



United States Mission to the OSCE

Session 1: OSCE Commitments on Freedom of Movement and Challenges to their Implementation

As prepared for delivery by David DiGiovanna
Supplementary Human Dimension Meeting on Freedom of Movement
Vienna, April 25, 2013

Mr./Madam Moderator,

Under Principle X of the Helsinki Final Act enshrining obligations under international law and the 1990 Copenhagen Document, participating States are obliged “to fully respect the right of everyone to freedom of movement and residence within the borders of each State, and to leave any country, including his [or her] own, and to return to his [or her] own.”

Let us be clear from the outset of this meeting: Freedom of Movement does not include the automatic right of a person to enter one state from another. The operative principle of Freedom of Movement is that states cannot bar their own people from leaving their country for travel or emigration, if they so wish. There is no commitment by participating States to admit citizens of other countries. The United States’s focus in this meeting will be on the three key elements of Freedom of Movement: the right to move and reside freely within a participating State, the right to leave any participating State, including one's own, and the right to return to one’s own State.

Some participating States still do not fulfill their Freedom of Movement obligations under international law. I would also note that the fundamental freedoms of expression, peaceful assembly and association, religion and movement are closely linked. Wherever one of the fundamental freedoms is restricted, it is likely that others are restricted also.

I will cite some troubling examples. With regard to restrictions on movement within countries, Turkmenistan's law provides for internal exile, requiring an individual to reside in a certain area for a fixed term of two to five years. Also in Turkmenistan, a 2005 Law on Migration has been used to limit the travel of Turkmenistani citizens wishing to leave the country. Muslims in Turkmenistan are often barred from making the Hajj, a violation of both freedom of movement and religious freedom. Non-Muslim religious leaders have also faced exit denials. The law also specifically allows the government to impose limitations on obtaining education abroad in specific professions and specialties.

In 2012, Belarusian authorities prohibited more than 20 democratic and civil society leaders, independent journalists, human rights advocates, and opposition activists from traveling abroad for up to six months. We understand that some civil society activists and journalists have been issued travel documents along with advice not to return home. We are also concerned by reports that Belarus’s security forces have threatened some opposition members with bodily harm or prosecution if they did not leave the country. As I mentioned, restrictions of freedom of movement should not be considered in isolation from restrictions imposed on other fundamental freedoms of expression, association and assembly.

Since 2006, the Government of Azerbaijan has prevented the foreign travel of Popular Front Party chairman Ali Kerimli by refusing to renew his passport. The government cited an outstanding civil complaint against him from 1994 as the reason for the refusal, although it renewed Kerimli's passport without objection on several occasions in the years since the complaint was filed. Kerimli's appeal of the decision was rejected at all levels of the court system. In 2009 Kerimli submitted a complaint to the ECHR, which has not yet heard the case.

We applaud the recent agreement by Serbia and Kosovo on normalization of relations, and believe that it should lead to further integration of both into European structures. We note with regret, however, that Department of State's 2012 Annual Country Report on Human Rights Practices for Kosovo identified roadblocks established by Kosovo Serb hardliners in the northern part of the country, which restricted basic rights, including freedom of movement and movement of goods, as one of the most pressing human rights problems in the country.

The breakup of former federations and the creation of new states has, in some instances, left lingering problems regarding documentation and risk of statelessness. Persons lacking identity papers are not only frequently ineligible for health care, social welfare, and public schooling in some countries, they are unable to acquire passports and visas. Members of several minority populations throughout the OSCE space, including but not limited to Roma communities, suffer under these conditions. In many countries, Roma may face difficulties with freedom of movement that arise indirectly from a lack of documentation.

While most European governments do not single out Roma communities or other vulnerable groups for formal or bureaucratic restrictions on movement, the 2012 Human Rights report issued by the U.S. Department of State notes that Macedonia denied some exit permits for Roma individuals under a law allowing authorities to deny exit to individuals suspected of harming the country's foreign relations. In response to an EU request to reduce the number of asylum seekers, Macedonian authorities implemented a strategy to deny exit permission to 4,360 citizens, mostly Roma, whom authorities suspected would seek asylum in the EU.

In the Helsinki Final Act and subsequent OSCE documents, the United States joined our fellow participating States in making it our aim to facilitate freer movement and contacts, individually and collectively, whether privately or officially, among persons, institutions and organizations of the participating States, and to contribute to the solution of humanitarian problems that arise in that connection. The annotated agenda includes the question "Are the 'early' CSCE/OSCE commitments in the field of human contacts still relevant today?" Our response, and that of all participating States who have agreed to uphold all of the OSCE's commitments, must be an unequivocal yes. These commitments are, if anything, more relevant than ever in an increasingly interdependent and globalized world, where national success depends on educated, entrepreneurial and internationally engaged citizens who seek to shape the future of their own countries and the world community for the better.

Consistent with the OSCE commitment to "facilitate wider travel by citizens [of OSCE participating States] for personal or professional reasons," over time there has been gradual simplification and more flexible administration of procedures for exit and entry from and into other States. Today, for example, the United States' Visa Waiver Program (VWP) has expanded to include citizens from over 30 participating States. The Administration supports further expansion of the visa waiver program to include additional qualifying countries.

In closing, the United States is among the most open societies in the world. We are proud of that fact, and we work to keep it that way. We received over 62 million international arrivals in 2011, the vast majority of whom came for tourism or business. Of those, approximately 27.9 million were from overseas destinations. 18,341,539 of the tourism and business travelers came to the United States as a result of partner countries having met the criteria for the visa waiver program, and visa fees have adjusted as innovations and reciprocity have allowed.

A total of 56,384 persons were admitted to the United States as refugees during 2011. During 2011, 24,988 individuals were granted asylum, including 13,484 who were granted asylum affirmatively by the Department of Homeland Security (DHS) and 11,504 who were granted asylum defensively by the Department of Justice. Also in 2011, a total of 1,062,040 persons became legal permanent residents (LPRs) of the United States. The majority of new LPRs (55 percent) already lived in the United States when they were granted lawful permanent residence. Nearly 65 percent of new LPRs were granted permanent resident status based on a family relationship with a U.S. citizen or legal permanent resident of the United States.

The United States remains strongly committed to defending and promoting respect for individual's right to exercise the fundamental freedom of movement. And we will continue to uphold our OSCE commitments in the field of human contacts, even as we exercise our sovereign right to control our borders and safeguard our citizens and the millions of foreign nationals from across the globe who live and work among us.