

## Supplementary Human Dimension Meeting (II)

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Check against delivery!

Excellences,  
Ladies and gentlemen,

I am very pleased to be here with you today, in my first appearance in Vienna as ODIHR Director. I find it all the more fitting that the topic we are here to discuss is on Freedom of Expression. Because, as the American Judge Cardozo stated in a ruling in 1937: *Freedom of expression is the matrix, the indispensable condition, of nearly every other form of freedom.*

Already in Helsinki (1975) the OSCE participating States committed themselves “to facilitate the freer and wider dissemination of information of all kinds, to encourage co-operation in the field of information and the exchange of information with other countries”.<sup>1</sup> In Copenhagen (1990) they committed themselves “to respect the right of everyone, individually or in association with others, to seek, receive and impart freely views and information on human rights and fundamental freedoms, including the rights to disseminate and publish such views and information” With the view to promote secure environments and institutions for peaceful debate and expression of interests by all individuals and groups of society, the OSCE also committed to support and help strengthen civil society organizations.<sup>2</sup> The OSCE participating States later reconfirmed the importance of the free flow of information in Istanbul (1999) and the important roles performed by civil society and free media, in Astana (2012).

In sum, the participating States have therefore recognized the freedom of expression as a basic precondition not only for the progress and development of every man and woman, but our societies at large. Of fundamental importance is that this right cannot be limited to only those opinions favourably received or uncontroversial. It must also include those that offend, shock or disturb the state or any sector of the population. “Without the right to offend or be offended”, as Salman Rushdie once pondered, “What is the value of freedom of expression”?

It is not only the substance of the ideas and information expressed that is protected. It is also the forms and means by which they are conveyed. These range from the most obvious means of expression such as traditional media, cinema or web. They can also include less conventional forms, such as hanging of dirty laundry outside a national parliament. Everyone is entitled to this freedom. This includes journalists, human rights activists, members of the armed forces and everybody else.

Without the freedom of expression it is not possible to fully enjoy many of the other human rights and fundamental freedoms protected by international human rights standards and affirmed in OSCE commitments. Freedom of expression and opinion is for example closely intertwined with freedom of association, as a conduit for the exercise of freedom of expression and opinion.<sup>3</sup> As such, freedom of association must be guaranteed as a tool to ensure that all citizens are able to fully enjoy their rights of freedom of expression and opinion, whether practiced collectively or individually.<sup>4</sup> Any restrictions on freedom of expression should therefore be subject to the strictest scrutiny. They have to be based on law, serve a legitimate aim, and be proportionate and non-discriminatory.

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<sup>1</sup> Helsinki 1975, “Co-operation in Humanitarian and Other Fields”.

<sup>2</sup> Maastricht 2003 (OSCE Strategy to Address Threats to Security and Stability in the Twenty-First Century) par 36.

<sup>3</sup> Article 10 ECHR and Article 19 ICCPR) and see quote from CDL-AD(2011)035 – Opinion on the compatibility of human rights standards of the legislation on non-governmental organisations of Azerbaijan, § 102.

<sup>4</sup> See ODIHR-VC Guidelines on Political Party Regulations (2010), par 37

Ladies and gentlemen,

Freedom of expression has of course a particular significance in the context of democratic **elections** and the right to political participation. Democratic elections are not possible where a legal framework or practice limit or inhibit campaign speech and expression. They are also not possible if there is limited access to information for voters to make an informed choice. Media therefore serve as invaluable communication channels between the contestants and voters, as they:

- Provide a platform for debates among candidates.
- Allow contestants to communicate their messages to the electorate.
- Report on campaign developments.
- Inform about how to exercise the right to vote, how to monitor the electoral process, and to report on the results of elections.

Or so they should, and must be enabled to do.

When assessing freedom of expression in the context of elections, there are therefore three sets of inter-related rights and duties that need to be ensured.

Firstly, elections are ultimately conducted for the electorate. Voters need to be exposed to diverse, balanced and impartial information in order to be able to make an informed choice. In this context, freedom of expression implies the ability of voters to choose consciously, exercising the right to receive and impart information.

Freedom of expression is also woven into the commitment guaranteeing the ability of contestants to campaign freely. Election contestants should be provided by law and in practice an opportunity to inform the public. It has to be on an equitable and non-discriminatory basis, including through the media. In this regard, participating States are obliged to ensure “*that no legal or administrative obstacle stands in the way of unimpeded access to the media [...] for all political groupings and individuals [...].*”

Evidently, the principle of freedom of expression also applies to the work of the media itself. Media outlets should have the freedom to inform the public about an election campaign and contestants, including through analytic and critical reporting. This has to be free from any undue influence, harassment or intimidation. At the same time, media, especially public (or state), have a special duty of providing contestants equitable access and covering their activities in an accurate and impartial manner, given that their operations are publicly funded.

In recognition of the important role played by the media in electoral processes, ODIHR was specifically tasked at the 1994 Budapest Summit to “*assess the conditions for the free and independent functioning of the media*”. In implementing this mandate, the ODIHR regularly carries out comprehensive quantitative and qualitative monitoring of relevant media, and reports on the media environment and the coverage of campaigns.

ODIHR reports to date indicate that the participating States comply to varying degrees with their media-related OSCE election commitments. An overly restrictive legal framework, which does not allow for sufficient editorial freedom, has been observed in some States. Insufficient legal safeguards for freedom of expression and the criminalization of defamation allows for undue restrictions on media freedom in several States. Other problems relate to non-compliance with equal treatment and access requirements. This frequently includes lack

of balanced reporting on electoral contestants or a disproportionate focus on incumbents. Such shortcomings require continuous attention and improvement.

Ladies and gentlemen,

Despite all the commitments and guarantees, the right to freedom of opinion and expression continues to be unduly restricted in a number of OSCE participating States. Laws that allow for disproportionate and unreasonable limitations on the grounds of national security, public health and public morals are a cause for concern in some States. The same applies to vague laws that can be arbitrarily applied in order to curb freedom of expression. All too often the fight against terrorism, in and of itself, is being presented as a proportionate and necessary justification for restricting expression. In a number of OSCE participating States, defamation laws are reportedly used to silence, and sometimes even imprison, people who speak up.

Too often human rights defenders or journalists who disclose misconduct and abuse, express opinions perceived as controversial or challenge majority views face verbal attacks and intimidation. Some even face physical violence by state or non-state actors, including from violent extremist and organized crime groups.

It is important to underline once more that the right to freedom of expression entails not only the right to express but also to seek, receive and impart information. The European Court of Human Rights has consistently and repeatedly recognized the right of citizens to receive information on matters of general public interest. In the same period, some States have blocked websites with the aim of restricting information perceived to be critical of the authorities, or posing risks to “public health and morale”. National security is also frequently used to justify over-classification of information. The purpose of such restrictions often seems to be the creation of obstacles for whistle-blowers, investigative journalists or human rights activists. By limiting access to information of public interests, access is also being limited for all those who try to shed light on alleged corruption and human rights violations by state actors.

Since 2008, ODIHR has witnessed a shrinking space in many States for fundamental freedoms related to freedom of expression, such as the right to peaceful assembly and association. Restrictive legislation, increased scrutiny and “branding” of NGOs as “foreign agents” on the basis of the sources of funding, have led to a chilling effect on civil society as a whole in several States. In the area of human rights, threats by many governments towards human rights defenders continue. With regard to democratic governance, there is a growing disengagement of citizens from representative politics in both the so-called “established” and “new” democracies. Younger generations tend to favour new technologies, alternative and new forms of political participation including online social movements and networks. States should acknowledge and embrace the potential new technologies have to remedy some of the challenges posed by traditional mechanisms for the freedom of expression and political engagement. However, it is important to keep in mind that all the fundamental principles of democracy need to be equally respected both on- and off-line.

ODIHR has also observed a concerning trend and rise of **anti-Roma rhetoric** over the last years. This trend seems to especially become intensified during national and local electoral campaigns, or during socio-economic crises. The 2013 ODIHR Status Report findings show that certain political parties in some States have scapegoated Roma to capitalize on anti-

Roma sentiment among majority communities. These parties exploit a racist rhetoric labelling Roma and Sinti as socially inadaptible or stigmatizing them as mere “Gypsy criminals”.

Mass media is frequently used by extremists and populist politicians as an effective platform to convey a message of intolerance and hatred against Roma and Sinti. Instead of presenting positive aspects and a balanced portrayal, media very often reinforce negative stereotypes about them. For instance, Roma migration is commonly equated with trafficking in human beings and the exploitation of Roma women and children for prostitution and begging. Generally, even in many mainstream media outlets, Roma and Sinti are time and again depicted as a burden for welfare systems and a general a threat to public order and security.

Not only those representing Roma and Sinti, but civil society groups and organizations from all across the OSCE region are reporting a significant, and in some places increasing, number of hate speech incidents. Such incidents perpetuate stereotypes, create divisions and generate an atmosphere of intolerance and insecurity in societies. The Internet and social media are increasingly becoming major platforms for spreading hate speech. Racial slurs and offensive gestures continue to permeate public discourse. Such instances are particularly observed during peaceful assemblies linked to religious holidays, Holocaust Remembrance days and LGBT pride marches, to mention but a few. Civil society reports also note that statements of public figures, including politicians, present a worrying source of hate speech.

Ladies and gentlemen,

Freedom of expression is essential to foster dialogue in which pluralistic societies can flourish and diversity is not only respected but celebrated. In the OSCE region, however, we often see a delicate dilemma being posed between freedom of expression and hate speech.

Incitement to discrimination, promotion of racial superiority, scapegoating and verbal harassments are undoubtedly corollaries of freedom of expression. These phenomena need to be addressed and dealt with expeditiously and comprehensively. Furthermore, hate speech has the potential to fuel racist, xenophobic, anti-Semitic violence and other bias-motivated crime, also known as hate crime. Hate speech and hate crimes should, however, not be confused.

To counter hate speech, it is necessary to empower government representatives, parliamentarians and civil society to speak out and condemn hate speech. In other words, freedom of expression needs to be promoted as hate speech can effectively be opposed only by presenting counter-arguments. Instead of diverting energy into restricting or prohibiting hate speech, more energy should be spent on speaking out against it. Ideally, the conversation should be reclaimed. Imagine a hateful Facebook-post calling for the expulsion of all migrants from a local community. This could be countered with a thread that highlights all the positive contributions they are making. It could be expanded, for example, to interviews with local business-owners who migrated from other places, to share their journey of arrival and story of integration and success. Intolerance can't be overcome with yet more intolerance.

As recognized in several Ministerial Council Decisions, public figures play an important role in sending out a message that such divisive speech has no place in democratic and pluralistic societies. In this regard, I recall that OSCE participating States agreed to “*seek opportunities*

*to co-operate and thereby address the increasing use of the Internet to advocate views constituting an incitement to bias-motivated violence including hate crimes and, in so doing, to reduce the harm caused by the dissemination of such material, while ensuring that any relevant measures taken are in line with OSCE commitments, in particular with regard to freedom of expression.”*

Considering the key importance of freedom of expression as one of the pre-conditions for a functioning democracy, genuine and effective exercise of this freedom does not depend merely on the State’s duty not to interfere. It also requires positive measures of protection. OSCE participating States have committed themselves not only to refrain from acts intended to silence or intimidate human rights defenders or journalists, but also to protect them from any such acts by non-state actors. Without effective protection and full enjoyment of the right to seek and impart information, there can be no independent human rights monitoring or reporting.

Ladies and gentlemen,

I mentioned in the beginning that freedom of expression underpins most freedoms. Freedom of expression therefore also underpins most of ODIHR’s work.

As the principal institution mandated by OSCE participating States, ODIHR is tasked along with other OSCE institutions to support OSCE member states in meeting their human dimension commitments. The challenge lies in eliciting and promoting mutual trust and shared sense of purpose among OSCE participating States on the basis of common commitments. Often, the necessary political will is lacking on the part of OSCE participating States to request ODIHR expertise. ODIHR has the expertise to ensure that legislation and policies pertaining to freedom of expression are brought in line with OSCE commitments and international standards. ODIHR provides assistance and forums for the exchange of experiences and good practices to OSCE participating States in guaranteeing freedom of expression. This is what ODIHR was mandated to do. The annual Human Dimension Implementation Meetings and other events organized by ODIHR also serve as useful forums. They were established not for ODIHR, but for the participating States to review their progress through dialogue amongst each other and with civil society on the implementation of their commitments.

This is such an opportunity, and I hereby wish us all a meaningful, challenging, constructive and productive discussion, keeping in mind that if we don’t believe in the freedom of expression also for the people whose opinions we do not like, we don’t believe in it at all.

I thank you for your attention.