violence. It helped to bring the parties to the table and to create a good climate for dialogue, and also helped to develop a basis for negotiation. Setbacks are unavoidable and it is important to carry on in an overall environment that should allow for a breakthrough in the not too distant future.

PREPARING FOR THE FIRST OSCE PEACEKEEPING OPERATION

The Helsinki Summit of 1992 accepted that the CSCE could conduct peacekeeping operations. In a way, the OSCE resident Missions have tasks similar to peacekeeping, but they are small in size, numbering fewer than 20 people, and they are not regarded as peacekeeping operations. But in Budapest the OSCE Heads of State or Government declared their political will to provide "a multinational CSCE peacekeeping force" in the area of the Nagorno-Karabakh conflict.

The 1992 Helsinki Summit decisions strongly underlined that peacekeeping is not an end in itself but a "complement" to a political process of conflict resolution. In the Nagorno-Karabakh conflict, therefore, the necessary political requirements must be met before a peacekeeping operation is launched. This

implies above all political agreement on the cessation of the armed conflict. The OSCE, through the framework of the Minsk Group, is promoting such agreement. Decisions adopted in Budapest on the establishment of a Swedish-Russian co-chairmanship of the Minsk Group allowed for effectively incorporating the efforts of the Russian Federation into the OSCE framework. But among the parties, layers of mistrust and suspicion created by the protracted conflict still exist. The Azeris are afraid that peacekeeping may freeze the present situation on the ground, whereas the Nagorno-Karabakh Armenians are worried that if they retreat without credible international guarantees from territory they hold, they will be exposed to retaliation. Internal instabilities also threaten the continuity of the peace process.

To prepare the operation properly is a major challenge. It is a serious test of the OSCE's ability to conduct large-scale operations, which may also affect its future roles. A special High-Level Planning Group was established to elaborate the characteristics of the force, its command and control, the allocation of units and resources, the rules of engagement and other practical arrangements. As there is no OSCE experience in this field, the group is carefully studying United Nations experience, so as to learn from its lessons while avoiding certain shortcomings.

Financing the operation is another complex task. We must realistically assess possible costs, while trying to keep them as low as possible. Using in-kind contributions provided by participating States would allow actual costs for the OSCE to be significantly reduced. It is difficult to say at this point precisely what the annual costs will be. By UN standards, an operation three-thousand strong would go far beyond the $100 million level. We must develop arrangements for distributing these costs among participating States and raising the required funds. Unlike the United Nations, the OSCE has neither reserves nor credit, so we must also ensure cash liquidity from the very beginning.

But in the final analysis, it will be the people on the ground who determine the success of the operation. We need firm pledges of personnel; we need the willingness to provide people with the necessary professional abilities - and this in a combination acceptable to the parties.

The operation will only be possible with the consent of the parties. Thus, before a decision on deployment is taken, the parties must address a formal request to the Chairman-in-Office. An appropriate resolution by the United Nations Security Council is another prerequisite. Continuing political support by the United Nations Security Council has been given to the OSCE's efforts concerning Nagorno-Karabakh throughout the period of its involvement. Nagorno-Karabakh will also be a test of how successfully a synergy of efforts between the UN and a regional arrangement can be put in place.

Sharing the technical expertise gained by United Nations is an example of how mutually supportive co-operation among international organisations can be ensured.

The North Atlantic Treaty Alliance and associated structures such as the NACC and Partnership for Peace could also render assistance to the OSCE, as explicitly foreseen in the Helsinki 92 Decisions. The NACC has been conducting advanced conceptual explorations of various aspects of peacekeeping, and the 1993 Athens Document has helped to advance thinking on the subject. Is the time ripe for discussing possibilities of utilising this potential for the OSCE's practical needs? I think it is clear that this is a highly political, not a technical problem.

CONCLUDING REMARKS

The areas described above are only some of the OSCE conflict prevention and crisis management activities. The OSCE is also present in a supportive role in the former Yugoslavia. It helps to prevent

spillover of the conflict to the Former Yugoslav Republic of Macedonia. It follows the developments in Kosovo, Sanjak and Vojvodina. It assists the countries neighboring Serbia and Montenegro in the application of sanctions established by the Security Council of the UN against the Federal Republic of Yugoslavia (Serbia/Montenegro). Another case of OSCE involvement which extends beyond crisis management to post-conflict rehabilitation is the OSCE mission to Sarajevo; it supports the activities of three Ombudsmen in the Federation of Bosnia-Herzegovina.

OSCE Structures for Crisis Management

The OSCE's role and capabilities in early warning, conflict prevention and crisis management have been enhanced by the further development of political dialogue within the framework of its newly established Permanent Council. More support is being extended to the Missions, and the Conflict Prevention Centre has been consolidated as a supportive structure; the HCNM and the ODIHR have been strengthened.

An important event is the entry into force of the Convention on Conciliation and Arbitration within the OSCE. The Court of Conciliation and Arbitration will soon be established in Geneva.

Relationship with the United Nations and Other International Organisations

The OSCE relationship with the United Nations is based on the OSCE's status as a regional arrangement under Chapter VIII of the United Nations Charter. This is increasingly understood as meaning the "OSCE first," wherever the OSCE has the appropriate potential. This approach is accompanied by the possibility for OSCE States, in exceptional circumstances, to decide jointly to refer a dispute to the UN Security Council on behalf of the OSCE.

It is important that the primary responsibility of the United Nations for the maintenance of international peace and security, as enshrined in the UN Charter, be fully respected. But every organisation has its specific character and autonomous role. Hierarchies do not seem to serve the purpose of effective co-operation. International organisations have the same ultimate contractor - their member States. A variety of organisations working on a problem can be an asset, provided the effort is carefully co-ordinated. In this sense, there is no room for "rivalry" or "competition" among regional organisations. At least, such an approach is alien to the OSCE. The Budapest Summit "decided to pursue more systematic and practical co-operation between the OSCE and other regional and transatlantic organisations that share its values and objectives."

The UN Secretary General's initiative in convening a meeting of regional organisations at the UN Headquarters, which took place on 1 August 1994, deserves to be followed up. One of its conclusions was that it would not be appropriate to try to establish a general, universal model for the relationship between regional organisations and the United Nations. Each organisation should develop its own model for relations with the UN. This will clearly be different for NATO and for the OSCE. Timely and clear allocation of tasks among them is the central issue. The member States of organisations can and must facilitate this process. Particularly in the case of the OSCE, the comparative advantages lie in preventive diplomacy and post-conflict rehabilitation. As the discussions on a security model for the twenty-first century proceed, it will be better understood that the relationship between various organisations, including the OSCE and NATO, is not a "zero balance" game. It could be argued that the stronger and more efficient the OSCE, the easier it will be for all OSCE participants to see the Atlantic Alliance as an element contributing to a lasting and peaceful order in the OSCE area. A strengthened OSCE, with its democratic principles and all-inclusiveness, and by making credible contributions to crisis management, could neutralise the dangers of new divisions and barriers.

This strategic complementarily of roles is supplemented by a variety of possible fields of practical co-operation. The Helsinki Document 1992 and the decisions adopted at the NATO 1992 Oslo Summit on

co-operation in peacekeeping is one area which still awaits exploration. There is a lot of room for ensuring better information, consultation, mutual political support, operational assistance, and the sharing of experience, expertise and knowledge. But this requires a political basis - one which unfortunately is not yet very solid.

All of our institutions form the fabric of what the Commission on Global Governance called in its report an "international civil society." It is our shared responsibility to make that society closer-knit and better able to deal with instabilities. This cannot be achieved by any one organisation. Mutually reinforcing co-operation is the key to better results. Let us recognise that at this point we identify problems and we ask questions, but we do not yet have convincing answers to all our questions.

LA LIBERTÉ D'ASSOCIATIONS ET DES ONG: CONSTRUIRE LA SOCIÉTÉ CIVILE[1]

L'Union Européenne est heureuse de pouvoir participer au Séminaire organisé par le BIDDH et portant sur la liberté d'Associations et des ONG: "construire la société civile".

Nous nous réjouissons à l'avance des échanges de vues que nous aurons entre représentants des Etats participants et ONG présentes, sur les sujets importants des relations entre Etats et ONG.

Parmi ces sujets figure la législation sur des Associations, fondement et base du développement du secteur associatif. En effet, plus que tout autre secteur économique ou social, car plus fragile, le secteur associatif ne peut se développer qu'à l'ombre d'une garantie juridique minimale assurant aux associations la reconnaissance d'une personnalité légale et la protection de cette personnalité. Nous entendrons avec intérêt, les vues des ONG sur la situation qu'elles connaissent dans leur pays respectifs. Nous espérons vivement que cet aspect de la question pourra être traité suffisamment en profondeur pour pouvoir dégager les grandes lignes de la situation et plus particulièrement dans les Etats nouvellement indépendants ou ayant mis en place depuis peu temps un sistème juridique d'Etat de droit.

Pour l'instant, l'acquis des textes adoptés dans le cadre de la CSCE ne nous fournit pas de références détaillées et de précisions sur ce point. La Charte de Paris place le droit d'association et de réunion parmi les cinq droits constitutifs de la démocratie et de l'Etat de droit. La réunion de Copenhague sur la Dimension Humaine a été plus explicite: ces textes basés sur une initiative de l'Union Europeenne, en leur paragraphe (9.3), disposent en effet que le "droit d'association sera garanti" et que ce droit (avec celui de former des syndicats) doit "exclure tout contrôle préalable". Les paragraphes suivants (10.1) et (10.2) et (10.3) détaillent la liberté d'association y compris le droit de former, de rejoindre et de participer à des organisations non gouvernementales "qui recherchent la promotion et la protection des droits de l'Homme et des libertés fondamentales y compris les syndicats et les groupes de surveillance des Droits de l'Homme". Mais l'application de ces principes demeure laissée à l'appréciation de chacun des Etats. Nous devons nous intéresser de près à cette mise en oeuvre.

Dans ce domaine crucial de la reconnaissance juridique, qui reflète les rapports entre l'Etat et le monde associatif, le Séminaire pourra peut-être mettre à jour l'existence d'un besoin d'échange d'informations voire de formation et de conseil à la fois au niveau des administrations étatiques qui ont en charge tous les aspects de la vie associative et au niveau des ONG elles-mêmes. Si ce besoin existe, nous sommes pour notre part en faveur d'un rôle accru du BIDDH dans ce domaine. Le BIDDH fait déjà beaucoup dans ce domaine, nous en sommes trés conscients. Peut-être pourrait-on approfondir son rôle de "Clearing House", de centre d'échanges pour les administrations et les ONG en matière de lois et réglementations sur la vie associative.

Mais nous ne sommes pas appelés à étudier seulement cet aspect de la relation complexe entre ONG et Etat. Nous avons également à notre programme un autre sujet tout aussi important: les relations des ONG avec les organisations internationales et tout d'abord l'OSCE. Les textes sont nombreux qui montrent sans ambiguité que les Etats participants à l'OSCE ont pris conscience trés tôt de l'importance du rôle que les ONG jouent dans l'établissement de la démocratie et de l'Etat de droit. L'histoire de notre continent depuis vingt ans est d'ailleurs là pour nous montrer qu'il ne s'agit pas là de rhétorique mais d'une constatation objective.

Le Sommet de Budapest est revenu une fois de plus sur cette ardente obligation d'associer plus

[1] Intervention prononcee M. Nicolas Mettra, Représentant adjoint à la Représentation Permanente de la France aupés des Negociations à Vienne, au nom de l'Union Europeenne Le mardi 4 avril 1995 au Séminaire sur les ONG et la liberté d'association

intimement les ONG au travail de notre organisation. Un volet du Document final est consacré au renforcement de l'application des engagements de la CSCE dans ce domaine. Si cette application doit être renforcée, c'est qu'elle a été jugée, à Budapest, insuffisant. Et il est vrai que par rapport à la multiplicité des engagements pris aprés la Charte de Paris, on a l'impression que les liens entre ONG, et Etats en particulier et leurs représentations à Vienne demeurent encore trop imprécis. Certes, le BIDDH a déja fait, et continue à faire énormément pour favoriser l'action des ONG et leur fournir une assistance variée et est l'interlocuteur normal des ONG. Mais il existe chez de nombreuses ONG un désir d'être associées plus étroitement aux discussions politiques qui se tiennent à Vienne notamment. Nous aurons à tenir compte de ce souhait.

Une partie du problème peut être attribuée à l'évolution institutionnelle extrêmement rapide de la CSCE puis de l'OSCE, à la grande diversité des sujets traités par l'OSCE. Le résultat en est toutefois un retard pris par notre organisation dans ce domaine par rapport aux organisations universelles ou régionales traitant des mêmes questions. Le resultat doit conduire à une collaboration plus etroite qu'actuellement. Tel pourrait etre notre objectif.

L'évolution institutionnelle de l'OSCE apporte en elle-même une partie de la solution. Le Conseil Permanent devient d'une manière croissante l'instance centrale où se discutent les questions politiques évoquées par les Etats participants. C'est donc autout d'une meilleure articulation entre le Conseil Permanent et les ONG, que la solution au problème d'un dialogue insuffisant avec les ONG, doit intervenir. Une telle constatation permet le maintien d'une distinction claire avec les instances de négociation qui, notamment concernent les questions de sécurité, comme le Forum de Sécurité.

Comment cette articulation se fera-t-elle? A ce stade, il parait prématuré d'en décider. Du reste, ce n'est pas le rôle de notre séminaire de le faire. En revanche, il sera très utile de commencer à en débattre entre nous en dressant ensemble une liste des avantages concrets que nous tirerions d'un lien plus direct, en déterminant les limites de nos interventions respectives. En effet, si les Etats et les ONG ont au sein de l'OSCE un grand avantage à travailler ensemble, ce travail doit se faire dans le respect du rôle et des modes d'action propres à chacun des deux acteurs.
Il serait très opportun que nous puissions ainsi par notre libre discussion apporter des éléments substantiels à notre réflexion, à celle du Secrétaire Général, à celle du BIDDH. En effet, la réunion sur la mise en oeuvre de la dimension humaine pourrait notamment tourner autour de ce point. Comment renforcer les relations existant entre l'OSCE et les ONG?

L'Union Européenne n'a pas à ce stade des éléments déterminants et fixes sur la manière dont cet objectif doit être atteint. Mais elle considère que nous devrons trouver d'ici le mois d'octobre des modalités pratiques permettant de mieux oeuvrer entre Etats et ONG à cette fin.

JUDICIAL REVIEW IN THE NEW NATIONS OF CENTRAL AND EASTERN EUROPE: SOME THOUGHTS FROM A COMPARATIVE PERSPECTIVE

JUSTICE ROBERT F. UTTER
and
DAVID C. LUNDSGAARD

Since emerging from the Soviet shadow, the developing nations of Central and Eastern Europe[2] have increasingly looked west for ideas and precedents in establishing the foundations of their new societies. By examining the various choices made by nations like Great Britain, France, Germany and the United States, much can be learned about the range of alternatives that exists within the framework of democratic self-government. By investigating the practical consequences of those choices, it is possible to develop some concept of the factors that bear on the relative successes and failures of the Western nations. This article represents a limited effort in this direction. Its goal is to examine some of the comparative aspects of the institution of judicial review and to relate them to a number of the choices presently faced by the developing nations of Central and Eastern Europe.

In reaction to well-known deficiencies in the performance of the prior Communist governments, particularly with respect to individual rights, many of the new nations are eager to provide a broad array of civil and political rights to their citizens. However, the institutional capabilities for the judicial protection and enforcement of those rights are often lacking. As a result, decisions with respect to the appropriate form of judicial review may be caught between the Scylla of overly ambitious statements of rights and judicial impotence in protecting those rights and the Charybdis of failing to protect certain rights at all. In order to provide protection for an adequate menu of individual rights in the face of inadequate judicial resources, therefore, the new states will have to find or create means beyond simple judicial review for alternative methods of guaranteeing individual constitutional rights.

I. LEGAL TRADITIONS OF JUDICIAL ACTION

In approaching comparative analysis of an institution as varied and complex as that of judicial review, it is useful to be clear about the definition of the institution under inspection. "Judicial review" is defined as any judicial action that involves the review of an inferior legal norm for conformity with a higher one, with the implicit possibility that the reviewing court may invalidate or suspend the inferior norm if necessary or desirable. While it is impossible to describe both briefly and adequately the character and nuances of the complex systems of judicial review and the variations of them existing around the world, it is possible to provide a generalised examination of their broader features and the relationship of those features to judicial review.

A. The Civil-Law System

The civil-law system is characteristic of the nations of the continent of Europe, including France, Germany, Italy and others. For the purposes of this article, the most significant feature of civil-law

[2] The nations now arising out of the fall of the Soviet Union include nations other than those in Europe. This article, however, is limited to those nations whose traditions and futures are more European than Asian.

jurisprudence is its traditional emphasis upon the limitation of the judicial function to the application of the policies enunciated by the principal lawmaking body, the legislature.

The Limited Function of the Civil-Law Judge

The founding principle of the civil-law system has been the supremacy and sovereignty of the legislature, which traditionally has been considered to be the purest expression of the collective will. The peoples of the civil systems have typically placed an almost extravagant faith in their legislative institutions.[3] Having passed through the fire of popular revolution against monarchical feudalism, the civil-law states were habituated to turning to their Bundestags and national assemblies, rather than to institutions like the judiciary, for the protection of basic rights. The relationship of the popular assemblies to the people was considered to be adequate protection against those bodies becoming sources of oppression.[4] The task of a judge in this system was not to "create" law in any sense, but rather only to determine the facts to which the laws were applicable. Practically speaking, the civil-law judiciary was constrained in its activity by the use of comprehensive codes and by the absence of a system of precedent. Overall, the classic civil-law judiciary was a relatively insignificant part of the governmental structure.

Implications for Judicial Review

The limited civil-law conception of the judicial function has at least two implications for the general institution of judicial review. First, legislatures and populations that are schooled in the civil-law tradition are more likely to exhibit a general hostility to the actual exercise of judicial review. Even if the institution of judicial review is endorsed by a civil-law nation in theory, the initial instances of its exercise with respect to a legislative enactment are likely to cause consternation, anger, and demands for repeal, because sizeable constituencies will have been in favour of any given invalidated statute. Even in nations like the United States, with well-established traditions of judicial review, the actual invalidation of a statute by the judiciary in the name of the higher law of the Constitution is frequently an occasion for much displeasure directed at the offending court. In nations lacking such a tradition, this understandable reaction may be exacerbated by the persistence of a belief that judges should not be engaged in lawmaking. The recognition of the possibility of counter-reaction is perhaps one reason why courts exercising constitutional judicial review in civil-law countries have typically employed that authority in fairly modest terms.

These observations apply with less force to judicial review of non-statutory laws or regulations. When a court is merely reviewing an administrative decree for conformity with a statute or with a constitutional command, the affected political interests are likely to be less powerful than in the statutory context. Thus, it would not be surprising to see civil-law nations experimenting with administrative judicial review prior to adopting judicial review of statutes.

The second consequence of the civil-law tradition for judicial review involves the character of the judges themselves. Judges trained in the civil-law tradition may be ill-suited for the mantle of extraordinary authority that is a part of judicial review. In part because of the inevitable public displeasure, the exercise of judicial review requires a particularly hardy and independent judiciary.[5]

---

[3] Lloyd Cutler & Herman Schwartz, *Constitutional Reform in Czechoslovakia: E Duobus Unum?*, 58 U. Chi. L. Rev. 511, 536 (1991) ("The European parliamentary tradition places great faith and confidence in elected representative bodies. To Europeans, such caveats are comforting guarantees of the supremacy of parliament over the king and the king's judges.").

[4] See Jerome B. King, *Constitutionalism and the Judiciary in France*, 80 Pol. Sci. Q. 62, 69 (1965) ("The constituents of the Revolutionary period apparently could not conceive of a government established on republican principles becoming oppressive.").

[5] See Keith S. Rosenn, *The Protection of Judicial Independence in Latin America*, 19 U. Miami Inter-Am. L. Rev. 1, 33 (1987) ("Judicial review presupposes a strong judiciary with the independence, prestige, and experience to perform the delicate balancing of individual and societal interests that goes into constitutional adjudication.").

"Judicial policy-making exposes judges to fierce public criticism by those who do not like the political consequences of their decisions and puts them right in the storm-centre of great partisan controversies..."[6] The classical civil-law judge, however, has been trained to avoid political questions and only to "apply the law." Such instruction is poor training for the difficulties of judicial review. Moreover, the requirements for judicial positions in civil-law countries tend to be less demanding. Many civil-law judges are career judges who entered the judiciary immediately following their legal education and have not had the breadth of legal and practical experience often expected of judges who are to make constitutional decisions.[7] Therefore, even if a civil-law nation elects to adopt judicial review, its ability to do so may be constrained by a lack of judges with the training, experience and bearing adequately to perform the task.

Recent Trends in the Civil Law

It is worth noting that the traditional civil-law conception of the judicial function has been breaking down in Europe at least since World War II. As a practical matter, the adoption of judicial review by civil-law systems has been facilitated by graduated introduction of the institution, typically through the "back door" of federalism and separation-of-powers review. Frequently, judicial review is instituted principally for the purpose of policing the separation of powers between the legislature and the executive, or the allocation of competencies between national and local authorities in a federal state. Enforcement of federalism and separation-of-powers principles, however, accustoms responsible courts to the processes of judicial review. This familiarity then provides fertile soil for the development of other types of constitutional adjudication. It is often only a very small step between structural judicial review, like federalism, and the enforcement of constitutional individual rights.
The continental experience of recent years suggests that the civil-law tradition is not completely at odds with judicial review. Despite legal-historical traditions that are hostile to its exercise, it appears that the civil-law system is itself not incompatible with judicial review. Instead, the question of whether a particular civil system may permit the introduction of judicial review may depend on the extent to which the historical conception of the limited judiciary still flourishes in that particular nation.

B. Socialist Legal Systems and Theory

Socialist (or communist) legal traditions, both in practice and in theory, are relevant to the new nations of Central and Eastern Europe in two ways. First, many of the jurists who will form the backbone of the new judiciary in these nations will have been trained under the old socialist systems.[8] These jurists will necessarily exhibit certain strengths and weaknesses associated with this training that must be considered when the tasks of the new judiciaries are determined. If the legal system is asked to perform tasks of which it is not capable, the project of democratic government itself will be set back. Second, despite the discontinuity perceived in the West between the old Communist order and the new "democratic" character of the emerging nations, the socialist legal order is still the background, the *milieu*, in which the new systems will be created.

In terms of its conception of the judiciary, the socialist legal tradition arrived at a conclusion very similar to that exhibited by the continental civil-law systems, but through entirely different reasoning. Like the continental civil-law tradition, socialist legal theory adhered to notions of legislative

[6] Edward McWhinney, *Constitutional Review in Canada and the Commonwealth Countries*, 35 Ohio St. L.J. 900, 907 (1974).
[7] Cynthia Vroom, *Constitutional Protection of Individual Liberties in France: The Conseil Constitutionnel Since 1971*, 63 Tul. L. Rev. 271 n.26 (quoting Mauro Cappelleni, *Nécessité et légitimité de la justice constitutionnelle*, in Cours Constitutionnelles Europeennes et Droits Fondamentaux 463-64 (L. Favoreu ed. 1982)). See also John Henry Merryman, *The Civil Law Tradition*, 35 (2d ed. 1985).
[8] The necessity of retaining the "experienced staff" of the Soviet judiciary was recognized in a Working Paper that was presented to the Russian Parliament in October 1991. Boris Zolotukhin, *Working Paper on Legal Reform in the Russian Federation*, New Outlook, Winter/Spring 1992, at 75, 83 (English summary by Janine Ludlam).

supremacy that afforded no space for judicial review. According to traditional socialist theory, the state was the expression of the dictatorship of the proletariat.[9] Because the proletariat could hardly act contrary to its own interests, there was no need for any division of powers, nor for judicial review of any sort. Because the effective implementation of socialist legal theories was essentially identical to those of the continental civil-law systems, the implications for judicial review are roughly the same. The people and legislatures of the new nations may be poorly prepared for the experience of judicial invalidation of otherwise legitimate legislative or executive enactment.

These observations should be moderated somewhat by the knowledge that the stringency of socialist thought regarding judicial review began to erode at some time prior to the actual demise of the Soviet Union. Yugoslavia, for example, established a federal constitutional court as early as 1963,[10] although this institution unfortunately had lost a substantial amount of its authority to review laws for constitutionality by the mid-1980s.[11] As with the civil-law tradition, the socialist legal tradition does not itself appear to be entirely preclusive of judicial review.[12]

C. The Common Law Tradition

The influence of the common-law tradition upon the new nations of Central and Eastern Europe will be less direct than that of the civil-law and socialist legal judicial traditions. While the debate has raged as to whether judicial review is a uniquely "American" invention, there is no doubt that the common-law experience has provided a model for many of the examples of judicial review we see around the world today, and certainly provides one strand of legal thought that is likely to have an important influence upon the choices facing the new nations of Central and Eastern Europe as they develop their judicial systems.

The common-law view of the judicial function is substantially at variance with that of the civil-law and socialist legal systems. Traditionally, the common law has placed much more faith in judges and hence has been more receptive to the participation of judges in the policy-making process of governing. This greater degree of faith can be traced to two interrelated phenomena of the common-law system. First, in administering the common law, judges are specifically empowered to make law in those instances in which a statute or constitutional directive does not control. Thus, the judges of common-law countries are more accustomed to the task of judicial policy-making, and the peoples and legislatures of those countries are similarly accustomed to accepting such policy-making as legitimate. Second, most of the common-law countries are more deeply steeped in a legal culture that recognises the principle of legal hierarchy, a principle at the heart of the institution of judicial review.

In discussing judicial review in common-law countries, one notices immediately the anomaly that the mother country of the common law, Great Britain, does not now and never has had any form of judicial review[13]. While the British experience in this respect is important, it is of limited significance and does

[9] Vladimir Gsovski, *The Soviet Union*, in *Government, Law and Courts in the Soviet Union and Eastern Europe*, 33 (Vladimir Gsovski ed. 1959). See Rhett Ludwikowski, *Judicial Review in the Socialist Legal System: Current Developments*, 37 Int'l & Comp. L.Q. 89, 89 (1988) ("Socialist law theorists traditionally argued that `the legislature is conceived to be the supreme expression of the will of the people and beyond the reach of judicial restraint.'") (quoting J. N. Hazard Et Al., *The Soviet Legal System: The Law in the 1980s* 320 (1984)).

[10] See Ludwikowski, Ibid., at 94.

[11] See Hartwig, *supra* note 2, at 451-52.

[12] The Soviet Union even experimented briefly with a form of constitutional control just prior to its disintegration. In 1989, the Congress of People's Deputies established a legislative body known as the Constitutional Oversight Committee, which actually invalidated a number of laws and decrees as unconstitutional in its brief period of existence. For an overview of the activities of the Constitutional Oversight Committee, see Alexander Mishkn, *The Emergence of Constitutional Law in the Soviet Union*, New outlook, Spring 1991, at 7; Peter B. Maggs, *Enforcing the Bill of Rights in the Twilight of the Soviet Union*, 1991 U. Ill. L. Rev. 1049.

[13] See S.H. Bailey & M.J. Gunn, *Smith and Bailey on the Modern English Legal System* 242 (2d ed. 1991). In Great Britain, the very term "judicial review" means simply appellate review of the decisions of lower courts.

not reflect the general pattern in the rest of the common-law world. Most of the common-law nations, such as the United States, Canada,[14] India[15] and Australia[16] have some form of judicial review. In large part, the common-law acceptance of judicial review is closely associated with its general familiarity with the policy-making authority of judges through the ordinary processes of the common law. Another portion of this acceptance derives from the prevalence of "higher law" theories in the common-law world. The impact of these higher law theories can particularly be seen in the United States, where the institution of judicial review was explicitly based upon theories regarding the hierarchy of various sorts of laws. Because the courts must decide cases in accordance with the law, courts are obligated to determine whether a given legislative enactment conflicts with the constitutional directive.[17] When the statute (the lower form of law) conflicts with the Constitution (the higher form of law), the latter is given controlling effect by the courts.[18]

There appears to be an essential continuity in the amenability of common-law adjudication to judicial review. The source of this continuity is most likely the role of the common-law judge in policy-making. The common law's frank recognition of the policy-making role of judges provided a framework both for the existence of multiple forms of positive law (statutory and common law) as well as for the direct involvement of judges in lawmaking. When judges are openly allowed the authority to participate creatively in the processes of government, the stage is set for the introduction of judicial review. At the same time the civil-law systems have been moving toward forms of constitutional control of legislation, the common-law nations have been moving toward more extensively codified legal systems. In these ways, the two legal systems are beginning to converge. The traditional authority and independence of the common-law judge has been reduced in recent years by the introduction of broad and comprehensive legislation in those nations that adhere to the common-law system.[19] The common-law judge is now called upon to exercise his or her authority more and more often in cases of statutory construction and less frequently in cases of explicit judicial lawmaking. This shift in focus is likely to be accompanied by an increasing judicial deference to the legislature and diminution of the ability of the common-law judge to interpose his or her authority against the will of the majority.[20]

D. Summary

The civil-law tradition, in its classical form, severely restricted the ambit of judges in deciding cases by relying heavily on principles of legislative supremacy and legal positivism. In practice, the civil-law code system and the rejection of precedent further limited judicial scope. While the modern civil systems have been moving away from absolutism in these areas, this history suggests limitations on the political capacity of civil-law nations to stomach judicial interference, as well as to produce judges

[14] See *Reference re Section 94(2) of the Motor Vehicle Act*, 24 D.L.R. 4th 536, 544-47 (1986) (discussing traditional federalism judicial review in Canada as well as relatively novel human rights judicial review under the Canadian Charter of Rights and Freedoms).

[15] See *India Const*. art. 132 (1990), reprinted in *India, VIII Constitutions of the Countries of the World* (Oceana) 105 (1990) (establishing appellate jurisdiction of Supreme Court in cases involving constitutional questions).

[16] The Australian Constitution has no explicit provision for the judicial review of statutes, yet that authority is exercised by Australian courts. See, e.g., Australian Communist Party v. Commonwealth, 83 C.L.R. 2 (Austl. 1950) (invalidating portions of legislation directed at making the Communist Party illegal as beyond the Australian legislature's constitutional authority).

[17] 5 U.S. (1 Cranch), 177-78 (1803).

[18] Ibid., at 180.

[19] For a description of this proliferation of legislation, see generally Guido Calabresi, *A Common Law for the Age of Statues* (1982). See also Lord Leslie Scarman, *Law Reform 47* (1968) (By 1967, "the bulk of the English law that matters ha[d] found its way into the statute book.").

[20] Conservative jurists point out, however, that American judges have been able to maintain a modicum of operational independence even in the face of extensive statutory development through the "freewheeling interpretation" of statutes and the use of "conveniently vague constitutional doctrines." See, e.g., Richard Posner, *Sex and Reason* 79-81 (1992) (noting the role of courts in moderating the effect of Victorian morals legislation in America). To the extent that this is the case, the disempowerment of the common-law judge by extensive legislative activity will be diluted.

capable of exercising judicial review. To the extent that the new nations of Central and Eastern Europe draw from the civil-law tradition, they will likely encounter similar difficulties.[21] Socialist legal tradition, which derived its conclusions theoretically rather than historically, imposed restrictions on judicial behaviour similar to those associated with the civil-law principles of legislative supremacy. Countries that were formerly socialist may therefore expect to have similar problems with judicial review, even if they eschew relying upon the civil experience. Unfortunately, the lack of a rule-of-law culture and a cadre of independent-minded judges may limit the range of choices available to these countries in developing forms of judicial review.

The common law, by way of contrast, is relevant to the new states of Central and Eastern Europe as an intellectual force rather than as a direct constraint or influence, and it will prove to be more a source of comparative analysis than an immediate cultural antecedent. The common law offers the new states a jurisprudence richer in judicial independence and legal hierarchical theory, which is at the core of effective judicial review, than do the civil or socialist legal judicial traditions.

II. THE FORMS AND STRUCTURES OF JUDICIAL REVIEW

Once the determination to institute some form of judicial review has been made, a number of secondary choices regarding the forms and structures of that review will necessarily present themselves.[22] Of course, none of these choices can be made independently. The choice of the courts to which competence to exercise judicial review will be granted is perforce closely related to the choice of the scope of the review power, and vice versa.

A. The System of Judicial Review

Centralised and Diffuse Systems of Judicial Review

The first and most important decision regarding the exercise of judicial review involves the judicial structure that will have the review authority. In this respect, traditional scholarship has typically distinguished between two basic models of court structure, which have been loosely labelled the American and Austrian systems.[23] The American, or "diffuse," system of judicial review relies upon the constituent pieces of the ordinary judicial system to engage in judicial review. In the United States, any lower court may make a decision regarding the constitutionality of both legislation and administrative action, or the conformity of a lower law to a statutory mandate. That decision is binding upon the parties involved until reversed by a higher court. The American system, therefore, allows a high degree of judicial control of constitutionality because resources are utilised to their maximum capacity.[24] The Austrian, or "centralised," system of judicial review, on the other hand, relies upon a specialised court system, frequently a single constitutional court, to exercise judicial review. The original model for the

[21] One commentator has already noted the influence of the civil-law traditions in at least one former socialist country, Hungary. See Ethan Kligsberg, *Judicial Review and Hungary's Transition from Communism to Democracy: The Constitutional Court, the Continuity of Law, and the Redefinition of Property Rights*, 1992 B.Y.U. L. Rev. 41, 121 n.197. Klingsberg, in particular, notes the importance of a lack of precedent in Hungary's civil-law practice and the presence of strong legal positivism. Ibid., at 121-25.

[22] The classic study of comparative judicial review, though now a little dated, is Mauro Cappelletti, *Judicial Review in The Contemporary World* (1971). For a more recent study, see Allen R. Brewer-Carias, *Judicial Review in Comparative Law* (1989). This Article relies in large part upon Cappelleni's work for the categorization of the various types of judicial review. It recognizes, however, that these categories imperfectly capture the tremendous variety of forms of judicial review and are therefore merely a starting point for investigation rather than a strictly limited menu of options.

[23] Cappelletti, Ibid., at 46-51; Brewer-Carias, Ibid., at 177-81.

[24] The diffusion of judicial review authority in the United States is multiplied by the presence of two judicial systems, state and federal, both of which have equal authority to invalidate legislative and executive actions for incompatibility with constitutional norms.

system was the Austrian Constitution of 1920.[25] Under the Austrian system, the general courts are barred from making constitutional determinations, although they may be allowed the authority to "certify" such questions to the constitutional court when those questions arise in the course of ordinary litigation.[26]

The Austrian model has typically been the preferred choice of the civil-law nations for three reasons. First, the civil law's tradition of legislative supremacy is partially appeased by the restriction of judicial review to a single specialised tribunal. Second, because the civil-law nations generally reject the notion of precedent, a diffuse system of judicial review poses the spectre of radically inconsistent decisions being rendered on identical constitutional issues. Finally, the legal-judicial culture in which civil-law judges operate limits the number of judges available who can effectively exercise judicial review.

Constitutional Human Rights in Central and Eastern Europe

To date, the Austrian model has also been the most popular choice of the new nations of Central and Eastern Europe. Poland[27], Hungary,[28] and Russia [29], for example, have already established single constitutional courts based on the Austrian model. It is also being considered in Romania,[30] Azerbaijan[31] and Ukraine.[32] The preference of the new states for the Austrian model is not surprising, given the influence of the civil-law system and the similar effects of the civil tradition and socialist legal theory. The Austrian system is more properly geared toward a limited form of "structural" judicial review rather than toward the protection of individual rights. If the purpose of judicial review is merely to enforce the constitutional separation of powers and to maintain the proper relation between the various public entities in a federal republic, then a central constitutional court may be able adequately to perform its task. If, on the other hand, the purpose of judicial review is understood to be the protection of individual human rights, then a single constitutional court is unlikely to be capable of responding to the number of constitutional complaints.

Potential Non-judicial Solutions to the Individual Rights Dilemma

There are certain intermediate solutions to the dilemma posed by the need to enforce individual rights in nations without the judicial resources to adopt the American structure of judicial review. One of the most popular alternatives to judicial review is the institution of the Ombudspersons.[33] In its classic form, this institution is an independent agent or agency whose purpose is to inquire into the administration of government, usually at the behest of individuals aggrieved by that administration.[34]

---

[25] Cappelletti, *supra* note 21, at 46.

[26] See, e.g., F.R.G. Const. art. 100 (1949) (describing certification procedure to German Constitutional Court), reprinted in *Federal Republic of Germany, VI Constitutions of the Countries of the World* (Oceana) 131 (1991); Antonio La Pergola & Patrick Del Duca, *Community Law, International Law and the Italian Constitution,* 79 Am. J. Int'l L. 603-04 (1985) (describing certification procedure to the Italian Constitutional Court).

[27] Pol. Const. art.33a (1991), reprinted in *Poland, XV Constitutions of the Countries of The World* (Oceana) 17 (1991).

[28] Hung. Const. ch.IV, § 32/A (1949), reprinted in *The Republic of Hungary VIII Constitutions of the Counties of the World* (Oceana) 13 (1990).

[29] The Russian Constitutional Court came into existence on July 12, 1991, when the congress of People's Deputies adopted the Law on the Constitutional Court. For a detailed description of one of the court's earliest and most important cases, the so-called "Trial of the Communist Party"; see David Remnick, *The Trial of the Old Regime*, The New Yorker, Nov. 30, 1992, at 104.

[30] Rom. Const. arts. 140, 144 (1991), reprinted in *Romania, Constitutions of the Countries of the World* (Oceana) 34-35 (1992).

[31] See *Concept for the Constitution of the Republic of Azerbaijan*, § VI (copy on file with the Ohio State Law Journal).

[32] See Ukrainian Const. art. 214 (proposed) (copy on file with the Ohio State Law Journal).

[33] For a fairly comprehensive description of the ombudsperson in European law, see Walter Gellhorn, *Ombudsmen and Others* (1966). Gellhorn's treatment is thorough, colorful, and insightful, though now substantially dated.

[34] Ombudspersons often also have authority to institute proceedings on their own initiative. See, e.g., Ewa Letowska, *The Polish Ombudsman (The Commissioner for the Protection of Civil Rights)*, 39 Int'L & Comp. L.Q. 206, 207 (1990) (stating that Polish Civil Rights Commissioner may act on own initiative); Gellhorn, Ibid., at 75 (stating that Finnish ombudsmen

The ombudsperson is most familiar in its Scandinavian form, where it exists in all four Scandinavian nations, but has been established in nations as disparate as New Zealand[35] and Poland.[36] A version of the ombudsperson has also appeared in embryonic form in Great Britain.[37]

The ombudsperson may be superior to a constitutional court in the protection of individual rights because the ombudsperson has a greater capacity to hear individual complaints outside of ordinary litigation. As a result, the ombudsperson may be involved in a broader array of interactions with government officials and the public than would a constitutional court. This greater flexibility may allow the ombudsperson to have a more pronounced practical effect on the behaviour of government and even upon public opinion.[38] The ombudsperson is usually limited, however, to being only an investigative agent who lacks the authority to provide independent remedies for government misbehaviour. The Polish Commissioner for the Protection of Civil Rights, for example, has the authority only to request the assistance of official bodies, including the power to bring cases before the constitutional court.[39] Also, because the ombudsperson responds to individual complaints, the institution runs the danger of becoming an exclusive spokesperson for particularly aggrieved segments of society, such as prisoners, to the exclusion of the rest.[40]

Another alternative to judicial review in protecting individual rights is the authority of the procurator, or public prosecutor. As a guardian of individual constitutional rights, the procurator enjoys an advantage over the ombudsperson in typically having larger institutional resources with which to respond to constitutional problems. However, because the procurator usually functions as a prosecutor as well, its relationship to the government may be too close to ensure the independence necessary to provide an adequate safeguard for individual rights.

B. The Effect of Judicial Review: Erga Omnes or Inter Partes ?

A second choice faced by a nation developing a system of judicial review is the extent to which constitutional decisions will be binding. Judicial decisions may be binding upon all those subject to the issuing court's jurisdiction (*erga omnes*), or alternatively may affect only the parties to the case in which they arise (*inter partes*).[41]

The choice as to the effect of judicial review is chiefly related to the structure of the judicial system. If a nation elects only to have a single constitutional court responsible for all constitutional adjudication, it will be difficult for that nation to maintain only an *inter partes* rule. It would be anomalous, as well as burdensome, for a constitutional court repeatedly to decide the same constitutional issues only because the parties to the cases differed.[42] For this reason, some nations that have adopted unitary constitutional courts have provided specifically for the *erga omnes* effect of constitutional decisions.[43] Other nations

---

may initiate investigations).

[35] See Gellhorn, *supra* note 32, at 91-153 (discussing ombudsperson in New Zealand).

[36] See generally Letowska, *supra* note 33.

[37] For a description of the British Parliamentary Commissioner, see Gavin Drewry & Caroll Harlow, *A `Cutting Edge'? The Parliamentary Commissioner and MPs*, 53 Mod. L. Rev. 745 (1990). According to Drewry & Harlow, however, there is still a fair amount of dispute as to whether the Commissioner is a true ombudsperson in the Scandinavian tradition or is merely a servant of the House of Commons in fulfilling its obligations to constituents. Ibid., at 765.

[38] See Gelhorn, *supra* note 32, at 77 (The repeated interventions of Swedish ombudspersons "have helped mold public opinion concerning such diverse things as free speech, freedom of religion, police restrictions, and penology.").

[39] See Letowska, *supra* note 33, at 207-08.

[40] This was the experience of the Finnish ombudsperson in the early 1960s. According to Gellhorn, the evidence "strongly supports the opinion that the Ombudsman is more `the prisoners' than 'the people's man.'" Gellhorn, *supra* note 32, at 66; see also Letowska, *supra* note 33, at 211-12.

[41] See Cappelletti, supra note 21, at 85-88.

[42] This problem would be particularly acute with respect to the criminal law. Under an *inter partes* rule, each person convicted under a law later deemed to be unconstitutional would be requires to initiate a separate litigation for release.

[43] For example, in Russia, "decisions of the RF Constitutional Court shall... be binding on all territory of the Russian

have provided that statutes which are declared unconstitutional in one proceeding are "nullified," which effectively gives the decisions *erga omnes* effect.[44]

C. The Timing of Judicial Review: A priori or incidental?

A third choice is whether judicial review shall occur prior to the promulgation and implementation of a law or executive decree, or only following the implementation of the law or decree.[45] Under one system, known as a priori review, parties are allowed to challenge the propriety - usually with respect to constitutional norms - of statutes and executive decrees in specialised proceedings prior to the promulgation and application of those statutes and decrees.[46] This form of review has a certain hypothetical quality to it because review takes place in the abstract without a concrete set of facts to which the challenged law or regulation is applied. Alternatively, parties may be limited to challenging government actions only in the context of ordinary litigation, that is, when such a challenge is "incidental" to the litigation. Under the incidental system, a constitutional violation may comprise the gravamen of a plaintiffs complaint, but the presence of the constitutional question is only incidental to the harm which has occasioned the litigation.

The choice of a priori or incidental judicial review is more likely to be reflective of the purposes that judicial review is designed to serve. For example, a priori or abstract review is likely to be more consistent with separation of powers or federalism review than it is with the protection of individual human rights. Conversely, incidental review may be less effective in dealing with separation-of-powers problems. One very interesting feature of systems of a priori and abstract review is the degree to which they allow for mechanisms of constitutional dialogue between the judicial, legislative and executive branches of government, and between the various branches of government. Unlike incidental judicial review, these forms of review do not arise in the context of a specific case. Without the time pressure associated with the need for a decision, they allow for the possibility of a period of exchanges between the judiciary, the legislature and the executive branches. A priori review also has the advantage of occurring prior to the promulgation of a statute or executive decree. Because the questioned law is not yet in effect, all of the relevant actors have substantially more leeway in developing solutions to any constitutional problems.

IV. THE RELATIONSHIP OF DEMOCRACY TO JUDICIAL REVIEW

The classical understanding of the problem of the relationship of the institution of judicial review to the general notion of democracy has been that judicial review is inherently "antidemocratic" and must, therefore, be "resolved" with democratic theory in some coherent and legitimate fashion. The question as to whether such a "counter-majoritarian" difficulty exists, and if it does what is to be done about it, are key to the operation of a system of judicial review. While these questions may appear to be highly abstract, they do, in fact, relate directly to the practical enterprise of establishing a system of judicial review.

Federation." *Draft Constitution of the Russian Federation* art. 103(6) (1992), reprinted in *The Russian Federation, XXV Constitutions of the Countries of the World* (Oceana) 48 (1993). Germany has also specifically provided for a partial *erga omnes* effect, making decisions of its constitutional court binding upon public authorities but not necessarily private parties. See Wolfgang Zeidler, *The Federal Constitutional Court of the Federal Republic of Germany: Decisions on the Constitutionality of Legal Norms*, 520 Notre Dame L. Rev. 504 (1987).

[44] The Costa Rican Constitution provides that statutes which are unconstitutional are "absolutely void." Costa Rican Const. art. 10 (1977), reprinted in *Costa Rica, IV Constitutions of the Countries of the World* (Oceana) 3 (1982).

[45] See Cappelletti, *supra* note 21, at 69-77.

[46] See, e.g., art. 61, of the French Constitution: "Organic laws, before their promulgation, and regulations of the procedure of the Parliamentary Assemblies, before they come into application, must be submitted to the Constitutional Council, which shall rule on their constitutionality." Fr. Const. art. 61 (1958), reprinted in *France, VI Constitutions of the Countries of the World* (Oceana) 40 (1988); see also Rom. Const. art. 144(a) (1991), reprinted in *Romania, Constitutions of the Countries of the World* (Oceana) 34-35 (Romanian Constitutional Court may pass on the constitutionality of laws prior to promulgation).

Traditional "Counter Majoritarian" Thought

Traditional constitutional theory has posited that the institution of judicial review is inherently antidemocratic in that it is employed primarily to thwart the will of a democratically elected and "representative" legislature. In Alexander Bickel's words, "nothing... can alter the essential reality that judicial review is a deviant institution in the American democracy."[47] In order for the institution to be legitimated, therefore, some reconciliation between its antidemocratic nature and the general theory of democracy must be achieved.

Bickel's own response to the task was the recognition of judges as performing a unique role in the elucidation and application of "principle" to problems. Bickel's resolution suggests the desirability of a centralised constitutional court. If the purpose of judicial review is to infuse the political process with principle, then the power should be exercised only by those with the independence occasionally to oppose the will of the majority. As we have seen, in the classical civil-law system and the socialist legal system, judges typically do not have the training to exercise such independence. A unitary court, however, could be comprised of those unique individuals who could, when circumstances demand, stand up to the legislature and the executive. Furthermore, ordinary judges are less likely to have the requisite leisure to engage in the sort of philosophical inquiries that Bickel demands of judges exercising judicial review.

Second, Bickel's solution strongly suggests that career judges may not always be the most appropriate choices for judicial review authority. Such individuals will be experienced in the day-to-day minutiae of judicial administration but may not be qualified for the highly abstract and philosophical task of deriving the fundamental values of a society. The appropriate Bickellian constitutional court, then, might be comprised of individuals from a variety of academic and philosophical backgrounds.

An alternative response to the "counter-majoritarian difficulty" is simply to deny that democracy has any meaning, or, at least, any meaning to the modern world. Some constitutional experts note that many features of modern government are not particularly democratic and argue that we should not be particularly concerned about the "non-democraticness" of any particular one feature, including judicial review.[48] These experts point out that most modern governments bear little resemblance to the classic ideal of democracy, even in a representative form.[49] In their view, modern government is comprised of a heterogeneous amalgam of officials who fall along a fairly wide spectrum of public responsibility; it is not a "democracy." The U.S. government, for example, exhibits a number of institutions and practices that are not strictly democratic. Most obviously, the members of the U.S. Senate are elected not democratically on the basis of population, but geographically as representatives of their respective states.[50]

The results of this recognition of the non-democratic aspects of modern government are largely empty regarding the appropriate scope of judicial review.[51] In theory, any form of judicial review may be

---

[47] Alexander Bickel, *The Least Dangerous Branch*, at 18 (1962)

[48] See, e.g., Erwin Chemerinsky, *Foreword: The Vanishing Constitution*, 103 Harv. L. Rev. 43, 74-77 (1989).

[49] See Allan Ides, *The American Democracy and Judicial Review*, 33 Ariz. L. Rev.1, 6 (1991) ("[C]lasssic participatory democracy - even a representative version - is at best a theoretical ideal, unattainable in the modern, highly populated, transnational world."); Harry Wellington, *Interpreting the Constitution*, 28 (1990) ("If we move from the deep structure of the Constitution to regular and accepted practice within, say, the legislative branches of the federal government, we find further dilution of any simple notion of majority rule or electoral accountability.").

[50] Of course, senators are elected democratically within their geographic constituencies, though even this was not the case when the U.S. Constitution was ratified. Prior to the ratification of the 17th Amendment, senators were elected by their state legislatures. See U.S. Const. art. 1, § 3.

[51] This is not to suggest that adherents to this view do not themselves have their own preferences regarding judicial

compatible with modern democratic government because there really is no such beast as true democratic government. Some forms of judicial review may be better or worse, but not because of their relative impacts on the character of democratic government.

In terms of the developing nations of Central and Eastern Europe, this easy answer to the counter-majoritarian difficulty may be unsatisfactory. For new societies eager to embrace democratic self-government, this form of legitimisation may be sorely insufficient.

Notions of Democratic Constitutionalism

For this reason, the growing interest in the democratic features of judicial review may be particularly appealing to the new nations of Central and Eastern Europe. Over the years, a number of scholars and judges have concluded that judicial review is not only compatible with democratic self-government but is, in fact, a necessary component of such government. According to this line of thought, judicial review plays an important role in the creation and perpetuation of constitutional democracies and, therefore, can be understood as an essentially democratic practice.

Two distinct reasons for the necessity of judicial review in a democracy have been posited. First, judicial review may be a form of democratic enforcement that protects the "deeper" democratic judgements of the people expressed in a constitution from the vicissitudes of temporary majorities (or the more representative judgements of the legislature against the irresponsible decisions of government bureaucrats). Second, judicial review may be necessary to protect the values that are "required" by democracy itself, even if those values are not expressed within a constitution. These theories are unified only in their belief that without judicial review, the practice of democracy may be imperilled.

The Dangers of Judicial Review to Democracy

No discussion of the relationship between judicial review and democracy would be complete without a discussion of a school of thought that entirely rejects judicial review on grounds of incompatibility with democracy. In a sense, this view takes Bickel's counter-majoritarian difficulty so seriously that it is willing to jettison the institution of judicial review entirely in favour of majoritarian supremacy.
The core of this democratic objection to judicial review is the belief that responsibility is the only means by which people can learn to govern themselves. Through the process of self-government, and the occasional failure, people learn moral responsibility and thereby attain the potential to govern themselves effectively. "Participation in the process of government uplifts the participants in their knowledge and sensitivity to the needs of others, enhances their sense of mature responsibility, and fully integrates each individual into the community."[52]

The problem with judicial review, in this view, is that it partially relieves the people of responsibility for their political choices. The classic statement of this view was stated by James Bradley Thayer: "The exercise (of judicial review), even when unavoidable, is always attended with a serious evil, namely, that the correction of legislative mistakes comes from the outside, and the people thus lose the political experience, and the moral education and stimulus that comes from fighting the question out in the ordinary way, and correcting their own errors. The tendency of a common and easy resort to this great function, now lamentably too common, is to dwarf the political capacity of the people, and to deaden its sense of moral responsibility."[53]

These observations, while worthy of attention, are not usefully applicable to the present situation in

---

review. Instead, it is only to indicate that the view itself does not require any particular conclusion.
[52] See Ides, *supra* note 48, at 4 (describing Rousseau's attitude toward democracy).
[53] Ibid., at 24 (quoting James Bradley Thayer, John Marshal 106-07 (1901))

Central and Eastern Europe. An experiment with parliamentary supremacy in the new nations of Central and Eastern Europe would be highly inappropriate. It is certainly true that the institution of judicial review cannot provide salvation for a nation bent on destroying the political and civil liberties of a minority of its citizens. It also seems certain, however, that the success of non-judicial review nations, like Great Britain, is largely due to the existence of traditions of adherence to the "rule of law." In the new states, there is no such tradition. Under such circumstances, judicial review would seem to be an absolutely necessary safeguard of whatever form of democratic self-government those nations choose to adopt. A doctrine of legislative supremacy without a tradition of the rule of law could be extremely dangerous.

V. CONCLUSION

The new nations of Central and Eastern Europe are now engaged in the critical task of forming the institutions that will determine the shape of their societies for years to come. In doing so, they look to the West for information and precedents and are attempting to derive what they can from Western experiences, both good and bad. The comparative analysis of institutions, like the analysis of judicial review is an important part of this endeavour.

For the new nations, perhaps the most useful aspect of Western government is its experience with the principles of separation of powers and the protection of individual human rights. Not only have the democracies of the West had several centuries of experience with these principles, but they represent working models of how theory is to be translated into practice. The Western systems have had centuries to develop a variety of reactions to the problems of government. Reflection on the successes and failures of the West can provide a significant resource for the new states in creating their own indigenous institutions.

Among the most difficult choices in the new states of Central and Eastern Europe will be the prospect of adequately protecting individual human rights. While these states may have a deep commitment to the protection of individual rights, there are significant problems with creating mechanisms by which that commitment can be transformed into enforcement. Those nations whose legal traditions are the product of the civil-law and socialist legal systems may not be prepared for the adoption of judicial review on the scale that may be necessary for the adequate protection of the rights which the new states would like to guarantee. These nations may suffer from the absence of a culture of the rule of law, from a lack of jurists with the qualifications to exercise judicial review, and from political elements unaccustomed to accepting judicial interference.

The process of change moves slowly. The influence of Communism and its practices has been pervasive and has made it difficult immediately to create new and innovative solutions to many of the problems of Central and Eastern Europe. As a result, many of the organisations and institutions presently in existence may find themselves transformed and may eventually disappear entirely. This flux may be frustrating to those who hope to see the quick and easy rise of solid and stable constitutional democracies in the wake of the Soviet Empire. It should be remembered, however, that free nations are built not only upon the demise of tyrannical ones, but also upon the persistent efforts of those who believe in the value of liberty and are willing to labour in the pursuit of the vindication of that belief.

ABOUT THE AUTHORS

Justice Robert F. Utter: Justice, Washington State Supreme Court, Olympia, WA; B.S., University of Washington, 1951; L.L.B., University of Washington, 1954.

David C. Lundsgaard: Associate, Dorsey & Whitney, Minneapolis, MN; former Law Clerk to Justice Robert F. Utter, Washington State Supreme Court; B.A., University of Washington, 1988; J.D., Yale Law School, 1992.

THANKS

The authors would like to express their thanks to Professor Joachim Herrmann for his helpful comments on an earlier draft of this article and to Lori Lynn Phillips for her editorial assistance.

THE ELECTORAL SYSTEM OF THE RUSSIAN FEDERATION

Councillor Vadim Zhdanovich

Central Elector Commission of the Russian Federation

The purpose of this article is to describe, in general terms, the new legal framework for elections in the Russian Federation, using the example of the Parliamentary Elections in Russia in December 1993.

The electoral system of Russia has its own political and legal history. The December 1993 elections to both the Parliament (the State Duma and the Federation Council) and local government together with the adoption of the Constitution have laid the foundation for a civic partnership within Russian society. It was the first time that elections were conducted under a mixed majority-proportional system in a multi-party context. A total of 225 single-member constituencies were set up for the elections to the State Duma (the Parliament's lower chamber) and 89 dual constituencies, according to the number of "subjects" in the Russian Federation, for the elections to the Federation Council (the upper chamber). Over 58 million, or 54.8 per cent of the total number of voters, cast their ballots. More than 100,000 signatures were collected by the 13 parties and socio-political associations that were officially registered as participants in the election process.

Under the conditions of transition from the Soviet model of development to the constitutional-democratic one, there was need for a clearly formulated Federal-State electoral policy, a policy consistent with democratic values and founded on a sound legal basis. This policy was reflected in the federal *"Act on the basic guarantees of the right to vote for the citizens of the Russian Federation."*

According to the provisions of the Act, each citizen of Russia who has reached the age of 18 may exercise the right to vote. Suffrage is universal, equal, direct and by secret ballot. The minimum age for candidates is 21 for elections to the legislative bodies and 30 in the case of the presidency. Any citizen of Russia having the right to vote on election day is entered in the roll of voters. The roll is compiled by the precinct electoral commission on the basis of the data provided by the head of the local authorities. A citizen of the Russian Federation may only be entered in one roll of voters. The roll of voters must be open to public inspection at least 30 days before election day.

For the conduct of the elections, the boundaries of electoral constituencies have to be drawn and the number of voters therein established by the relevant electoral commission and approved by the appropriate legislative body at least 60 days before the elections. The difference in the number of voters among constituencies cannot exceed 10 per cent in general, 15 per cent in the case of constituencies in remote areas. For the voting itself and the counting of the votes, election precincts have to be established. This is done by the head of the local administration in agreement with the electoral commission at least 45 days prior to election day. The number of voters per precinct cannot exceed 3,000.

A list of election precincts, with an indication of their boundaries and the addresses of precinct electoral commissions, must be made public by the appropriate electoral commission at least 40 days before election day.

The system of electoral commissions

It is the task of electoral commissions to put into effect and defend the citizen's electoral rights. In accordance with their functions, the electoral commissions fall into the following categories: Central Electoral Commission of the Russian Federation; Electoral commissions of the member-states of the Russian Federation; Regional electoral commissions; Territorial electoral commissions (for towns, communes and so on); Precinct electoral commissions.

The Central Electoral Commission (CEC) of the Russian Federation is a permanent body which supervises the work of the electoral commissions conducting the elections to the presidency and to the federal organs of representation as well as holding Russian Federation referenda. It is appointed for four years. The CEC of the Russian Federation is composed of 15 members. Five each are appointed by the State Duma (from among the candidates nominated by parliamentary caucuses), the Federation Council and the President. Members of the CEC must have a university legal education. From their membership they elect by secret vote a Chairman, a Deputy Chairman and a Secretary.

Electoral commissions of the member states of the Russian Federation are formed by the legislative and executive organs of those states on the basis of proposals from public associations, elective organs of local government or voters' assemblies. Local electoral commissions are set up on the basis of proposals from public associations or voters' assemblies. Candidates, their agents, spouses, close relatives or direct subordinates cannot be members of electoral commissions. The activity of the electoral commissions is to be conducted in an open and transparent manner. The sessions of the commission may be attended by candidates and their agents as well as by representatives of electoral associations and the media. Their decisions are to be publicised by the press and other media. On election day, observers have the right to be present at the polling stations. Electoral commissions carry out their functions in accordance with the principle of collegiality. Their decisions are signed by the Chairman and the Secretary. Members of an electoral commission who disagree with a decision are entitled to express their dissenting opinion in writing, which opinion must be brought to the attention of the higher-level electoral commission within three days.

According to the provisions of the Constitution, the decisions and actions of the organs of state power as well as the executive officers who infringe the electoral rights of citizens are open to appeal. A complaint against a decision or action of an electoral commission can be lodged with the higher electoral commission or with the court. Decisions on complaints lodged during the elections must be taken within five days and on complaints lodged on the day of voting, immediately.

The election campaign

Candidates or electoral groupings have the right to free air time, on an equal basis, on the channels of state and municipal television and radio. In addition, it is possible to purchase air time. The rules for allocating air time to candidates and electoral groupings on the channels of state radio and TV are established by the CEC with the assistance of those state organs which are responsible for the observance of the constitutional rights and freedoms in the mass media. The election campaign begins on the day of the candidates' registration and ends one day before election day. In the three-day period before election day, it is forbidden to publish the results of public opinion polls, forecasts of voting results and other such prognoses connected with the elections.

Financing of the elections

The expenditures of the electoral commissions related to the preparation and conduct of the elections are covered by the appropriate budget. A report on election expenditures is to be submitted by the CEC to both chambers of Parliament. Candidates may raise their own funds for election campaign purposes. Such funds can also be raised by electoral groupings. The acceptance of donations from the following is prohibited: foreign countries, organisations or persons; Russian corporations where foreign capital exceeds 30%;

international organisations; state organisations and institutions; organs of local government or religious assemblies. No later than 30 days after the elections, every candidate or electoral grouping must present a report to the relevant electoral commission on the size of their election funds, the sources from which the funds were drawn, and on all the expenditures made. The commission must publish this report no later than 45 days from the time of its submission.

Voting and its recording

In Russia, voting is held on a non-working day. It is the responsibility of the district electoral commissions to inform the voters of the time and place of voting no less than 20 days before election day. This is done through the mass media. There are provisions for advance voting. Each voter votes in person; voting in the name of another person is not allowed. To receive a ballot-paper, a voter must produce a passport or any other document which will give proof of their identity. Having filled in the ballot-paper, the voter inserts it into the ballot-box. All ballot-boxes are to be placed within the field of vision of the members of the precinct electoral commission. Any member of the electoral commission who infringes on the secrecy of voting is immediately excluded from the commission, and the observer guilty of the same is expelled from the polling station. Counting of votes is done by the members of the precinct electoral commission. A ballot-paper is deemed invalid if it is illegible. In such event an explanation is provided on the back of the ballot-paper stating why it has been deemed invalid. While counting the votes, the district electoral committee draws up the record of voting in two copies, one of which is immediately delivered to the higher electoral commission. The compilation of the results is done in the presence of observers. All the records of the elections, including the ballot-papers, are preserved for a term not exceeding one year. The results of voting must be made available to any voter, candidate, observer or representative of the mass media.

The new electoral system places special emphasis on the education of participants in the election process. As part of this, an improvement of the legal culture of the voters is foreseen. This will be achieved through preparing special school programmes, teaching aids, films and advertisements. A special centre for promoting election techniques will be set up at the CEC. It will provide practical aid, consulting - both scientific and methodological - as well as information services. Regional seminars for the people in charge of the constituency electoral commissions have become an established practice. They cover the entire spectrum of the Russian electoral system. All these measures are aimed at the establishing and consolidating in the Russian Federation of the rule of law and of an open civic society, and at the implementation of the principles of democracy through the creation of a fully-fledged electoral system in compliance with international standards.

DEALING WITH MULTICULTURALITY: MINORITY, ETHNIC, NATIONAL AND HUMAN RIGHTS

Nicolae Gheorghe and Thomas Acton

Institute of Sociology, Romanian Academy,
The Ethnic Federation of Roma in Romania

Excerpts from report prepared for the Colloquy held in Slovakia in 1992 on "Gypsies in the locality", organised by the Council of Europe[54]

The specific case of Romanies, or Gypsies, with their particular history and social situation brings into question the concept of "culture" with its complex semantic and controversial pragmatic implications. The "classic" situation in social and cultural policy is that of equating one people with one culture.

During the last two hundred years in European political history, we have witnessed the process of nation-building and the formation of national states. "Culture" played an important role in this process, since in Eastern and Central Europe cultural nationalism was (and still is) a driving force in the formation and legitimisation of nation-states which have a tendency to become ethnic states, that is states which "belong" to an ethnic majority.

The idea of state unity is put into practice, among other means, through a policy of cultural unity and cultural homogenisation, frequently imposed by hegemonic political elites to subordinate social groups which are depicted as culturally peripheral and socially marginal. By a process of homogenisation, the local and regional cultures are brought into a "national culture" which traces its symbolic boundaries in contrast and in sometimes violent competition with "aliens" and "strangers" from both within and outside the geographical boundaries. Language, religion, folklore and traditions become the epitomes of this national culture. The peasant communities frequently offer a reservoir of rituals and artefacts which are skilfully processed by an urban intellectual elite produced by the national schools and employed by the expanding state "bureaucracies".

This process of state and nation-building and consolidation via cultural artefacts has its own rituals, frequently sponsored by the state machinery. We are exposed to folk shows, festivals and exhibitions. The contemporary media of mass communication and culture lend this process more penetration and glamour. Traditions are "invented" and the peasants become French, Germans, Romanians, Slovaks, etc.

Those peoples and groups who are less successful in creating their own nation-states and who are incorporated into the nation-states of other peoples become "ethnic" or "national minorities". They strive for more group rights or the defence of basic freedoms and human rights in terms of their distinctive cultural traits, which then become "ethnic cultures". They use similar means (i.e. folklore, festivals, schools and publications in their own language) to affirm and preserve their specific cultures, competing with the dominant nation for the resources provided by the state.

The smaller or even less successful ethnic groups follow or simply imitate the more numerous and successful corporate groups in creating a cultural niche for themselves within the framework of the dominant nation and their state. Local and regional groups such as the Vlachs of the Balkans, or the plethora of ethnic groups in

[54] Gypsies in the Locality - proceedings, Report on the colloquy held in Liptovsky Mikulás (Slovakia), 15-17 October 1992, pp 95-110, Council of Europe Press (ISBN 92-871-2604-6), 1994. The text is being used for the Bulletin with the permission of the Council of Europe.

the former republics of the ex-Soviet Union provide present-day illustrations of a process which has been repeatedly re-enacted in modern history, only with different actors.

The world's Gypsy population is increasingly becoming part of a process of political mobilisation, manifest throughout Europe. Cultural affirmation is a component of such a process. We can identify among Gypsy communities in various countries the indicators (or symptoms) of the cultural mobilisation which preceded and accompanied the process of nation and state-building described above. An emerging Gypsy political elite is now engaged in a type of "self-rallying" process. Here and there we are witnessing cultural festivals, publications in and about the Romany language, readings in Gypsy folklore, textbooks for Gypsy children in schools, advertising of Gypsy groups and events, etc.

In this article we will provide the conceptual background of the strategies used by Roma (Gypsy) associations in different countries to promote the Gypsies' interests in social and political contexts marked by ambiguities of attitude if not by overt group conflict. The main point of our argument is that Gypsy history and present-day social realities are rather "deviant" cases, in respect of the historic pattern which shaped the cultural nationalism and the tools of cultural policy currently used both by the administrators of the national states and by the active elite of various national minorities.

While we are looking for the "uniqueness" and the unity of a people's culture as a prerequisite for promoting distinct cultural entities and a distinct cultural policy within territorially confined administrative units, the Gypsy people is presenting itself as a huge Diaspora embracing five continents, sharing the citizenship of a multitude of states, while lacking a territory of its own. The Gypsy "archipelago" is formed by a mosaic of various groups speaking both different dialects of Romany as an oral language and a variety of languages of the surrounding societies. The gypsy communities share a number of religions and church affiliations; they maintain cultural boundaries not only between themselves and the surrounding environment, but also between various Romany groups themselves.

Multiculturality might be an appropriate concept to describe the basic reality of the Gypsy people. While Multiculturality could form the basis of an enlightened policy in specific local communities where several ethnic and cultural groups interact and co-exist, it is still difficult to imagine how Multiculturality and multi-territoriality could become the basis for the cultural affirmation and development of people, or at least of communities, which strive to identify themselves in respect of other groups in terms of unity and specificity.

The historic diversity and Multiculturality of Gypsy groups imposes serious constraints upon the formalisation or codification of Roma culture in order to teach and propagate it, and to put it on an equal footing with other groups or ethnic-minority cultures, not to mention better established "national cultures".

Recent developments in the former communist countries of Eastern European have provided a new and promising context for experiments with Romany ethnic culture. These are countries where the discussions on ethnic specificity and ethnic rights have more than an academic interest. The geopolitics of the region are closely tied to ethnic politics which are fiercely promoted through persistent, and even bloody, group conflicts. This is the region of the world where the majority of the Roma population is concentrated and where the prejudiced perceptions of Gypsies tend to voice themselves violently, resulting in pogrom-like attacks on Roma communities, the expulsion of Roma groups from localities of legal residence, the waves of refugees towards the West and a policy of forced repatriation from Western countries and "reintegration" in their countries of origin where Gypsies are rejected as foreigners.

The unity of ethnic struggles is always illusory, but, to participants in those struggles, creating, strengthening and maintaining that unity often seems the prime task. This illusion of ethnic unity is created by the existence of a common threat: racism. The most far-reaching example in many West European societies is that of anti-Black racism, which has in turn produced a Black identity which Black militants have used to embrace ethnic groups of startlingly diverse culture, language and physical appearance. However, insofar as these groups share a common experience of discrimination based on dominant ethnic groups regarding them as non-white,

and insofar as culture is experientially determined, that common identity will become an increasing reality.

In many ways, both anti-Gypsy racism and Gypsy anti-racism (or Gypsy nationalism or Gypsy communalism, not to prejudge terminology) are as diverse as Black anti-racism and anti-Black racism. The determination of Romany intellectuals in many countries to construct a common Romany political struggle may thus seem remarkable, and indeed non-Gypsy social anthropologists continue to express as much scepticism about it as did the old racist Gypsylorists[55]. Nevertheless, Romany activists are subject to the same political logic as other ethnic activists.

Historical background

Before we examine that logic of unity, we need to examine aspects of the diversity of the Romany experience, a diversity which gives rise to the different interests for which Romany activists have sought to use the rhetoric of unity. Insofar as ethnic histories have a beginning, we may trace that of the Gypsies to two periods of emigration from Northern India: one around the 7th century, which created the Nawar/Zott communities of the Middle East, and the other around the 10th century, which eventually created the Romany communities in Turkey and Europe. It is probable that at the heart of these emigrations was an expanding commercial nomadism dealing in metalwork, transport and entertainment; other communities and refugees from military defeat may have been drawn together by their common Indian-ness outside India, their ability to speak a Prakritic lingua franca (or one of a series of mutually intelligible lingua franca) which became the Romany language[56].

Large communities settled in Eastern Europe; from the fifteenth century, rather smaller groups visited Western Europe. Much modern historiography tends to represent the European reception of Gypsies as generally hostile from the beginning, but this is misleading. It is true that there are examples of persecution in the West, and slavery in the East prior to 1500. However, these cannot be compared with the sustained genocidal persecution and enslavement which appeared in the third and fourth decades of the 16th century[3]. This persecution cannot be explained by any special characteristic of the Romany immigrants. The upheavals that awaited the creation of the West European nation-states, the redefinition of the Muslim-Christian border, and the period of the beginning of agricultural capitalism in the West were marked by general phenomena of inflation, unemployment and xenophobia, which led to religious and ethnic scapegoating against Jews and Africans as well as Gypsies. Yet, in the West at least, Gypsies also suffered social stereotyping as "vagrants".

Although it was only the most extreme instance of a general phenomenon, this 16th century Gypsy holocaust changed the particular situation of Gypsies everywhere, and created the new groups and modes of co-existence which lasted until the new holocaust of the 20th century. Between 1600 and 1800 there was virtually no international migration of Gypsies, except in the process of European colonialism. In Eastern Europe (and in Spain) there were large, sedentary slave or underclass communities and smaller nomadic groups; in the West, each political unit of the 16th century created a local ethnic group combining Romany and local commercial nomads. For historical reasons, some of these groups identify themselves as Romany, while others built an ethnic identity partly around denying that they were Romany. In the British Isles, for instance, we have four such groups: the English, Welsh, Scottish and Irish Travellers[4].

The content of traditional stereotypes differs between Eastern and Western Europe, though both are overlain with 19th century romantic racism. The East European stereotype was of a slave, someone shiftless, ignorant and stupid - not all that dissimilar to American anti-Black racism. The West

[55] T.A. Acton, "Zigeunerkunde - ein Begriff, dessen Zeit vorbei ist", Zeitschrift for Kulturaustausch , Vol. 31(4), 1981: pp. 380-4; J. Okely, The Traveller-Gypsies, C.U.P. Cambridge, 1983: pp. 170-2,; W. Cohn, The Gypsies, Addison-Welsey, Reading, Mass, 1973: p.66.

[56] T.A. Acton, Gypsies , Macdonald, London, 1981.

European stereotype was more like a down-market version of anti-Semitism - the Gypsy as a cunning fox but, unlike Jews, illiterate. Curiously, in North America, the West European stereotype of Gypsies as crafty nomads is applied to the predominantly static, East European Gypsy community.

We should add that there are substantial differences in social organisation between the Western commercial-nomadic groups and Eastern sedentary groups. If we were to construct an ideal-type differentiation, we would paint the Western nomadic groups as anarchic societies, regulating relations between close-linked groups by the process of feuding and practising marriage by elopement, and the Eastern, primarily sedentary groups as possessing an embryonic state in the form of the kris tribunal, which regulates justice, including disputes over arranged marriages[57]. In practice, of course, actual Gypsy groups are somewhere between these two models of anarchy and regulation, and the revival of international migration in the 19th century meant that Romany groups with very different culture, dialect, economy and social organisation could co-exist with little contact within the same physical territory. It should be noted that those European Travellers who strongly deny Romany identity, such as the Irish Travellers, also can easily be fitted into this continuum and also tend to possess the same rather un-European taboos regarding cleanliness that mark the culture of Romany-identifying groups.

Definitions of Minorities

As we outlined above, many different Gypsy/Romany/Traveller groups exist in very different political systems, but in every system, since the way the group is defined in academic and policy literature is related to policy justifications, these groups - with the exceptions we note below - are usually attached to a conceptual category with general implications for the discourse of ethnic/national/anti-racist politics. These concepts overlap and sometimes conflict. The concepts, derived ultimately from Tsarist and Ottoman practice and which Stalin[58] (1942) codified for communist countries as "nationality", "national minority" and "ethnic group", are used much more randomly in the West, almost as alternative rather than exclusive categories as intended in the Stalinist usage. They compete with other terms such as "linguistic minority", "race" and "racial minority", "cultural minority" and, in the lands where West European colonialism permanently dispossessed previous residents, the "indigenous and tribal peoples" mentioned by the International Labour Organisation Conventions (Nos. 107, 169).

Within these categories there may be, in particular political-cultural or academic contexts, various sub-groups such as the "Deutsche Volksgruppe" or "Osterreichishe Volksgruppe". Such administratively defined minorities enjoy an almost quasi-corporate status, which might perhaps be compared to that of Native American nations in relation to land rights. State recognition of their historically rooted, local minority rights must be contracted to the denial of rights to others not perceived as so historically rooted but classed as "migrants", "immigrants", "refugees", "displaced persons", "stateless persons", and so forth.

All of these categories indicate that Gypsy groups so classed belong to universal types of groups defined by the processes of cultural difference which exist throughout the human race. We can see this, in fact, by comparing them with another kind of concept which we, as sociologists, can see as a category, but whose function for governments has been to act as the denial of a universal category. For Gypsy groups, these are labels like "Travellers", "migranti e itineranti", "Woonwagenbewoner", "Resende", "Voyageurs", "Population Nomade", "personnes sans domicile fixe", "vulnerable groups". For governments, such labels serve to designate groups defined by some localised deviant life-style, rather than by ethnicity. Particularly in the case of groups who deny Romany identity, such as Irish Travellers, the implication is that they are not an ethnic group and therefore have no special rights. Campaigns about the rights of Gypsies in other countries, it was argued, cannot therefore apply to them

[57] T.A. Acton, "Oppositions Théoriques entre 'Tsiganologues' et distinctions entre Groupes Tsiganes" in P. Wiliams' siganes: Identité. Evolution, Etudes Tsiganes/Syros Alternatives Press, 1989: pp. 87-97.
[58] J.V. Stalin, Selected Writings, Greenwood, N.Y., 2nd ed. 1970.

because, as they say themselves, they are not Gypsies. Or even if, as in the case of English Gypsies or Swedish Tattare/Zigenare, they say that they are, the same arguments can still be used by claiming they are not "real Gypsies"[59]

The framework of West European ethnic politics has therefore made it very important for political organisations from groups like the Irish Travellers and Dutch Woonwagenbowoners, who have to assert that despite their historical self-image as non-Gypsies and despite their claim to human rights on the basis of local citizenship and ancestry, to state that they are also specific ethnic minorities in their own right[60]. One can see that the logic of this has been accepted within international Romany organisations who have admitted the participation of such groups for the past thirty years and have even pursued the logic to the point of expressing solidarity with similar groups who have no possible ethnic or historical connection with the Romany Diaspora, such as the Burukamin of Japan.

The importance for policy of these concepts was brought home to one of the present writers during comparative fieldwork on the fishing and canal-boat-dwelling populations of Guangdung, China. When Acton attempted, in 1980, to show to officials, both in China and Hong Kong, comparisons of special educational provision for these boat-dwellers with that provided for English Gypsies, he was invariably met with the assertion that the two situations were completely different, because Gypsies were an ethnic minority and the boat-dwellers were not[61]. In fact, during the entire Qing and Kuomintang periods, both academic and policy discourse had treated the boat-dwellers as a non-Han-Chinese minority, a position only reversed by research in the 1950s. By contrast, until the 1950s, the English Gypsy population was treated by government as an s-social group defined by lifestyle and to be sharply distinguished from "true Romanies"[62]. The recent acceptance of the application of "race relations" legislation to Gypsies has come about only after a great deal of politicking and indeed legal argument about the "mandla" criteria for legal acceptance as a "race" (Times Law Reports, 29 July 1988). Like much other anti-racist activity, in order to make any impact on racist practices, that of Gypsy activists had to make ad hoc arguments in terms that captured the immediate attention of the powerful people being lobbied and exploited contradictions within the ideological positions of those people. It is hardly surprising that most anti-racist rhetoric borrows the conceptual apparatus of racism, seeking to discredit the content of a particular racism rather than to undermine racism in general. Most ethnic struggles have too much to gain in the short term from their own racism.

The contradictions which arise from this, however, are particularly apparent with Gypsies. Unlike the common situation of ethnic minorities who are more or less confined to certain territories or regions, Romany communities are dispersed in a world-wide Diaspora both within and across the borders of countries, states and continents. Specific concepts or sets of concepts may be theoretically and politically meaningful in some countries, but meaningless or even misleading for Romany communities in other countries. Equally, the applicability of some specific concept of minority rights to one particular Romany ethnic group existing in many countries does not mean that same concept might be relevant to describing the situation or informing the strategies of other Romany groups - even in the same countries.

For instance, the political strategy of the large populations of sedentary Roma in Eastern Europe when asking for their recognition as "national minorities" is shaped not only by the Stalinist definition of the latter, but also by historical traditions of cultural nationalism and by the political rhetoric forged in the

[59] T.A. Acton, Gypsy Politics and Social Change, Routledge and Kegan Paul, 1974.

[60] C. Buis, P. Hovens, H. Hutjens & G. Peterink, "Fact-file-The Netherlands", Interface (European Commission Newsletter on the Education of Gypsies and Travellers) Vol.4, 1991: pp. 9-14.

[61] T.A. Acton, "Education as a by-product of fish marketing", Journal of the Hong Kong Branch of the Royal Asiatic Society,Vol. 21, 1981: pp. 120-143 (in fact, though dated 1981, this was published in 1983).

[62] T.A. Acton, "The Social Construction of the ethnic identity of commercial-nomadic groups" in J. Grumet (ed), Papers from the fourth and fifth annual meetings of the Gypsy Lore Society North American Chapter, G.L.S., New York, 1985.

processes of building conflicting
national states in that particular geopolitical space. Such influences can even be seen in the strategies for creating a literary language: Friedman[63] showed how Jusuf Shaip's Romani Grammatika[64] followed techniques used earlier in the construction of literary Macedonian.

One must ask, however, what meaning this concept of "national minority" can have when applied to the situation of ethnically similar groups in France or the USA. Could we, for example, imagine one of the more widespread (and more anthropologically documented) groups, the Kalderash Roma in New York, Buenos Aires, Balham and Paris getting together with their relatives in Moscow and the Balkans in a common political action based on claiming their rights as a "national minority"? If that seems improbable, could we imagine the Kalderash or other presently mobile or nomadic groups in the West finding the concept of a "tribal people" as defined in international law more useful for seeking legal recognition and protection of their distinct cultural identity? Adopting such a label would enable them to network into the political alliances of "indigenous peoples". However, such an identification would probably be profoundly unacceptable to organisations of Hungarian Romany musicians, or to the developing East European Romany intelligentsia in general.

The difference in interests between long-established communities and more recent migrants recurs throughout the Romany world. Romany refugees in Germany seeking a "Bleibenrecht" must identify themselves as "stateless" in order to benefit from the provisions of the 1951 Geneva Convention. Given the reappearance of fascist movements calling for genocide or expulsion in the East, the identification of Romany people as a "stateless minority" may become instrumental for refugees not only in Germany, but also in other EC countries. The beginnings of such a strategy, however, are already in conflict with the demand of Sinti Gypsies represented by the Zentralrat Deutscher Sinti und Roma, who are seeking constitutional rights as a "deutsche Volksgruppe". In fact, conflicts of interest like this have appeared in Western Europe ever since the renewal of emigration from Eastern Europe in the 19th century and have even been exported to the lands of settled European colonialism in America, and more recently, even Australia[65]. We have only begun to explore the diversity of the cultural traditions, class positions and interests of Romany groups, within specific and also highly variable national and regional political contexts, each with correspondingly variable approaches to minority rights issues. This variety is not an unfathomable mystery or an impenetrable puzzle, as some traditional social anthropologists who have studied only one Gypsy group would sometimes have us believe, but it is very complex.

Current developments in Romani Politics

Perhaps it is, however, the popular versions of this academic reaction that have helped create an international Romany movement. In England, councillors who have never knowingly spoken with a Gypsy believe that somehow Gypsies do not deserve the protection of the Race Relations Acts. In Eastern Europe, despite Indian diplomatic intervention in the last decade as a putative country of origin, Romany people are still not seen to conform to the standard pattern of a "national" or "historic" minority (and even if they did, that might not impress a new generation of skinheads). So, even though the content of the prejudiced stereotypes varies, as does the thrust and impact of different forms of discrimination or oppression, the brute fact of virulent and persistent rejection has drawn together politically-minded Romany individuals to assert an ethnic solidarity expressing the feeling that they belong to the same and distinct people, who share common and enduring cultural traits, similar patterns of interaction with multicultural environments, and common problems resulting from widespread

[63] V.A. Friedman, "Problems in the Codification of a Standard Literary Language" in J.Grument (ed), Papers from the fourth and fifth annual meetings of the Gypsy Lore Society North American Chapter, G.L.S., New York.
[64] Shaip Jusuf & Krume Kepeski, Romani Grammatika, Nashe Kniga, Skopje, 1980.
[65] M. Morrow, Romani Peoples in the Australian Legal and Social Context, Press Statement, Romani International - Australia Inc. Clarence Gardens, South Australia, 1991; see also K. Lee, "Submission to the Australia Council" and "Members' Activities", Romani Review - Newsletter of the Romani Association of Australia Inc., Wallsend, NSW March, 1992.

prejudice, ethnic hostility, racial hatred, and violence.

Nonetheless, this political solidarity has to be addressed to rather different constellations of problems. These include:

a) The struggles of commercial nomadic groups in North-Western Europe to defend or secure camping sites and educational provision. As these struggles for basic human rights gain some minimal satisfaction, they progress to other more common anti-racist themes, such as securing access to schools, clubs and shops on the same terms as other citizens[66].

b) The struggles for cultural and linguistic rights in Eastern Europe, which were the most common form of group self-promotion in the former communist countries (albeit repressed in Bulgaria and Romania). Once established, these could, as in Hungary, move on to questions of civil rights, educational and occupational advancement, and the improvement or replacement of ghetto housing. In these struggles, the linguistic issue has a salience which it largely lacks in Western Europe[67].

c) The life-and-death struggles which have begun to develop more recently in parts of Eastern Europe simply to protect the lives and property of Gypsy groups against localised racist attacks following the weakening of state repression of private violence[68]. Coupled with this must be the attempt to form alliances against new political movements which advocate the generalisation of such violence to institutional genocide similar to that practised by the Nazis in Germany or the English colonists in Tasmania.

d) The struggles of recent migrants and refugees. These in turn take various forms, but may include both the immediate reductionism so evident in Germany at the moment and the longer-term problems of statelessness, cultural identity and difficulties in long-term economic adjustment which are present within some Romany groups of recent East European origin in North America and Western Europe[69].

e) The struggles for economic advancement of local commercial-nomadic and former commercial-nomadic groups within rural development programmes in the Middle East[70] and the Indian subcontinent[71].

It should be emphasised that this categorisation claims to be neither definitive nor exhaustive. It should also be emphasised that many groups of Gypsies are hardly in struggle at all. For example, the romance (Angle-Romany) populations of North America and Australia are able to pursue a caravan-dwelling lifestyle without attracting any of the political opposition this attracts in England, because caravan-travelling is common in those countries and therefore not a characteristic of Romany ethnicity as in England. In England, by contrast, caravan-travelling is so strongly perceived as a trait of Romany identity that house-dwelling Gypsies may easily escape attention. Such groups of Gypsies escape discrimination, however, because they are not identified by their neighbours as Gypsies, or only by those neighbours who have established stable social relations with them. Still, they have to pass as non-Gypsies to escape discriminatory stereotypes. This concealing of one's identity - perhaps from

---

[66] See Acton, supra note 6; see also J.P. Liégeois, Tziganes et Voyageurs, Council of Europe, Strasbourg, 1985.

[67] D. Crowe & J. Kolsti (eds), The Gypsies in Eastern Europe, M.E. Sharpe, NY, 1991; see also M. Cortiade & P. Bakker, In the Margin of Romani-Gypsy Languages in Contact, University of Amsterdam Institute for General Lingustic Studies in Language Contact, Vol.1, 1991.

[68] Helsinki Watch, Destroying Ethnic Identity - The Gypsies of Bulgaria, Helsinki Watch, New York, 1991.

[69] I.F. Hancock, The Pariah Syndrome, Karoma, Ann Arbor, 1987.

[70] N.S. Hanna, Ghagar of Sett Guirhana - A Study of a Gypsy Community in Egypt, American University of Cairo Papers in Social Science, Vol.5, 1982.

[71] S.P. Ruhela, The Gaduliva Lohars of Rajasthan: A Study in the Sociology of Normadism, Impex India, New Delhi, 1968; see also B. R. Shyamala Devi, Tribal Integration in a Developing Economy, Ph.D. Thesis, Jawaharlal Nehru University, New Delhi, India, 1989

childhood onwards - carries its own psychological penalties. Educated Gypsy individuals in secure economic positions have begun to realise that, despite their fears about revealing their own ethnicity, they have not only a right, but perhaps even a duty, to be publicly indignant about stereotypes which also put them down. Next to the traditional communal negotiators who dealt with police and municipality ("Gypsy Kings" or "Gypsy Councillors") the "coming out" of such hidden intellectuals has been a major source of Romany ethnic militants[72]. Indeed, we may attribute the fact that Gypsy political organisation only really got going in North America, despite intermittent welfare-oriented activity since the 1930s, to the well-publicised remarks of members of the US Holocaust Commission crassly denying or minimising Romany victimisation in the holocaust[73] which steamed up a number of well-educated and economically comfortable American Roma to realise that anti-Gypsy racism was also their business.

Theorising Human Rights

The organisations and campaigns created in these struggles always exist in dialogue or interaction with state authorities and practices, even if, on the side of the state,
this sometimes appears to be a dialogue on different wavelengths. That is to say, the Gypsy organisations respond to the categories of policy already adopted by the state. The declaration of the September 1991 Rome conference of the working group of academics and International Romany Union Presidium members attempted to square the circle of this diversity by saying:

"All Romany political strategies have to combine:
-a human rights approach
-a minority rights approach, and
-a social movement and community-development approach.

While closely inter-related, each of these approaches entails distinct goals, techniques of action and different networks of alliances which may be promoted jointly or separately by governmental agencies, NGOs and by Roma communities and associations.[74]"

In fact, if we look more closely, we may see that the second and third of these approaches are often in conflict, while the first may be a kind of synthetic approach which was used at least by those Romany activists present in Rome to subsume and reconcile rather different struggles. We shall argue that this adoption of a human rights approach is more than the manipulation of concepts, but is in fact essential in providing moral legitimacy for sustainable Romany political action and creating the possibility of political solidarity or unity which will not itself be oppressive of Romany diversity.

The social or community-development approach, which might be said to correspond to "assimilation" or "integration" strategies within British "race" relations, tends to see Gypsy communities as "backward" or "underdeveloped" when compared to majority communities and therefore in need of special help. In an Indian context, where such special help might consist of building new wells or clinics in a Bangor village, one can see how the patronising ideological baggage of such an approach might be irrelevant to the villagers, while Rubella's[75] account of the failure of sedentarisation policy with Gaduliya Lohars shows that ethno-centric assumptions can mislead policy-makers as much in India as in Europe.

As some European policy-makers came to see the disadvantages of Romany communities as intolerable,

[72] T.A. Acton, "Stifled voices learn to shout", Times Higher Education Supplement, 1990.
[73] see Hancock, supra note 16.
[74] Rome Conference 1991 "Est e Ovest a confronto - sulle politiche regionali e local versi i Rom", Lacio Drom, Rivesta bimestrale di studi zingari, Vol.27, No.6: p.411.
[75] See Acton, supra note 2; Nicolae Gheorghe "The Origin of Roma Slavery in the Romanian Principalities", Roma, Indian Journal of Romani Language and Culture, Vol.7(1): pp. 12-27.

they too saw the problem as one of civilising a community "scarcely advanced beyond the stone age"[76]. Caravan sites were seen as transitional arrangements preceding housing, while special educational provision - sometimes used to avoid having to bring Gypsy children into classes alongside non-Gypsy children whose parents would object - was seen as a way of adapting Gypsy children to school.

It is easy to mock the paternalistic racism of such an approach and perhaps too easy to forget that even patronising officials creating segregated and substandard provisions for Gypsies could be marginalised and insulted by colleagues for providing Gypsies with anything at all and might indeed have to fight for such policies against traditional policies of simply moving Gypsies out of the area in Western countries, or leaving a village or a Gypsy quarter to stagnate in muddy quagmires without electricity or clean water in the East. It is easy to criticise Gypsy organisations who, in the 1961s, accepted bleak caravan sites next to sewage farms, or subsidised folklore programmes in place of civil rights, but that is to forget the realities of continual eviction or forced sedentarisation compared with which any recognition at all of rights for Gypsies constituted an advance.

Indeed, while Gypsy activists might now wish to assert that there is no specifically Gypsy problem of poverty, ill-health or housing, it still remains the case that for many Gypsies it is their problems of low income, poor health and housing which are most politically salient rather than formal issues of equality or non-discrimination. This means that although a minority rights approach is more in favour now, it has never been able entirely to subsume the struggles in which Gypsy activists have engaged.

A minority rights approach, as defined in the Rome declaration, may appear rather confusing in terms of British "race" relations, because it would include both the approaches called "multi-cultural" in Britain (or "inter-cultural" in EC terminology) and that called "anti-racism". In other words, it can vary from simply bringing into schools a few Romany cultural materials and books with positive images of Gypsies to a thorough analysis of the way in which it is non-Gypsy racism, rather than some imagined psychopathology or "backwardness" of the Gypsy community, which has led to the sustained disadvantages of the Gypsy community. Given the fierceness of the anti-racist critique of multiculturalism in Britain, it may surprise the reader that only rarely[77] does such a debate break out in Gypsy politics and studies. In light of the persuasiveness and respectability of anti-Gypsy racism, as compared with anti-Black racism or anti-Semitism, a certain solidarity is essential among all those who wish to affirm Romani/Gypsy/Traveller groups' own cultural identity, protect it against any form of racism, and obtain the associated rights to education, to cultural activities in Romany dialects and to collective public and political representation. In this respect, there are too few people prepared to convince Gypsies that the price of citizenship and protection against discrimination need not be total assimilation in the host culture, and that they need not fall out too often among themselves.

The problem is that any argument based upon ethnic particularism may be reversed in order to limit and control the ethnic group in question. By this we do not mean in any way to endorse the common racist complaint that any action against racial discrimination constitutes an unfair privileging of ethnic minorities. Rather, we mean to suggest that so long as state action to help end discrimination against Gypsies is organised as a form of positive or counter-discrimination aimed at a particular community, rather than individuals with specific needs and rights, then it is bound to give state agencies more power to define and control those communities.

It was never the point of Indian Reservations to give power or independence to Native Americans. We

[76] DOPISAC TU

[77] T.A. Acton, "Reacting to Swann: some difficulties" in M. Waterson ed., The Swann Report and Travellers, ACERT, London, 1986; T.A. Acton, "The Anatomy of a Furore", Paper to the Centennial Conference of the Gypsy Lore Society, Wagner College, N.Y., March 1988; T.A. Acton & D.S. Kenrick, "From summer voluntary schemes to European Community Bureaucracy: The Development of Special Provision for Traveller Education in the United Kingdom since 1967", European Journal of Intercultural Studies, Vol. 1(3), 1991.

should not be surprised that official Gypsy caravan sites in Western Europe have multiplied the dependency on state benefits of their residents. A kind of social inadequacy is built into the official perception of Gypsy particularism, so that Romany individuals who might be businessmen, students or professionals are seen as "not really Gypsies". Although in England the original definition of "gypsies" in the 1968 Caravan Sites Act (s.16) was "persons of nomadic habit of life, whatever their race or origin" [excluding showmen and circuses] there has been constant pressure to exclude those not entitled by a more particularistic definition of "real Gypsies". This involves the social construction of some mysterious group of deviant imitation Gypsies, whom the government imagines have some arcane interest in appropriating the image of the country's most persecuted minority, a fascinating and persistent racist fantasy, not always unabated by individual Gypsies, which has been examined at length elsewhere[78]. In the 1960s the pressure was to exclude "tinkers"; today it is to exclude "new-age Travellers". In contrast to earlier official determination to retain a non-ethnic definition of "gypsy" (sic)[79], recent government-sponsored reports[80] have tacitly conceded the demand for an ethnically discriminatory approach by recommending that councils "avoid mixing gypsies [sic] and other types of traveller on the same site since the two groups tend to be incompatible".

Let us make clear that we are not criticising the rights of individuals to live near to others of their own ethnicity, or to choose their own neighbours. However, one does not have to introduce a policy of rigidly segregated housing according to race in order to achieve such freedoms, and such a policy is not in fact one which respects cultural identity or autonomy. It would, for example, put wholly unjustifiable obstacles in the way of inter-group marriage. Nor would it in practice achieve any security for Gypsies on such segregated caravan sites, for anyone whose face failed to fit could be rapidly excluded once defined by the council (or perhaps by a tame Gypsy organisation) as "not a traditional traveller."[81]

In short, defending caravan-dwelling or nomadism as an ethnic Romany privilege is a political blind alley. The right to lead an economically viable nomadic lifestyle, conducted without invading the rights of others, is either a human right or no right at all.

Are we therefore implying that there are no morally legitimate, specific, ethnic Romany politics? Far from it. The economic history which has led to the Romany adoption of nomadism as a cultural motif certainly gives Romany people a special interest in its defence. The demand for resources to promote Romany culture and identity remains, but the political defence of the Romany language, say, cannot be conducted on the grounds that it is a particularly beautiful language (however much we may believe that) but on the grounds that anyone has the right to have their mother-tongue respected. Everyone has a right to their own cultural identity and to be protected against racism. In short, ethnic rights are morally defensible only as a sub-class of human rights; when Gypsies fight for theirs, they are also fighting for the future of humanity. A new holocaust would not merely be a disaster for Gypsies. It would taint, contaminate or destroy all hope that we now have of building a new Europe.

The advocates of the nation-state and the new right in Eastern Europe are charging national minorities with disloyalty; against Gypsies and the remaining Jewish communities they are reviving the old anti-Semitic charge of "cosmopolitanism". Perhaps Zionism can be seen partly as the ultimate riposte to the charge of "cosmopolitanism": certainly the Zionist state may claim to be one of the most anti-cosmopolitan of political entities, a kind of reductio ad absurdum of nation-state ideology. There were,

[78] Acton, supra note 6; D. Mayall, Gypsy-Travellers in the Nineteenth Century, C.U.P. Cambridge, 1989.

[79] E. Davies, Defining a Gypsy, London, Department of Environment Gypsy Sites Branch, 1984.

[80] G. Clark & D. Todd, Gypsy Site Provision Site Provision and Policy, Department of the Environment/H.M.S.O., London, 1991; G. Clark & D. Todd, Good Practice Guidelines for Gypsy Site Provision by Local Authorities, Department of the Environment/H.M.S.O., London, 1991.

[81] T.A. Acton, "Defining the Limits of Tolerance - UK Government Policy on Gypsies", paper to Rome Gypsy Studies Conference of Centro Studi Zingari/University of Rome/Romani Union, September 1991.

in the 1960s, Gypsy nationalists who took Zionism as a model, such as Ronald Lee and Vaida Voevod[82] but they have had little influence, for who is ever going to provide the territory or the political will to create Romanestan as a second Israel? Romany activists are stuck with their cosmopolitanism; they cannot escape it through an imitation Zionism or any other kind of ethnic particularism. In fact, while it is still open to Jews to read the lesson of the holocaust as being that only having a place of their own can protect them from a repetition, the lesson to the Gypsies is the opposite: the holocaust of the 20th century abolished the protection given by the mehalla, the ghetto, the segregated pariah nomadism and the other sanctuaries which emerged as refuges after the holocaust of the 16th century. There is no substitute for having human rights everywhere; this is the logic of seeking to define Gypsies as a transnational rather than a national minority. It is not so much that the rights of ethnic minorities must be protected, as that ethnic majorities must be in themselves deconstructed. The foundation of global human law must shift from the self-contradictory illusion of national self-determination to a new bedrock of individual, human self-determination. The unfolding agenda of Gypsy activism may be nothing less than the abolition of the nation-state. The mere existence of such an agenda has profound implications for any sociology of group conflicts.

[82] See Acton, supra note 6, p.234.

SINTI AND ROMA AS NATIONAL MINORITIES IN THE COUNTRIES OF EUROPE

Romani Rose
Chairman of the Central Council of German Sinti and Roma in Heidelberg, Germany

Note from the editor: At the special request of the author, the article is being published in exactly the same form as it was submitted. The ODIHR bears no responsibility for the editorial content; the views expressed in the article are those of the individual author.

The Roma and Sinti minorities are long established national minorities in their respective countries of residence in Western, South and Eastern Europe. For example, the attitudes of the 70,000 German Sinti and Roma regarding housing, careers, education, religion, etc. do not differ from the attitudes among the majority of the German population. They pursue their professions as business people, tradesmen, factory workers, clerical workers, academics, civil servants or artists. Like the Danes, Sorbians and Frieslanders in Germany, the 70,000 Sinti und Roma in Germany form a historically developed national minority.

However, in many states a large number of Roma are forced to live under extremely discriminatory conditions and to suffer exclusion and disadvantage. Following that, there are no equal opportunities and chances for them. Many families became victims of pogroms like those in Romania and live - especially in the states of South-Eastern Europe after the collapse of the Communist systems - in severe poverty. In February this year, again neo-Nazi groups murdered with a bomb four Roma in Oberwart, Austria, and injured seriously with such attacks Roma children in Pisa, Italy, where in March 1995 a 13-year old girl lost her right arm and fingers of her left hand and a 3-year old boy lost his left eye.

The Sinti and Roma were victims of the Nazi Holocaust. The unique feature of this policy of genocide in Europe was the plan to annihilate completely all Sinti and Roma, like the Jews, solely on the grounds of so-called "race". By 1945, this plan had been largely completed. The Jewish communities and the Sinti and Roma were systematically murdered family by family, from infants to old folk, throughout the area of Europe under National-Socialist influence. 5,000 Sinti and Roma fell victim to the racist madness, not only through slaughter in the concentration camps, but mainly through mass-murder by firing squads and the mobile gas chambers used by the SS units. The genocide of the Sinti and Roma, like that of the Jews, was planned and organised centrally in the Reich Security Head-Quarters ("Reichssicherheitshauptamt") of Heinrich Himmler.

A realistic basis for preventing discrimination, for participation in political and social life and a binding basis in the fight against disadvantage, inequality of opportunities, poverty and racist attacks can only be attained by equal inclusion in the conventions and agreements on the protection of national minorities.

The Central Council of German Sinti and Roma is lobbying the Council of Europe and the European Union, as well as the OSCE, for equal and legally binding minority protection for the Sinti and Roma minorities in the member states. According to the summit meeting of the Heads of State and Government of the Council of Europe, held in Vienna on October 9th 1993, this minority protection is now to be defined in the "Framework Convention for the Protection of National Minorities" produced by the Council of Europe on November 21st 1994 and will be included in the "Additional Protocol to the European Convention on Human Rights for the Protection of National Minorities" at the end of

1995. These agreements must include the Roma and Sinti minorities in the individual European countries as well as the remaining national minorities and treat all minorities in the same way.

On February 25th 1995, the German Ministry of the Interior publicly declared concerning the "Framework Convention for the Protection of National Minorities":

"The situation of the further minorities traditionally domiciled in Germany, the Frisians with German nationality in Northern Friesland and in the East-Frisian Saterland as well as the German Sinti and Roma, recognised as an ethnic minority in Germany, is equal to the national minorities of the Danes and the Sorbians with German nationality concerning the maintenance of their own identity, their need of protection and the support given by the state. That is why the German Government has proposed to the Lands (Bundeslander) to apply the Framework Convention also to these both groups. This shall be done in a binding way by an interpretative declaration of the Federal Republic of Germany together with the signing of the Convention in the Council of Europe. At the moment the Lands (Bundeslander) are discussing this proposal."

Fifty years after the National-Socialist Holocaust, the agreements mentioned above should not be permitted to create second-class minority rights for Sinti and Roma. The member states do have a special responsibility to recognise their Sinti and Roma minorities as national minorities and to sign the "Framework Convention" of the Council of Europe including Sinti and Roma.

The Central Council of German Sinti and Roma opposes any kind of "special regulations" for Sinti and Roma. The effect of regulations of this kind would simply be to relieve the member states of their individual responsibility for the Sinti and Roma minorities domiciled in these countries, enabling them to reject legally binding minority protection. Earlier recommendations of the Council of Europe already contained exclusion clauses of this kind with the only purpose being to exclude the Roma and Sinti minorities from the binding third part of the "European Charter for Minority Languages", from the "Framework Convention for National Minorities" and from the other international conventions for national minorities of the UN, CSCE and European Union. For example, the Recommendation 1203/1993 of February 2nd 1993 contains the following discriminatory and exclusive formulation according to the old racist ideology: "Gypsies are a non-territorial minority, scattered all over Europe, not having a country to call their own, a true European minority, but one that does not fit in the definitions of national or linguistic minorities." But the reality is that the German Sinti and Roma are Germans and Germany is their own home country. The Italian Roma and Sinti are Italians and Italy is their own home country. The Spanish Roma have Spain, the Austrian Roma and Sinti have Austria, the Hungarian Roma have Hungary and so on. Otherwise, Recommendation 1203 only contains legally non-binding and useless "conditional provisions" with formulations like "could", "should", "ought", "it is important", etc. By contrast, the Recommendation 1201/1993 for an "Additional Protocol to the European Convention on Human Rights for the Protection of National Minorities" contains binding protective provisions for national minorities that must be ratified, i.e. incorporated in legislation. The "Framework Convention for the Protection of National Minorities" which also can be signed by all states of the OSCE, also contains concrete rights and binding guarantees that the states have to recognise as a law in their country once the Convention is signed.

In this respect, the Vice-Secretary General of the Council of Europe, Mr. Peter Leuprecht, said on July 11th 1994 in Strasbourg: "The Council of Europe knows that each definition of minorities has to be prevented which leads to further discrimination and exclusion. So the term of "National Minority" has to be defined so that Sinti and Roma are included."

It is no longer acceptable for the residential rights of the Roma and Sinti minorities in their respective domiciles to be the subject of recommendations and resolutions discussed in European bodies where they are identified in blanket terms such as "social group", "refugees" and "nomads" (see Recommendation 1203/1993). Like the majority population, the national minorities of Sinti and Roma

in Europe have been living in their respective domiciles as historically developed minorities.

Freedom of movement and freedom of establishment can only be achieved by way of the Maastricht treaty on European Union. The speedy integration of the states of Eastern Europe into the European Union is an essential prerequisite for this goal.

Beyond this, it is necessary to provide help for refugee families who leave their countries because of persecution and violent racist attacks there - help and regulations within the framework of the Council of Europe, the European Union and the OSCE. Measures must be taken which are appropriate to the situation and which are based on current law and existing agreements. The same applies to people who have been stateless in the long term. Only a policy of this kind can be realistic and have prospects for success. The existing provisions for eliminating statelessness, the resolutions made at Maastricht to coordinate the taking in of refugees and the declarations of the states of the European Union on the asylum question from February 1992 form an appropriate basis. If poverty and the other reasons for refugees leaving their countries are to be eliminated, it is urgently necessary to incorporate the countries of Eastern Europe into the European Union, not to introduce discriminatory "special regulations for Gypsies" or to exclude them from the legally binding rights of national minorities.

The Central Council of German Sinti and Roma also expressly welcomes the resolution of the "European Bureau for Lesser Used Languages" of January 21st 1994. This calls on the German Government to register and ratify the "Romanes" language used by the German Sinti and Roma along with Danish, Frisian and Sorbian in the legally binding third part of the "European Charter for Regional or Minority Languages." As an "historically developed" minority language under the terms of the Charter, the "Romanes" language used by German Sinti and Roma has its own "linguistic area" within the state territory of the Federal Republic of Germany and is therefore entitled to protection and promotion according to the binding third part of the Charter. It is against the law of the European Convention for Human Rights generally to exclude the Sinti and Roma minorities in the different countries of Europe from the binding rights of the Charter as some recommendations of the Council of Europe did in the past.

It must also be criticised that European bodies as well as the bureaucratic administration of the Council of Europe in Strasbourg treat the six million Sinti and Roma in Europe as so-called "migrants". The recommendations of the Council of Europe use this classification very consciously with the intention of excluding these groups from protection for national minorities. There can be no doubt that the authorities are aware that this classification as "migrants" is actually incorrect and unrealistic. Nonetheless, this old "gypsy" cliché, which has been used to identify six million people as "nomads" and "migrants", still continues to be used. The consequences of these strategies of the Council of Europe and European Union that are intended to deny the Sinti and Roma minorities their residential rights in the member states are demonstrated by the reports of the denaturalisation of ten thousand members of the minority in the Slovak or the Czech Republic.

By signing UN resolution 47/135 on February 3rd 1993, the Federal Republic of Germany along with the member states of the Council of Europe and the CSCE undertook "to ensure the protection of the existence and identity of national, ethnic, cultural, religious and linguistic minorities using legal measures". Each state must fulfil this undertaking without distinction for the minorities in its own territory, including its own Roma and Sinti minorities. The principles of the UN resolution must also set an example for a policy adopted by the Council of Europe, European Union and CSCE that is free from exclusions and discrimination with regard to the Sinti and Roma minorities.

Apparently independent scientists make themselves available for such discriminatory practices by the government and contribute to the consolidation of existing structures of prejudice.

The declaration made by Mr. Leuprecht on July 11th 1994 is a good beginning for changing the old

policy of the Council of Europe. The then Secretary-General of the Council of Europe, Mrs. Catherine Lalumiere, had already written to the Central Council of German Sinti and Roma on January 4th 1994, hoping the term national minority "will be understood in such a way as to include Sinti and Roma". The OSCE has to develop its activities in this way. As necessary activities of the OSCE, I actually propose recommendations to protect the Sinti and Roma as national minorities and to protect their minority languages. I propose a recommendation of the OSCE for governmental support to the self-representative organisations of the Sinti and Roma minorities in their home countries and I propose an appeal of the OSCE to the European Commission on Human Rights.

We need a recommendation from the OSCE to the member states of the Council of Europe to sign the "Framework Convention for the Protection of National Minorities" of the Council of Europe (November 21st 1994) including the Sinti and Roma minorities as national minorities. Additionally, we need a recommendation from the OSCE to the member states to ratify the Romanes languages as minority languages in the individual European countries according to part III of the European Charter for Regional or Minority Languages. More than 35 points of the legally binding part III do allow for the ratified protection of the Romanes languages.

Bureaus for the self-representation of the Sinti and Roma minorities in the member states are necessary. To work against the threat of discrimination, the member states of the OSCE should establish institutions for the political self-representation of the Sinti and Roma minorities, which have an independent status for publishing incidents of governmental arbitrariness and infringements with racially discriminating motivations.

The OSCE, the Council of Europe and the European Union should employ their financial funds to support the self-representative organisations of the Sinti and Roma minorities in their home countries and thus enable them to perform the task of self-representation. This includes the support of Bureaus for the Roma and Sinti organisations if the member states are not able to finance central and regional consulting Bureaus for the Roma and Sinti minorities.

The main aim of these Bureaus for the Roma and Sinti minorities should be to work towards removing legal, economic and social disadvantages. They should also have the task of informing the public about the situation of the minority in the member states. The executives of these Bureaus should be exclusively the independent Roma and Sinti organisations as "Non-Governmental Organisations". Delegates from the organisations should form the board of the Central Consulting Bureaus and decide together and independently about their working programme and projects. Only the members of the boards, and not intergovernmental or governmental institutions, should be responsible for the whole working of the Bureaus, for the task of remaining all-party and independent, and for the correct use of the supporting funds. The Bureaus should be open to all Roma and Sinti people without distinction and should offer them free consulting services in cases of discrimination and unfair disadvantage.

In Germany, the bureau of the Central Council of German Sinti and Roma in Heidelberg with its 5 staff members is financially supported by the Federal Government. Since 1991, the German Government has also supported the Cultural and Documentary Centre for German Sinti and Roma in Heidelberg with 8 staff-members. The Central Council was founded in 1982 by 11 associations of the lands (Landesverbande) and regional associations of the German Sinti and Roma. The Central Council today includes 16 member-organisations and works as the representative of the German Sinti and Roma minority in the Federal Republic. Concerning the support from the German Government, there is the discriminatory situation whereby the Central Council and the Documentary Centre of German Sinti and Roma are still supported by the "Ministry for Youth, Families and the Elderly" in its competence for so-called "socially marginalised groups". The foundation of the Central Council working for civil and minority rights and against discrimination and the foundation of the Documentary Centre are mentioned in the annual Ministry report, in the chapter "Policies for the Elderly" between "Public and Private Social Welfare" and "The Elderly with Handicaps". This stigmatising practice is a follow-up to old

propaganda clichés and prejudices against the minority by declaring Sinti and Roma a "socially marginalised group" by birth and not recognising them as a national minority with the same rights as the other citizens of the country. Sinti and Roma also have to be supported on an equal footing with the Danes and Sorbians in Germany by the Ministry of the Interior.

The further activity of the OSCE must be to check the practice of asylum procedures in Western Europe. According to article 24 of the OSCE Budapest Document, the OSCE authorities should contact officially the European Commission on Human Rights with an appeal that the Commission should investigate the practice of the asylum and refugee procedures in Western European countries. The Commission should also investigate the practice of various countries which qualify states including Romania, Bulgaria, the Czech Republic, the Republic of Macedonia, Poland and Serbia as "safe" countries for Roma families who left their home country because of persecution and public violence.

These necessary activities of the OSCE could be initiated by the ODIHR in Warsaw.

ODIHR MANDATE - MEDIA FIELD

Note from the editor: With the previous edition of our Bulletin we started this new initiative, aiming to describe the ODIHR mandate in various fields and to illuminate the services ODIHR can provide. In this respect, we would like to present our mandate with relation to Media

Elections: The original mandate of the ODIHR calls for assistance to the new European democracies in establishing a tradition of free elections and electoral administration. Openness and diversity in the media, and adherence to the rules formally established for media coverage during the election process, have always been an important part of the services ODIHR provide in the field of election observing.
Recognising the role that independent media play in building democratic societies, the ODIHR now plans to launch a new policy regarding the implementation of the election-monitoring mandate, which will also address the issues of access to media and freedom of speech during elections.

ODIHR Seminars: In the decisions of the Rome Council Meeting, the Ministers underscored the role played by free media in the upholding of fundamental rights in democratic societies. As a result, the Committee of Senior Officials requested the ODIHR to organize - in co-operation with relevant international organisations and as a follow-up to the CSCE Seminar on Free Media - a workshop concerning business techniques related to journalism.

To fulfil this mandate and in order to further the work of the OSCE in the area of free media, the ODIHR plans to organize in 1995 a series of three seminars on Print Media Management in different OSCE regions. These will centre on the business of operating a newspaper. In addition, media issues will be the main topic of the debates of one of the discussion groups during the International Seminar on Tolerance, organised by ODIHR in close co-operation with the Council of Europe and the Government of Romania, which will be held in May 1995 in Bucharest.

Media Clearing House: To develop further OSCE work in the field of human rights and fundamental freedoms, a provision dedicated to the topic of free media was adopted during the CSCE Budapest Summit (5-6 December 1994):

(10) The participating States decide to ask the ODIHR to act as a clearing house for the exchange of information on media issues in the region, and encourage governments, journalists and NGOs to provide the ODIHR with information on the situation of the media.

(Towards a Genuine Partnership in a New Era, Budapest Document 1994)

To fulfil this mandate, ODIHR plans to collect and provide upon request the reports on the implementation of Human Dimension commitments related to media in the OSCE participating states, as well as information on national legislation on media. ODIHR will also continue to maintain close contacts with various organisations working in the media field.

ODIHR now invites all interested organisations and individuals - international organisations; NGOs; universities; private researches and government officials - to provide us with information on the media issues in the OSCE participating states. The contact person within ODIHR is Paulina Merino.

ELECTIONS

BULGARIA

THE PARLIAMENTARY ELECTIONS
18 December 1994
Observers Co-ordinator: Mary C. Andrews

The parliamentary elections held on 18 December 1994 in the Republic of Bulgaria were observed by a total of almost 150 international observers representing 12 CSCE participating states and four other countries. The Office of Democratic Institutions and Human Rights observed the pre-election campaign period for two weeks before election day, briefed and provided written materials to the international observers.

The elections were well administered from a technical perspective and held in compliance with internationally accepted standards of democratic elections, although there were areas for improvement suggested for the future. ODIHR reported the desire of some political parties to change the election laws before these elections or to revise them before any future elections. There was a large number of complaints about the allocation of media time, use of coloured ballots, and provisions for Bulgarian citizens voting abroad All this seems to indicate the need for the new parliament to reconsider these provisions in consultation with the political parties outside parliament.

Although the Bulgarian Constitution prohibits political parties established along ethnic lines from participating in elections, some ethnic groups have been permitted to organize and field ethnic candidates in elections. ODIHR underscores its concern over the uneven treatment of ethnic-based political parties. The OSCE has affirmed its support for the political organisation of ethnic minorities, and ODIHR encourages the new parliament to reconsider the issue of participation of ethnic political parties.

For most observers, the allocation of television and radio time was the single most important issue with respect to the campaign. Television time for debates and promotions was allocated according to a 1991 parliamentary media declaration, that is only to the parties which were elected to the previous National Assembly. Charges for purchased television time for campaign promotion were over 10 times the regular charge for television commercials.

Observers noted that on election day the voting was orderly and regular. Both voters and election commissioners at the polling stations were well informed of the voting procedures and, according to most observers, this appeared to be the result of their previous experience with voting in democratic elections. The observers were particularly pleased with the continual announcement of election results by the Central Election Commission, and the delegations did not receive any reports of fraud in the calculation or announcement of election results. ODIHR believes this is an important indication of the transparency of the election administration. In the opinion of the observers, review of election administration decrees illustrates adherence to the election laws and other relevant legislation.

THE REPUBLIC OF UZBEKISTAN

THE PARLIAMENTARY
AND LOCAL ELECTIONS
25 December 1994
Observers Co-ordinator: Jacques Roussellier

Approximately 50 observers from the OSCE Member States monitored elections in and outside Tashkent.

Some national observer groups were generally satisfied with the way it was administered while calling for improvement; others noted with concern the lack of freedom of information, of association and press, as well as the absence of a genuine contest among competing parties, not to mention *inter alia* extensive family voting and loose ballot security, thus concluding that these elections fell short of meeting all OSCE standards. ODIHR representatives emphasised the need for changes in election law and practice, and expressed the hope that a step-by-step opening up of the political system will ultimately strengthen and not jeopardise the country's stability and that the new parliament will include a genuine and constructive opposition.

Electoral campaign: As restrictions were imposed on the registration of certain political parties, freedom of association and campaigning existed only in a limited way. The election law gave excessive powers to the Central Electoral Commission (CEC) in regulating the financing and running of political campaigns. The CEC decided that information about candidates should be in identical format and that their policies should not contradict the constitution.

Access to media: Although legally registered parties and candidates enjoyed freedom of speech during the campaign with equal access to TV coverage as well as printed media, freedom of expression was curtailed. Article 29 of the Uzbekistan Constitution provides that every one has the right to freedom of thought, speech and convictions. However, this right is not absolute since the provision also states that "every one has the right to seek, receive and impart information except [that which is] directed against the existing constitutional structure and other limitations prescribed by law". Furthermore, there is a law against "offending the honour and dignity of the President" which clearly limits the ability to criticise the President. Any candidate could then be disqualified if he was found to have criticised provisions of the constitution and existing laws in his political platform.

Registration of parties and candidates: The ruling People's Democratic Party (PDP, formerly the communist party) and the Progress of the Fatherland, which is supporting the current leadership of Uzbekistan, constitute the only registered political parties. The overwhelming majority of candidates were therefore members or supporters of the current government, leaving full control of the electoral process in the hands of the state. In addition, the new Constitution passed in December 1992 prohibits political parties based on religious or ethnic/national lines and thus, under existing legislation, national minorities cannot effectively take part in policy decision-making either through individual or collective representation.

Voter registration: All citizens legally residing in Uzbekistan or the former Soviet Union were registered on the voters' list and allowed to vote with appropriate proof of residence. Voters were allowed to vote in a polling station other than the one prescribed for them by the official invitation, provided that they filled up an authorisation form prior to the elections. Although the law prescribes that I.D. be presented by voters to identify themselves, election officials, especially in rural areas, did not ask for an identification document and used the invitation to find the name of the voters on the list. Family voting was widespread in many polling places, despite assurances at all levels that this would not be permitted.

Conclusions: Although the new election law and practice in Uzbekistan is markedly different from its Soviet origins and while attempts were made at the highest levels to provide democratic conditions for voting procedures, observers noted that these elections were still very much embedded in the traditions of the past and that changes were more cosmetic than conducive to free and fair elections as the main opposition parties were debarred from running. Furthermore, there was no real difference in policy between the parties, although most voters interviewed considered that for the first time they were given a choice between parties and candidates. Hopefully the new parliament will break with its Soviet past and lead to more open and constructive debate, albeit with the absence of an opposition. This could be one step towards further democratisation.

With a view to suggesting amendments to the law, the ODIHR plans to hold a seminar or round-table on electoral law and practice and election-related legislation, such as the law on the media, law on association, law on political parties.

THE REPUBLIC OF KYRGYZSTAN

THE PARLIAMENTARY ELECTIONS
5 and 19 February 1995
Observers Co-ordinator: Jacques Roussellier

The first democratic election of the Parliament in Kyrgyzstan was monitored throughout the country by approximately 60 observers from OSCE states and NGOs. Freedom of information and association have not been curtailed; political parties are organised and functioning freely, and there is a general sense that authorities are serious about implementing democratic reforms, in particular in the field of elections.

In contrast with neighbouring countries, Kyrgyzstan enjoys a freedom of speech, information and association that are vital conditions for democratic elections. Although candidates were only allowed 10 days before the first round to buy time slots on TV and advertisements in newspapers, the campaign took place in a generally peaceful, if not uneventful, atmosphere. New political parties have been able to form and register without prejudice over the past two years, a fact unmatched in many other former Soviet states.

Only 16 deputies were elected in the first round. Although this was widely expected by observers and the media, the result took the electoral commissions by surprise. A heated campaign for the run-off took place, and the murder, allegedly non-political, of a candidate in the week prior to the run-off increased tension.

Voter identification was not always correctly applied and family or proxy voting took place especially in rural areas. Whilst polling site officials were well acquainted with democratic voting procedures, they sometimes made allowance for traditional habits of multiple voting, perhaps under pressure to reach the 50% threshold needed to validate the election. Voters were usually unsure about voting procedures. Observers, however, noticed a marked improvement in the second round: voting procedures were more closely followed by election officials and voters appeared to be less confused.

One of the main concerns observers expressed was the lack of an efficient judicial review of decisions of electoral commissions or of complaints lodged by candidates and voters. The law is very unclear on what kind of powers the Central Election Commission has when handling disputes, complaints and violations. Also, the relation of the Commission to the court system is unclear. Prior to the run-off, the Central Election Commission set up a special independent commission of professional experts to act as national observers without any mandate to settle disputes or sanction violations; its role turned out to be rather weak and confined to making recommendations for a future draft election law.

REPUBLIC OF MOLDOVA

LOCAL REFERENDUM ON INCLUSION OF
CERTAIN LOCALITIES IN GAGAUZIA
5 March 1995
Observers Co-ordinator: Jacques Roussellier

A group of twenty observers, mostly from embassies of OSCE member states in Chisinau and from the Council of Europe, monitored the referendum. There were no visible signs of deliberate intimidation or wilful attempts to put pressure on voters. Unofficial results show an overwhelming yes vote with indications that support for inclusion in Gagauzia came from ethnic non-Gagauzes.

Legal background: The primary legal basis for holding the referendum is the Law on the Special Status of Gagauzia. The Law stipulates *inter alia* that the localities will be included into the autonomous territorial unit of Gagauzia, an integral part of the Republic of Moldova, on the basis of a referendum. In the localities with less then fifty percent Gagauz population the referendum is to be held only at the request of at least one third of voters registered.

The second most important law for the organisational aspects of the referendum is a government resolution of 31 January 1995, which promulgates temporary regulations on the conduct of the referendum. The regulations specify the procedures for localities with less than fifty percent Gagauz population to request the organisation of a referendum: initiative groups, authorised by the local administration, may collect signatures and present the list to the republican commission which, according to the resolution, will determine localities where the referendum will be conducted ten days after the date of the referendum is fixed.

The timetable was certainly unrealistic and unfair for citizens groups, as they had only ten days to collect signatures requesting the organisation of a referendum. The Joint Commission later agreed on a list of villages with less than fifty percent of Gagauzes where the referendum would take place, leaving approximately ten villages which could have an initiative group out of the deal.

Election procedures: The regulations for the referendum were broadly in line with international standards on election procedures, but they were unequally applied. The referendum took place peacefully and without noticeable pressure on or deliberate intimidation of voters. The ethnic composition of the electoral commissions was generally representative of the localities with one or two exceptions. Counting procedures were respected and election officials appeared well trained and informed about their duties. The secrecy of the vote was guaranteed although confusion in some precincts led to unacceptable cases where several persons voted in the same polling booth. Voters appear well informed about the meaning and consequences of the referendum.

However, there is still the question of whether and how the upcoming local elections in Moldova will be organised in now officially declared Gagauz areas, bearing in mind that much of the powers vested in Gagauzia by the Law on the Special Status of Gagauzia correspond to prerogatives given to local authorities.

THE REPUBLIC OF ESTONIA

THE PARLIAMENTARY ELECTIONS
5 March 1995
Observers Co-ordinator: Giorgio Fontana

The elections held on 5 March 1995 were the second parliamentary elections since Estonia re-established her independence in September 1991. In a country divided along stark geographic and generational lines, economic issues and recent radical reforms dominated the electoral campaign.

A group of 14 international observers from OSCE states and NGOs, including one observer from a non-OSCE country, monitored the elections. On the basis of reports from observers and discussions with various organisations in Estonia, the ODIHR considers the 1995 Parliamentary Elections to have been conducted in accordance with the principles contained in the Electoral Law.

Role of the media: The monitoring of the media was undertaken by the European Institute for the Media, which issued a separate report. The ODIHR observers did not receive any specific negative comments from political parties or others about the activities of the media.

Registration of voters: The process for the Registration of Voters worked reasonably well although there were some complains from parties that either the applications for citizenship were being delayed (thus meaning the applicants could not register as voters) or alternatively that some Estonian citizens were not included on the Register of Voters. ODIHR recommends the Estonian Parliament to give consideration as to how the preparation of the Voters Registers might be further improved. It should be added that comments made to ODIHR representatives about citizenship inevitably spill over into comments about eligibility to vote, a sensitive issue in a country with a Russian minority of 475,000 (30% of total population).

Registration of candidates: Seventy-eight candidates, mostly from two coalitions - the Fourth Force and the Better Estonia/Estonian Citizen union - had their applications to register as candidates rejected. This was the cause of some debate and the issue was being pursued through the Estonia Courts. Following discussions with some of the political parties and others involved, ODIHR recommends that issues such as the registration of candidates are dealt with as early in the process as reasonably possible, so as to allow time for any problems to be resolved.

The voting process: ODIHR observers were able to monitor almost 10% of the 688 polling stations in various parts of Estonia. Generally, the polling stations were well organised, the staff competent and well trained, the voting process smooth and with few queues. Several suggestions, however, have been made to the Estonia National Electoral Committee for clarification and consideration, including:

m Vote secrecy: in a number of stations there were no curtains to polling booths and voters were allowed to circulate behind those marking their ballot papers. There were also a number of cases of family voting and of voters not folding their ballot papers, so other persons were able to see how they had marked the papers;

m Party representatives: they were present in only a few stations and there was some inconsistency among election officials as to whether they would admit agents at all, admit only those accredited or anyone who presented themselves as agents.

NEWS FROM THE ODIHR

ODIHR TRAINING OMBUDSPERSONS FOR BOSNIA-HERZEGOVINA

February 13-17, 1995

Moderator: Jacques Roussellier

The newly-appointed ombudsmen of Bosnia-Herzegovina - one from each of the main ethnic groups (Serbs and others, Croats and Bosnians) attended an intensive training seminar in Warsaw organised by specialists on human rights from international organisations, as well as by invited ombudsmen from various countries.

Among guest speakers were representatives of experienced Ombudsmen in other countries: Swedish Ombudsman against ethnic discrimination; Director-General of the Austrian Ombudsman Office, United Nations Special Rapporteur on the situation of human rights in the territory of the Former Yugoslavia; as well as representatives of UNPROFOR, UNHCR and UN Human Rights Centre. The active participation of organisations involved in Bosnia-Herzegovina was testimony of the great interest the international community took in this first national human rights institution so far set up in Bosnia-Herzegovina.

Discussions were conducted in an informal and participatory way. The ombudsmen have prepared regulations on the method of executing their functions and on their internal organisation. They have established first contact with key Ministries of the Federal Government. They have also met the media in Sarajevo several times and will continue to meet them on a regular basis. They intend to open offices in Zenica and Mostar in two months.

Participants in the seminars discussed practical cases Ombudsmen are usually facing and exchanged views on cases already brought to the attention of the Bosnian Ombudsmen. They also addressed specific aspects of the Bosnian Ombudsmen institution such as the use of the media as an instrument for achieving their goals; the need to educate the public and the authorities; the importance of training the local police forces on the power of initiative to be used by the Ombudsmen; its future work as well as co-operation with UN/UNHCR.

Tadeusz Mazowiecki's words may be taken as a conclusion for the whole workshop: "We should not have too many expectations for the future achievements of the Ombudsmen. Let us proceed step by step".

CONTACT POINT FOR ROMA AND SINTI ISSUES

2 March 1995

Repporteur: Jacek Paliszewski

The informal consultation of representatives of Roma NGOs, the Council of Europe, the Office of the HCNM and UNHCR took place in Warsaw, upon the invitation of the ODIHR. It aimed at elaborating guidelines for the activities of the Contact Point for Roma Issues (CPRI) in 1995.

The following main objectives of the Contact Point were indicated during the meeting:

m focus attention on addressing discrimination and violence against Roma. The other issues, i.e. education, culture, community development and employment would be covered by other relevant international

organisations;
m circulating information on Roma issues, including information on the implementation of commitments pertaining to Roma;
m encouraging development of Roma organisational capacity and assisting co-operation of Roma NGOs.

The practical implementation of the Contact Point clearing-house function was also thoroughly discussed. The proposal of regular internships (twice a year for three months) for representatives of Roma, financed by Roma NGOs, in the CPRI was accepted by participants.

It was noted that the CPRI would work closely with the HCNM and the Council of Europe. A continuous working relationship should also be maintained with the Standing Conference for Co-operation and Co-ordination of Romani Associations in Europe.

SUMMARY OF THE WARSAW MEETING

7 April 1995

Repporteur: Martin Alexanderson

During the OSCE human dimension seminar on freedom of association and NGOs, an informal meeting took place concerning the recently appointed Contact Point for Roma Issues (CPRI) of the Office for Democratic Institutions and Human Rights (ODIHR). The purpose of this meeting was twofold: inform interested parties of the upcoming activities of the CPRI and take note of their suggestions with respect to the Contact Point's future tasks.

The meeting was attended by representatives of the participating States of the OSCE, several international organisations, the OSCE Parliamentary Assembly, and non-governmental organisations (including non-Roma associations). The ODIHR informed the participants of the mandate of the CPRI, the co-operation foreseen with other international organisations (in particular the Council of Europe) and the outcome of a consultative meeting organised by the ODIHR on 2 March 1995.

Although no formal decisions were taken at the April meeting, a number of suggestions were made concerning the following matters :
Relations between the CPRI and NGOs: Several participants underscored the need to make the CPRI sufficiently known among non-governmental organisations. It has been stated that the Warsaw Office should develop contacts with Roma NGOs, with non-Roma NGOs and facilitate co-operation between these organisations.

Human rights training for Roma NGOs: In relation to the latter type of co-operation, it was suggested that the CPRI make available information on - and, as appropriate, coordinate activities of - NGOs and other institutions which could provide human rights training for Roma NGOs.

Information received by the ODIHR from non-governmental sources: A representative of an official delegation proposed that the CPRI should register "problems" concerning Roma and make the information available to the participating States of the OSCE. A member of a non-governmental organisation stressed the importance of inviting non-Roma NGOs to provide reports as an additional source of information.

Research activities of the future Roma intern: At a previous meeting it had been decided that the ODIHR would enable representatives of Roma NGOs to complete internships at the Warsaw Office. One participant suggested that the future intern could undertake a study on violence and discrimination directed against Roma communities, especially with respect to employment. There was another proposal to the effect that the study should focus on means to prevent racial violence and intolerance.

OUTLINE OF THE CLEARING HOUSE FUNCTIONS AND ACTIVITIES

21 April 1995

Rapporteur: Paulina Rogowska

It has been said on many occasions that CSCE (now OSCE) can play a special role in assisting States in meeting their human right commitment vis-à-vis Roma and other identified as Gypsies. By the decision of the Budapest Summit in December 1994 such a contact point has been established within the ODIHR. Its ultimate goal **is to assist participating States in finding constructive solutions for the problems that Roma face**. In order to fulfil this mandate, the ODIHR is to make full use of existing resources; no additional funding or human resources have been assigned.

Following the appointment of an ODIHR Contact Point, and after several consultations with other international organisations and Roma NGOs, the action plan for the Contact Point for Roma and Sinti Issues (CPRI) has emerged, which we would like to present now.

WORKING APPROACH OF THE CPRI:

The OSCE is not confrontational or accusational in its approach. While maintaining close contacts with NGOs, the organisation is assisting the participating States in the implementation of their human rights commitments. This approach embodies the working strategy of the CPRI:

m to facilitate contacts and exchange of information among OSCE institutions, Inter-governmental and international organisations, OSCE participating States, and Non-governmental organisations (NGOs),
m to circulate information on implementation of human dimension commitments pertaining to Roma, and
m to encourage the development of Roma organisational capacity by assisting in the co-operation of Roma associations and organisations.

Areas of concern: The CPRI will leave considerations of economic and social issues, culture, community development, etc. to those who are better qualified to address them, and limit itself to a few areas of great concern with regard to the position of Roma in the legal and political field, in particular - discrimination and violence against Roma and Sinti.

Partners the CPRI will co-operate with: It is obvious that the Contact Point can operate only if there are active partners - peoples as well as governments and organisations - who want to get in touch with others. Therefore the ODIHR strongly appeals to the governments of participating States, international organisations and non-governmental organisations which are interested in Roma issues, to provide the CPRI with the information which determines its functioning.

PLANNED ACTIVITIES

m The CPRI will collect and, upon request, disseminate information and documents on the implementation of human rights commitments **focusing on the discrimination and violence against Roma**. These reports will be made available by the CPRI to the participating States during the Implementation Meeting in October 1995.

m The CPRI will prepare a handbook of international organisations and legal instruments applicable to Roma issues, which will include information about the procedures to be used when reporting the violations of human rights of Roma.

m Pending comprehensive information is received by the CPRI, a country-by-country handbook of domestic institutions, consultative, advisory and judicial bodies and other institutions dealing with Roma will be prepared.

m The CPRI will contribute to the publication of a study on legal provisions regulating status of Roma in individual States.

m In order to exchange expertise and build organisational capacities, the ODIHR will host a Roma intern to the Contact Point twice a year for three months. This year's internship program has been funded by the Project on Ethnic Relations.

m A list of meetings, cultural activities and the human rights training for Roma NGOs will be maintained by the CPRI and distributed quarterly to all bodies from the CPRI mailing list.

m Articles on Roma issues will be published regularly in the OSCE *ODIHR Bulletin* to promote awareness of Roma problems as well as stimulate a debate on Roma issues.

m The CPRI will maintain a list of organisations interested in addressing Roma problems.

INFORMATION WE SEEK

m The Contact Point is completing a list of Roma and Sinti NGOs, governmental institutions dealing with Roma, research and cultural centres, media and individual experts active in addressing Roma problems. So far we have about 300 organisations on our list and we look for more. With respect to institutions, we would like the list to incorporate, whenever possible, information about the major focus of activities of a given organisation.

m Information provided by governments on the situation of Roma in their countries (statistics, government policy with regard to Roma, governmental programs etc.).

m Reports related to the implementation of the human rights commitments with special reference to discrimination and violence against Roma, and steps undertaken in order to combat these trends.

m Information about meetings and cultural activities of relevance to the international community of Roma, as well as human rights training for Roma NGOs.

m Information about domestic institutions - consultative, advisory and judicial bodies and other legal institutions dealing with Roma - together with information about the procedures to be used when reporting the violations of human rights of Roma.

m Specific laws or decrees on the protection of Roma, such as constitutional provisions on Roma, national laws on the protection of minorities, citizenship laws and jurisprudence from the countries with significant Roma population.

Point of contact within the ODIHR: A co-ordinator of CPRI activities within the ODIHR is Jacek Paliszewski. The working group of a Contact Point consists of two more persons: Paulina Rogowska and Martin Alexandersson.

HIGH COMMISSIONER ON NATIONAL MINORITIES

The OSCE High Commissioner on National Minorities, Mr. Max van der Stoel, continued his work in the first three months of 1995 with visits to the former Yugoslav Republic of Macedonia, Hungary, Romania and Slovakia, and other related activities.

GENERAL

The High Commissioner on National Minorities attended meetings of the OSCE Ministerial Troika in Strasbourg on 1 February and in Budapest on 17 March. He also attended various meetings related to the Stability Pact initiative and the Stability Pact conference in Paris on 20-21 March. During his visits to Slovakia, Romania and Hungary, he had discussions about the content of the paragraphs relating to minorities in the treaties on friendship and co-operation under negotiation between Romania and Hungary and Slovakia and Hungary.

FORMER YUGOSLAV REPUBLIC OF MACEDONIA

Recommendations made by the High Commissioner to the Government of the former Yugoslav Republic of Macedonia (FYROM) after his visit in November 1994 have been made public (CSCE Communication No. 37/1994). In them, the High Commissioner paid particular attention to the issue of educational opportunities for children of Albanian nationality, and stressed that further efforts were required to increase the percentage of Albanian pupils continuing their education at secondary school level. He expressed the hope that the Government's 1993 decision on establishing courses in the languages of various nationalities, including Albanian, at the Pedagogical Faculty in Skopje, would soon be implemented. Other recommendations concerned the need for further efforts to increase the representation of various ethnic groups in the state administration, including the police and the army; to extend the number of television programs in the Albanian language; and to use the Council for Inter-ethnic Relations, set up in accordance with Article 78 of the Constitution, as a major instrument of dialogue.

During a visit on 15-18 January 1995, the High Commissioner discussed questions concerning inter-ethnic relations with the President of the Republic, Mr. Kiro Gligorov, members of the Government, and leaders of political parties representing the Albanian community. As before, he paid considerable attention to educational issues.

The High Commissioner returned to the FYROM on 19-21 February, immediately after the tragic events in the village of Mala Rechica near Tetovo. On 17 February, one Albanian was killed and about twenty people, including policemen, were injured in clashes that broke out after a group of Albanians attempted to start teaching at the Albanian University. During his stay, the High Commissioner had intensive talks with the President of the Republic and the Speaker of the Parliament, Mr. Stojan Andov. He also met with the Ministers for Foreign Affairs, Internal Affairs and Education, and with leaders of the Albanian community of the FYROM. He discussed ways of stabilizing the situation in the country, continuing the dialogue between the Government and the Albanian community, and promoting solutions that would, within the framework of the national legislation of the Republic, meet the legitimate demands of the Albanian community.

After his meeting with the President, the High Commissioner made the following statement to the media of the FYROM: "I have met with President Gligorov and will be meeting with members of the Government and leaders of the Albanian community to discuss the situation in your country. I am strongly convinced that this is a time for restraint and for all the parties to remain calm. It is in the common interest of everyone in this country to live together in harmony. Incidents like that of [17 February] can only disturb this harmony. I am also deeply convinced that, if there is a further escalation of tensions, the interests of all ethnic groups will be

further damaged. Now is the time not for mass demonstrations but for dialogue. Dialogue is the way of searching for common solutions. The question of the university is uppermost in this regard. In my opinion, this issue should be discussed within the framework of preparing the new law on higher education. It cannot be enforced by illegal actions. I consider it very important that your President has reiterated his firm intention to live up to the commitments contained in the OSCE documents, including those relating to persons belonging to national minorities. On this basis, it has to be possible to find solutions to the problems your country faces."

HUNGARY

The High Commissioner combined a visit to the Hungarian Chairman-in-Office on 28 February with a meeting with the organisation of Slovaks in Hungary. He also raised the question of the representation of minorities in the Hungarian Parliament.

SLOVAKIA

On 6-7 February, the High Commissioner visited Slovakia. He met with the President of the Republic, Mr. Michal Ková_, and with the Prime Minister, Mr. Vladimír Me_iar, the Foreign Minister, and the Minister of Education. He also met with leaders of the political parties, including the Hungarian parties. During his talks with the new Government, the High Commissioner explored its views and plans on various issues, including Slovakia's planned administrative reform and the alternative schools.

ROMANIA

The High Commissioner visited Bucharest on 22-24 February. He met with representatives of the Government, Parliament and national minorities, and paid special attention to the draft law on education that was at that time being deliberated by the Romanian Senate.

HOW TO OBTAIN FURTHER INFORMATION

The recommendations of the High Commissioner that have been made public are available, as are other documents of the OSCE, free of charge from the Prague Office of the OSCE, Rytí_ská 31,
110 00 Prague 1, Czech Republic. When possible, please quote the relevant CSCE/OSCE Communication number.

Documents may also be accessed over the Internet by sending an E-mail message to: listserv@cc1.kuleuven.ac.be and adding the following text: sub osce Firstname Lastname. Data concerning the High Commissioner's activities are also available on gopher: URL://gopher nato.int:70/1.

A bibliography of speeches and publications relating to the High Commissioner's work has been compiled by the Foundation on Inter-Ethnic Relations. Copies can be obtained, free of charge, by writing to The Foundation on Inter-Ethnic Relations, Prinsessegracht 22, 2514 AP The Hague, The Netherlands.

NGO PAGES

These few "NGO Pages" go to print just as the largest Human Dimension Seminar yet organised by the ODIHR, "Building Blocks for Civic Society: Freedom of Association and NGOs" (April 4-7th) has come to a successful conclusion. A total of 123 non-governmental organisations were represented by 154 persons who arrived from Central Asia, the Baltic States, former Yugoslavia, the Balkans, the Visegrad states, the Caucasus, the CIS as well as from North America and Western Europe. As has been the case with each of our seminars, this event provided opportunities for NGOs which are new to the OSCE process to gain a better understanding of the structure and functions of the Organisation. In line with the usual practice at our seminars, ODIHR Director Audrey Glover and NGO Liaison Advisor Elizabeth Winship invited NGOs to meet for an informal discussion on the participation of NGOs in these events and the relationship NGOs can have with the ODIHR. In this issue of the Bulletin, we provide readers with some of the most common questions and their answers about NGOs and the ODIHR.

What is an "NGO" in the context of the OSCE/ODIHR's work?

The definition of a non-governmental organisation may be found in the Concluding Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, Chapter III, paragraph 43, which reads, "The participating States will recognise as NGOs those which declare themselves as such, according to existing national procedures, and will facilitate the ability of such organisations to conduct their activities freely on their territories.... " In practice, within the context of the ODIHR's work, an extensive range of organisations has been identified as "NGOs" for the purposes of our seminars and our database. Human rights committees and watch groups, religious organisations, research institutes, and labour unions which are concerned with human dimension issues have established and maintained contact with the ODIHR.

How ODIHR operates as a channel of NGO Communication for NGO information?

Written Communication

First and foremost, NGOs may contact the ODIHR in regard to Human Dimension (HD) issues, that is, rule of law, democratic institutions and human rights. Such contact takes the form of reports and recommendations written by NGOs for the attention of the ODIHR in connection with the implementation of human dimension commitments in any country or region of the OSCE participating states. These reports are registered in a database and are available should the Chair-in-Office request materials on a particular issue.

Seminars, Meetings and Conferences

NGOs have participated actively in the ODIHR's Human Dimension Seminars that have taken place over the past two years. In 1995, two such Seminars are planned. Additionally, this autumn, the ODIHR will hold its bi-annual Implementation Review Meeting, to which NGOs concerned with Human Dimension issues will be invited. These seminars present opportunities to the NGOs for exchange of views, ideas and experiences in the Discussion Groups and for informal meetings and talks with delegates, international organisations and other NGOs outside of the Seminar working sessions.

Whereas NGOs have full access during the Implementation Review meetings to plenary and working group sessions, their participation in Review Conferences is limited since such conferences cover the entire range of OSCE commitments - the three so-called baskets: security issues, economic and environmental issues, and Human Dimension issues. In fact, a decision was taken at the outset of the Budapest Review Meeting to close some sessions of Working Group 3 to NGOs, as those sessions focused on the structures of the OSCE itself (e.g. the ODIHR, the HCNM, etc.), and not on Human Dimension issues.

In addition to participation in Human Dimension Seminars, Implementation Review Meetings and Review Conferences, NGOs have also taken part in seminars organised by the ODIHR in Kazakhstan and Kyrgyzstan (in 1994). More seminars are planned for Central Asia this year, and NGOs will be encouraged to participate in them.

Furthermore, the ODIHR often sends representatives to attend other seminars and meetings, often ones organised by NGOs (see the NGO Pages of the previous Bulletin issue for related information) or by NGOs held jointly with International Organisations and/or government bodies. Each of these meetings provides NGOs and the ODIHR opportunities for networking and exchange of information and ideas.

Is there a selection/de-selection process for NGOs? Can they obtain consultative status to the OSCE?

The OSCE is the only inter-governmental organisation that does not have a system for granting NGOs consultative status. There is only one criteria by which an NGO may not be permitted to attend a seminar, meeting or conference. As set out in the Helsinki Document, Challenges of Change, Chapter IV, "Relations With International Organisations, Relations with Non-Participating States, Role of Non-Governmental Organisations (NGOs), paragraph 16 reads, "The above provisions will not be applied to persons or organisations which resort to the use of violence or publicly condone terrorism or the use of violence." The ODIHR welcomes the participation of any NGO taking an interest in the OSCE process and in the participating states' commitments to HD issues. Of particular interest are those NGOs coming from newly established democracies, as they are recognised for the important role they can play in building civil society, in providing bridges between citizens and government. In the near future, the ODIHR will conduct regional programs in the developing democracies to assist these new organisations in matters pertaining to professional organisational and managerial skills.

May NGOs obtain financial assistance from the ODIHR to meet travel and accommodation expenses required for participation in ODIHR seminars?

Currently no system exists by which the ODIHR may lend financial support to NGOs for the purpose of attending a seminar. Since the ODIHR is an institution supported by and working on behalf of 53 (minus one) participating states, it is not in a position to choose one NGO over another for assistance. Such a selective, subjective process would bring undesirable political consequences to the ODIHR's work with NGOs. The ODIHR encourages participating states to take the initiative to sponsor NGOs themselves, and welcomes support from outside sponsoring agencies, but does not take responsibility for choosing which NGOs will receive support. One idea has been suggested as to how the ODIHR might establish a fund for assistance to NGOs coming from newly admitted participating states, but the delicate question of how to select one or more NGOs from this group without creating political tensions remains unanswered.

What is the ODIHR's database, and how may it be of use to NGOs?

As the ODIHR has grown and evolved over the past 4 years, its network of contacts with NGOs has expanded dramatically, numbering nearly one-thousand organisations to date. With each seminar, meeting and conference, ODIHR staff have become acquainted with the work and mandates of hundreds of NGOs that are, in one way or another, concerned with HD issues. The co-ordinates and details of these NGOs have been recorded in an in-house database that has been compiled for internal office use. This long list of organisations has proven to be a useful tool "in the field" as the NGO Liaison Advisor has travelled from capital to capital, meeting with NGOs and sharing information. Now an effort is underway to re-design the database, using more powerful software, and inputting data collected from completed NGO questionnaires that have been distributed widely over the past few months. The database is neither an exhaustive list of HD-related NGOs from across the OSCE participating states nor is it a list of "approved" or "registered" NGOs, since no such status exists for NGOs within the OSCE. The database is organised into several fields used to

group NGOs into categories, for example, Country and/or Region of Activity, Subject Specialty, OSCE Venue, plus fields for NGO co-ordinates, address, tel/fax/e-mail, etc. This database continues to serve as an in-house tool for the ODIHR, but it is willingly shared with any organisation that may find database reports useful for making contacts, East to West or North to South.

Will the OSCE ODIHR Bulletin NGO Pages include information on NGOs themselves?

These "NGO Pages" are designed for reporting on the ODIHR's activities that are connected with and of interest to representatives of non-governmental organisations and other interested readers. In order to maintain its neutral, non-partisan position, the ODIHR does not wish to use this space to highlight the activities of any one particular organisation, unless that organisation has held an event to which the ODIHR has sent a representative. _

* *

Next Bulletin Issue - Look for a review of NGO activities at the ODIHR's most recent Human Dimension Seminar in Warsaw and the International Seminar on Tolerance, scheduled for May 23-26th in Bucharest, held under the auspices of the OSCE/ODIHR and the Council of Europe, the Government of Romania and in co-operation with UNESCO.

* * * * * * * * * * * * * * * * * *

A Note from the NGO Liaison Advisor:

As author of the NGO Pages, I would like to offer an apology to Lady Farrington, Head of the Congress of Local and Regional Authorities of Europe, for errors that appeared in the previous issue of the Bulletin. This NGO Liaison Advisor overlooked two glaring mistakes, for which she offers her apology.

E. L. Winship

3. See Acton, supra note 2; Nicolae Gheorghe "The Origin of Roma Slavery in the Romanian Principalities", Roma, Indian Journal of Romani Language and Culture, Vol.7(1): pp. 12-27.

4. T.A. Acton, "The Ethnic Composition of British Romany Populations", Roma (Indian Journal of Romani Language and Culture) Vol. 4(4) 1979: pp.43-53