



Organization for Security and Co-operation in Europe
High Commissioner on National Minorities

NO SECURITY WITHOUT ACCESS TO JUSTICE

address by
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OSCE High Commissioner on National Minorities

to the
Human Dimension Implementation Meeting

[Check against delivery]

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Dear Excellencies,

Dear ladies and gentlemen,

Dear participants,

It is a great pleasure for me to address you today at this working session of the Human Dimension Implementation Meeting dedicated to the rights of persons belonging to national minorities.

As you know, my mandate is focused on the prevention of conflict by providing early warning and early action at the earliest possible stage in regard to ethnic tensions. When national minorities' rights are not respected, this increases inter-ethnic tensions.

Certain responses to the refugee crisis currently unfolding in parts of the OSCE area seem to have undermined some of the work that has been done for the past 20 years in trying to de-escalate ethnic tensions, increase understanding between different ethnicities, efficiently handle past grievances through transitional justice and build strong democratic institutions. Increasingly nationalist rhetoric may exacerbate tensions within societies and create a climate of distrust and suspicion towards minorities, as well as between different communities.

We also see that opinions within participating States are divided: while we see rising xenophobia and stereotyping of "the other" on the one hand, we are also witnessing great compassion and help for people fleeing war and hardship.

In such times, it is more important than ever that participating States find new ways to maintain and reinforce their commitment to pluralism, equality and the protection of human rights, including minority rights.

An urgent issue is to address the spread of hate speech. Of course, this must be done without unduly restricting freedom of speech. What we need is strong leadership from the media and from political and community leaders. We should also realize that the use of hate speech is not something restricted to socially and economically marginalized persons.

Another urgent issue is to address the oversimplification of minority issues in some parts of the OSCE area, where they are viewed solely through a “security prism”. Such simplification will further alienate minority groups and undermine the cohesion of societies.

It is important that we work together to find ways to build, and in some cases rebuild, societies that are resilient to the emergence of conflict. Our societies must strongly resist efforts to undermine democratic principles or hinder the access of all to justice.

Excellencies,

Ladies and gentlemen,

Dear participants,

I would like to use this year’s address on the rights of persons belonging to national minorities to focus on access to justice. Without justice, there is no security.

Since taking up my mandate, I have observed how important effective justice mechanisms are to the integration of society. In turn, this promotes stability. It is not new to say that a justice mechanism must be able to command the confidence of the population within its jurisdiction, but it must be repeated from time to time. This includes not only the *substantive quality* of justice, but also *access* to justice.

The access of national minorities to justice will be one of the thematic priorities of my institution in 2016. I will pay attention to minorities’ access to justice in each participating State that I visit, within the scope of my mandate. It takes time to reform a justice system, and years for the rule of law to grow strong roots. I fully support all participating States that are on that path. For today’s discussion, I would like to encourage you, in the spirit of open and constructive dialogue, to give your own examples of measures that have been effective in promoting minorities’ access to justice on an equal footing. Minorities are often aware of the economic constraints that their State faces and can also be understanding of such limits. If they see that their Government is willing to address a particular issue in a dignified and sensible way, it substantially promotes the likelihood that members of the minority population will also show patience and understanding.

Excellencies,

Ladies and gentlemen,

We should briefly recap the relevant framework of commitments that participating States have agreed to. In terms of OSCE commitments, participating States have strengthened international human rights law by committing to ensure equal protection for access to justice to minorities. Indeed, this features prominently in CSCE commitments from Helsinki in 1975 to Copenhagen in 1990. At Copenhagen, participating States agreed to adopt, where necessary, “special measures for the purpose of ensuring to persons belonging to national minorities full equality with the other citizens in the exercise and enjoyment of human rights and fundamental freedoms.” Such special measures of course do not amount to discrimination; they are necessary to prevent discrimination and redress past injustice.

Participating States also reaffirmed in the Copenhagen Document that “respect for the rights of persons belonging to national minorities as part of universally recognized human rights is an essential factor for peace, justice, stability and democracy”. They recognized that persons belonging to national minorities have the right to fully and effectively exercise their human rights and fundamental freedoms without discrimination and in full equality before the law.

Successive OSCE High Commissioners on National Minorities have addressed many aspects of OSCE and international standards related to minority protection in the institution’s Recommendations and Guidelines. These thematic tools, which also draw upon the accumulated experience of the institution, aim to clarify relevant international standards and provide practical guidance for participating States in their implementation. The latest set of Guidelines, *The Ljubljana Guidelines on the Integration of Diverse Societies*, provides a toolkit for participating States to promote the integration of their diverse societies. The Ljubljana Guidelines provide advice that States should, as a matter of priority, assess the situation with regard to access to justice and develop a comprehensive strategy and policies aiming to guarantee effective access to justice for all, including for persons belonging to national minorities.

Developing mechanisms amounting to special measures that promote access to justice for minorities should not be thought of as generosity on the part of the State. We are talking about measures that are necessary for conflict prevention. An essential part of these measures

is to ensure that persons belonging to national minorities feel secure that they have equal treatment in all areas of life compared to those representing the majority. They must stand a chance of a fair trial. It is also important that the representatives of minorities see that the special provisions of minority rights are implemented in reality; for instance, if the legislation has provisions to permit citizens to address the courts in another language than the State language, then this provision should be upheld.

Excellencies,

Ladies and gentlemen,

Developing a comprehensive strategy to ensure equal access to justice for everyone in a society, as outlined in the Ljubljana Guidelines, will obviously be unique to the circumstances of each State. However, certain policies may address similar needs in more than one State, and it is those examples that I hope we can share with each other in this forum.

It is crucial that barriers to accessing justice are identified and removed, including those particularly affecting members of minorities, whether these barriers are of a financial, linguistic or social nature. Another important step is to provide for the use of minority languages in accessing free legal aid and during judicial proceedings and administrative procedures, above and beyond the minimum human rights standards. All these measures are keys to promoting equality of treatment, ensuring access to justice for all, enhancing trust in the authorities and reducing potential causes of conflict.

Access to official documentation is often a problem for persons belonging to national minorities, particularly those who do not speak the official language well enough to understand the details. At the same time, native State-language speakers can have difficulties to understand official documents in many participating States. In order to increase efficiency of public administration and decrease corruption, but also help minorities, no effort should be spared to make official documents as easy to read as possible. This is the inspiration for initiatives to promote clear language, such as the Plain English movement in the UK and other similar movements in other countries. Technological solutions, such as automatic translators, are also improving rapidly and may provide some support for translations.

A concrete measure to enhance access to justice is the opening of Court Liaison Offices. This is a low-cost measure that does a lot to foster a sense of inclusion among minority communities. For example, the establishment of offices responsible for simply assisting minority communities with accessing the justice system has proved highly effective. Such State-sponsored intermediaries should live and work in the areas where minority populations reside. They need not have any formal role in the police process or the court proceedings, but they can help to break down linguistic barriers by providing simple translation services, by pointing out legal options, and by combatting the fear or ignorance of “the other”, in this case, the majority and what they perhaps perceive to be “its” justice system. Another idea that has worked in some societies is the system of “Roma mediators”, who work as an interface between the community and different authorities.

The acceptance of the need for transitional justice mechanisms is also an important tool to create a climate of fairness and cohesion. We talk about co-operation to allow investigations, to ensure judicial assistance, to comply with court orders, to provide the resources for witness protection, and to assist in the education of the general population as to the necessity of the whole exercise. Past injustices left unaddressed can become a source of new tensions in the future. Unfortunately, calls for unbiased investigations sometimes fall on deaf ears.

The successor countries of the former Yugoslavia have been through a painful process over the last two decades to understand their shared past. It has been necessary for individuals to be held accountable for the most serious violations committed during a period of conflict in order to build a solid foundation for their shared futures. Although this painful process is not yet over, the International Criminal Tribunal for the former Yugoslavia is wrapping up its work and the international community is assisting in covering the remaining gaps in jurisdictional accountability. At this stage, I hope, despite recent rhetoric, that we will see a growing willingness to draw a line under what has gone before, and to look once more to the prospect of a shared future.

Excellencies,

Ladies and gentlemen,

To secure effective access to justice for all members of society, it is also essential to have an adequate representation of minority representatives in law-enforcement bodies and the

judiciary, as well as in all relevant structures of public administration and decision-making bodies. My institution's experience shows that the inclusion of minorities in the legislative, executive and judicial structures not only enhances the democratic legitimacy of a State, but also serves as a precondition for long-term conflict prevention, especially in nascent democracies that have experienced inter-ethnic conflict. Conversely, a society that systematically excludes minorities from its State bodies and institutions – through various means and under varied pretexts – is one whose fabric will be inevitably strained by distrust and suspicion, as always happens when particular groups are marginalized and side-lined.

Adequate representation can serve as an additional guarantee that minority voices will be heard and answered with effective legal redress in case of need. Securing minority representation in law enforcement and the judiciary sends a powerful signal of a State's recognition of its multi-ethnic society. To secure such representation, recruitment systems must be carefully designed. Appropriate policies should be developed to train, recruit, retain and promote judges, prosecutors and police officers. Where appropriate, the recruitment may also involve temporary special measures.

Excellencies,

Ladies and gentlemen,

Last but not least, it is equally important to prevent aggressive nationalism and xenophobia, which can also become obstacles in minorities' access to justice. A society where an aggressive nationalist rhetoric prevails unabated and spreads unchecked is hardly one in which minorities can feel secure. And it is a breach of the commitment to promote tolerance and understanding undertaken in Copenhagen in 1990 and subsequently in many other OSCE decisions.

Unfortunately, aggressive nationalism is present nearly everywhere in the OSCE today. In times of insecurity, there are always politicians who use this rhetoric. One could even say that aggressive language has become the mainstream. The refugee crisis unfolding in parts of the OSCE area has clearly strained both capacity and tolerance, and has provoked statements and actions from politicians that are out of step with the human dimension commitments that all participating States have committed to protect.

In this regard, I wish to directly call upon the participating States to increase their vigilance. When statements pitting Christians against Muslims are made at government level and left unchecked, it weakens our ability to promote respect for the rule of law.

But let us be quite clear, such problems are hardly confined to the areas now affected by the current refugee crisis. The failure to respect international law and to adequately address the rights of national minorities using the tools available and in dialogue between countries have led to war and weakened the security of the continent as a whole. In such risky circumstances, it is imperative that law enforcement, the judiciary, but also the executive and political structures, take prompt and resolute action to combat crime and to reconfirm their commitment to minority protection, equality and non-discrimination. Representatives of minority groups must know, and also feel, that they can seek and obtain effective State remedy and protection against such threats and incidents. Authorities must take appropriate measures to protect people who may be subject to threats or acts of discrimination, hostility or violence as a result of their ethnicity, culture, religion or belief. State authorities and public officials have a duty to avoid negative rhetoric or actions that target specific ethnic, cultural or religious communities, and also to prevent third parties from engaging in such activities. Among these actors, the media has a special responsibility. But unfortunately, we see too many examples of the media even manipulating facts and images, raising tensions. Hate crimes that target national minorities or any other vulnerable group must be countered with the full force of the law.

Excellencies,

Ladies and gentlemen

Protecting the rights of persons belonging to national minorities is a reflection of a society's and a government's willingness and ability to live up to its international commitments. Access to justice is both a fundamental human right in and of itself, and also a prerequisite for the protection of all other rights and freedoms. Inadequate access to justice can reinforce feelings of exclusion from or distance within society, particularly for persons belonging to national minorities. Conversely, inclusion – and visible inclusion – within justice mechanisms, as well as a fair consideration of the needs of persons belonging to national minorities within the justice system, can strengthen the integration of society, enhancing its cohesion and stability.

Human dimension commitments do not implement themselves; they require consistent action from the State authorities. I hope that in the discussion which follows, participating States will share their experiences of concrete and hopefully cost-effective measures which can be implemented within a reasonable frame of time. I and my staff stand ready and willing to assist participating States where we can, with measures promoting the integration of diverse societies through ensuring the rights of national minorities.

I would also like to inform you that we intend to continue this discussion in more detail during a Supplementary Human Dimension Meeting, which the Serbian Chairmanship and ODIHR, together with my institution, will organize in Vienna on 29–30 October this year, and to which you are all herewith kindly invited. The Meeting will take stock of the OSCE contribution to the protection of national minorities, focusing in particular on the Recommendations and Guidelines issued by my office.

It has been a privilege to address you, and I look forward to the discussions during the course of the afternoon.