

OSCE Human Dimension Seminar 2011:

The Role of Political Parties in the Political Process

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KEYNOTE SPEECH BY JUDGE ALEXANDRU TANASE

OPENING PLENARY

Excellencies, Ladies and Gentlemen,

I would like to start by thanking the Lithuanian Chairmanship of the Organization for Security and Co-operation in Europe, as well as the Office for Democratic Institutions and Human Rights, for giving me the honour to deliver the keynote address at the opening of this Human Dimension Seminar on “The Role of Political Parties in the Political Process”.

It is a point of special pride for me that I am able to participate in this Seminar in the context of a number of auspicious anniversary celebrations in the OSCE: twenty years of the work of ODIHR, and two decades of the ground-breaking declarations and documents – including the Paris Charter, and the Copenhagen and Moscow Documents – which deepened and expanded the base of political principles that shape this organization’s work in the field of human rights, democracy and the rule of law. These anniversaries – and their coincidence with the twentieth anniversaries of the momentous changes in Central and Eastern Europe, the Caucasus and Central Asia, - reflect how deeply the work of the OSCE organization has been entwined with this period. I deeply hope that my remarks may do justice to this occasion, and may be a valuable contribution to this seminar.

With your permission, I would like to shape my remarks around some reflections that grow out of the milestones of my career. I am especially fortunate to have looked at, and dealt with “political parties in the political process” as a lawyer, political party leader, and as an official in all three branches of government. I worked as a lawyer, advocating cases all the way to the European Court of Human Rights, which had an effect on political parties in Moldova. I have also been involved as a leading founder of a political party, and as a candidate, and later MP, for that party in parliament. Later, as Minister of

Justice, I had direct responsibility for the oversight of political party regulation. Thus, I have litigated for parties, participated and lead a party, and been a regulator of parties.

If we look back twenty years, to 1990 and 1991, we will find that many countries in the OSCE region were in Moldova's position: attempting to start anew on the path of multi-party democracy, but faced with the legacy of systems that enshrined fundamentally different ideas about parties and their role in the political process. To illustrate this, I can recall the way in which the Constitution of the Moldovan Soviet Socialist Republic enshrined the Communist Party as the "core of the political system" and as the "leading and guiding force of Soviet society". Similarly, here, in Poland, the Constitution, specifically recognized that "the Polish United Worker's Party" would have the "leading role among political forces in society". It is remarkable to consider how far we have come since these days. Twenty years' later, no participating State of the OSCE has such "leading party" provisions in its constitution. This must be seen as a major achievement. Nevertheless, as the saying goes, "old habits die hard". While leading parties are no longer inscribed in our constitutions, the idea that the party of those in power counts more than other parties still unfortunately echoes in our minds and practices. This must change.

In many transition countries, moving away from the idea that the ruling party is "the Party" or is "first among equals" has not always been easy. Too often, we have seen situations where parties, once they gain power, use the power of the state to intimidate, harass, and obstruct the work of other political parties. In my own career, I became involved with the launching of a party – the Liberal Democratic Party of Moldova. As a former political party leader and politician, I can assure you that the thought that one is entering an "unfair competition" with a dominant party or parties can be a major deterrent to political participation and engagement. Thus, I call on you today to keep in mind how our democracies can be strengthened to provide a true "level playing field" for all political parties, and in which the tools of office are used to govern in the name of all, and not to attack in the name of few.

In terms of the party system and political parties, the transformation took place at at least two levels. The first level would be the introduction of the idea of equal and fair competition among several political parties – "pluralism in political organizations", as the

OSCE Moscow Document of 1991 refers to it. Thus in many other countries, the transition to democracy brought with it a dynamic increase in the number of political parties registered and operating in the political system. This led to new challenges – not least, how to regulate the registration, operation and role of these parties in the democratic system. These are issues which continue to be contentious and crucial to the right development and stabilization of democracy, and I hope and expect that this Seminar – in particular Session III, on the regulation of political parties – will address some of these key issues in depth.

The relationship of the public, to the party has also changed. With the changes twenty years ago, the notion of “top-down leadership” disappeared, to be replaced with the idea that political parties should be based on the impulses and activities of its members from below, and should be open to internal renewal and change. In other words, not only is democracy defined by political parties, but political parties should be defined by “internal democracy”. I would argue that the emergence of this idea in post-communist countries is only part of a wider phenomenon seen in all democracies. Parties are less and less seen as “machines” with “bosses”, “oligarchs”, and “barons”, towards more transparent organizations in which individual members – and their voices and votes – carry greater weight. Parties are also less frequently seen as closed private clubs, but rather as public goods, from whom much is expected and demanded. Higher levels of accountability and openness towards the media, towards civil society, and the public at large are all required of parties today.

Both of these levels – the relationship between parties, and the relationship between the public and parties – are crucial to how we think about political parties in the political process. Parties – we often hear – are vehicles to transmit the ideas and interests of citizens from the grassroots into the institutions of governance. Indeed, the relevance of political parties has now been firmly anchored within the overall institutional architecture and processes of the democratic state. Modern elections, parliamentary systems, and the way in which governments are formed out of these, are unthinkable without political parties.

Speaking as someone who has helped to establish a party, run as its candidate, and won an election, I can say that I have been part of this mechanism of transmitting “ideas and interests” from citizens to governance. However, if this mechanism is to work, I would argue that three fundamental conditions need to be in place. First, there needs to be a way for the ideas and interests of party members and supporters to actually make themselves known to party leaders. In other words, internal party democracy is a key vehicle for generating genuine political choice that has roots in society. Second, choice must be varied: unless real political pluralism exists, political parties cannot be said to represent the people. In this context, we have to think carefully about why we restrict the formation and registration of political parties – do unnecessarily high or arbitrary barriers exist for creation and registration of new political parties? Let us be honest about the way in which such barriers can limit and deter participation, and think carefully about how regulation can be designed that does not hinder the rights of citizens to participate in the political process. Parties must be able to compete and win freely and fairly in elections. This is crucial if multi-party democracy is to have any meaning at all.

Third, beyond legal barriers, we should also think about the ways in which real representation can be hindered by how our political systems impact differently on diverse groups in society. For instance, women remain under-represented in political life in most OSCE countries – not enough women are elected into institutions from political parties. We must ask ourselves some tough questions about how political parties – as key vehicles of representation – can be obstacles to change as well as forces for reform in this aspect, and I hope that the Second Working Group of this Seminar will address these issues in depth.

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Excellencies, Ladies and Gentlemen,

Once within the institutions of government, parties do indeed have a crucial role to play in shaping the political process. As a former member of parliament, I would suggest that a crucial and complex element is the relationship between parties and parliaments. I would offer a number of reflections in this regard.

Parties are fundamental to structuring the work of modern parliaments, providing discipline and clarity in debating and voting procedures. At the same time, as parties offer choice and a contrast of policies in society at large, so parties in parliament must represent a spectrum of voices, ideas and interests in the political process. In modern democracy, the legislature is the only branch of government where the multi-party system is permanently recognized.

How parliaments deal with the political parties sitting within them should thus be a key measure of how pluralism is respected as a whole. Genuine pluralist parliaments need to find a role for the opposition parties to contribute to the policy process – and that also means having an actual legislative and policy process with parliaments at its core. A parliament in which draft laws can be analyzed, debated and amended, backed up by genuine expertise and the input of civil society. A parliament in which all members can ask questions - to hold the government and other members to account. All too often, however, parliaments are subjected to a “winner-takes-all” approach, in which the ruling party, from the commanding heights of the executive, uses parliament merely as a formal mechanism for approving laws. Laws are “rubber stamped” onto the statute book with little real discussion, consultation, evaluation, or compromise. One of the side effects of this is that quality loses out to efficiency in the lawmaking process – laws are adopted simply too quickly.

Parliament is the institution where political parties should be able to compete and collaborate for the good of society. Where one party dominates, and the opposition is excluded from policy processes in parliament, politics can become tense, polarized and “zero-sum”. As a result parliament becomes its worst caricature – a chaotic arena of bitter confrontation, leading many to question its use. Worse still are situations where the opposition is not even in parliament. Such situations in the long-term damage both political parties as well as the institution of parliament itself. Multi-party democracy and pluralism – its wealth of ideas, diversity of views, and tolerance of dissent - cannot be said to fully exist, I would argue, if it is not reflected in parliament. And parliament cannot fulfil its role if this diversity of views is not adequately reflected in it.

Furthermore, parliaments as forums of debate, discussion, and decision are crucial for helping to shape the essence of multi-party democracy – alternatives and choices. Where parliaments do not debate and decide, parties outside government cannot have a chance at presenting themselves to citizens as alternative stewards of the people’s trust. Equal and fair participation in parliament requires *all* parties – government and opposition - to be responsible stakeholders in public debates. We must think of parliament as one of the great stabilizing mechanisms of democracy – where parties in opposition have participated fully and fairly in parliament, the more likely they will be to act as stakeholders in the system of government as a whole. On the other hand, when the opposition is shut out of parliamentary debates and procedures, or even out of parliament as a whole, the opposition is only likely to grow weaker or more radical. Weak parliaments and weak parties thus feed on each other in a vicious circle. I would urge you – in your deliberations over the coming days – to consider this essential relationship between parties and parliament, and what recommendations and good practices can be formulated to create robust multi-party democracy with plural and strong parliaments.

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Excellencies, Ladies and Gentlemen:

I have mentioned earlier that the proper regulation of political parties has been one of the key challenges in building pluralistic party systems. Indeed, I believe this issue is fundamental, and I strongly welcome the fact that the OSCE ODIHR has in 2010, together with the Venice Commission, published *Guidelines for Political Party Regulation*.

In my career – as a lawyer and as a Minister of Justice – I have had to engage deeply with this issue, and would like to share some thoughts on it. As Minister of Justice, I worked hard to ensure that regulatory authorities remain neutral and objective in dealing with the process of political party registration, political party finance, and regulation of party activities. It was, and still remains, my strong belief that regulations must always be applied in an objective and non-discriminatory manner, and that parties should be subject to the same regulatory provisions and be provided equal treatment in the implementation of regulations. It is also crucial to ensure that parties have the right to appeal decisions by

regulatory bodies before a court of law, and that authorities can be held accountable for their decisions.

The sanctions, if any, which are applied to political parties must at all times be objective, enforceable, effective and proportionate to their specific purpose. We should be mindful, in this context, of what the European Court of Human Rights ruled in the case of *Christian Democratic People's Party (CDPP) vs. Moldova*, which concerned a temporary ban on an opposition party from holding “meetings” in front of the seat of government, which authorities had classified as unauthorized demonstrations. The Court’s judgement in this case very well illustrates the sensitivities in regulating political parties. The Court found a violation of Article 11 of the European Convention on Human Rights, stating in particular that even a temporary ban on the party’s activities can have a “chilling effect” on the party’s freedom to exercise its freedom of expression and to pursue its political goals (especially if enforced on the eve of the local elections) and thus be unjustified in a democratic society.

Speaking in a more personal capacity – not as a former Minister but rather as a former party member and candidate MP – there is one more case before the European Court of Human Rights which I would like recall, a case which concerned me in a very direct and personal way. I was an applicant in the case of *Tanase v. Moldova*, which concerned the introduction in 2008 of a prohibition on Moldovan nationals holding other nationalities, and who had not started a procedure to renounce those nationalities, from taking their seats as members of Parliament following their election. I argued before the European Court that this prohibition interfered with my right to stand as a candidate in free elections and to take my seat in Parliament if elected, thus also inhibiting the free expression of the opinion of the people in the choice of legislature. The case eventually reached the Grand Chamber of the Court, which in its April 2010 judgment reiterated that in a democracy, only loyalty to the State, and not to the Government, can constitute a legitimate aim justifying restrictions on electoral rights. To assess the proportionality of the impugned prohibition, the European Court undertook a review of practice across Council of Europe member States, which revealed a consensus that where multiple nationalities were permitted, the holding of more than one nationality should not be a ground for ineligibility to sit as an MP. Referring also to international reports by the

European Commission against Racism and Intolerance and by the Venice Commission, the Court recalled that according to its case-law, no restriction on electoral rights should have the effect of excluding groups of persons from participating in the political life of the country. In the light of these considerations, the Court found the provisions preventing elected MPs with multiple nationalities from taking seats in Parliament were disproportionate and unanimously held that there had been a violation of the right to free elections as guaranteed by Article 3 of Protocol No. 1 to the ECHR.

I believe the Court's judgment in this case serves as an important reminder that States should never unduly restrict the right of candidates to seek political office, but rather should always, and fully, ensure the free expression of the opinion of the people in the choice of the legislature.

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Excellencies, Ladies and Gentlemen:

In this keynote speech I hope to have given you a series of reflections – based on my own career as lawyer, leader, legislator and regulator – that underlined the importance of the topic which you will consider in these days to come. I hope they will be of use to you, and I wish you every success in your deliberations. I am very conscious – and very encouraged – by the fact that many of the thoughts I have shared with you are very clear reflections of the values that are enshrined in the OSCE's commitments. These commitments – and my own personal beliefs – revolve ultimately around a key fact: only free, vigorous and vibrant political parties can give voice to the people and thus, meaning to democracy.

Thank you very much.