

OSCE

Office for Democratic Institutions and Human Rights

BULLETIN

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A Note from the Director

Dear Readers,

It was good to see so many of you at the seminar on religion in Warsaw in April. It proved to be a most interesting meeting because the level of discussion was so high. The seminar revealed just how many problems exist all over the OSCE area with regard to practising religion and to keep this topic alive we are producing a special edition of the Bulletin devoted to the freedom of religion later this year.

We have another varied edition of the Bulletin for you this quarter. Mr. Bruce George.M.P. a member of the OSCE Parliamentary Assembly has written an interesting and topical article about NATO and the OSCE with some interesting proposals for closer interaction between the two bodies.

We are half way into a four part programme of prison training in Georgia in which we are using the Polish example of the dramatic change in their prison regime as means of effecting change. Georgian prison officers working alongside their polish counterparts in polish prisons has proved to be a most useful training. We are also doing work with prisons in other OSCE states . This is not only because the state of prisons reflects society as Dr. Monika Platek explains in her article but also because people are dying in prison in some countries due to the conditions. Dr. Livingstone who attended a workshop on prisons in Yerevan explains the need for the respect for human rights of prisoners which is so often forgotten.

For the first time we have an article on torture. Although freedom from torture is one of the basic human rights which is reflected in the OSCE documents, little attention has been paid to it so far. Dr. Nigel Rodley is an expert in this area being the UN Special Rapporteur on Torture and has written an article for us.

Last but by no means least we have an article by Yasha Lange of the European Institute of the Media in Dusseldorf and Elizabeth Fuller about the role of media in the TransCaucasus in general and particularly in relation to the elections which took place in each of the three republics . It suggests that the position of the media may indicate the progress which a state is making to democracy. For this reason among others we have an active media programme in ODIHR.

Although the ODIHR is much preoccupied with the elections in Bosnia-Herzegovina we will be carrying on with our other activities as much as we can and hope to see as many of you as possible during the next few months .

Audrey Glover
Ambassador

FORGING THE NATO-OSCE PARTNERSHIP

Bruce George MP

At the December 1994 Budapest Summit of the Organisation for Security and Cooperation in Europe (OSCE), it was decided to begin discussions on a "model" on "all aspects of security, as appropriate, aimed at devising a concept of security for the twenty-first century." A year later, in Budapest over 7-8 December 1995, the OSCE Foreign Ministers reviewed progress and directed that "progress achieved and results available at that time" be presented to the Lisbon OSCE Summit in December 1996.

At the 5 December 1995 North Atlantic Council meeting in Brussels, the Ministers described the aim as "the coherent development of a European security architecture including all [OSCE] participating States."¹

Clearly, a linchpin of future as well as contemporary European security will be played by NATO, performing both its core functions of transatlantic consultation and collective defence and its new missions in support of peacekeeping under OSCE or UN mandate, as decided in 1992, on a case-by-case basis and in accordance with Alliance procedures. Without the continued clear US commitment to European security, exercised through NATO, indivisible security on the continent and adherence to OSCE commitments for democracy and equal security will prove elusive.

As NATO Assistant Secretary General for Political Affairs Ambassador Gebhardt von Moltke stated at the Budapest Ministerial: "NATO attaches great importance to the ongoing discussion on the development of a comprehensive Security Model. It is a significant part of the process towards building a European security architecture." Ambassador von Moltke further noted that the Allies would continue to contribute to this work, and that they looked forward to "concrete proposals".

However, up until now co-operation between the two organisations has, for political reasons, largely been confined to attendance of NATO officials on a case-by-case basis at selected meetings and seminars. On 30 May at Noordwijk, the Netherlands, the North Atlantic Council tasked a review of the current pattern of contact "and to improve it as appropriate".

This is so for very critical and immediate reasons. The launch of the historic NATO operation *Joint Endeavour*, including Partner nations under NATO command, to bring peace to Bosnia-Herzegovina is indispensable to achieving stability in the Balkans. However, the long-term chances for avoiding further violence and ethnic cleansing will also depend on the political and civilian dimensions of the reconstruction of the former Yugoslavia. Although many organisations--the European Union, the UN High Commissioner for Refugees, the International Committee of the Red Cross--have a vital and demanding task, the Dayton agreement of 21 November 1995 also called upon the OSCE to perform three tasks:

1. Supervise the preparation and conduct of free elections and head an electoral commission comprising international experts and representatives from both "entities" of Bosnia and Herzegovina;

¹ Final Communiqué, Ministerial Meeting of the North Atlantic Council held at NATO Headquarters, Brussels, on 5 December 1995, Press Communiqué, M-NAC-2 (95) 118, paragraph ten. Reproduced in *NATO Review* (January 1996).

2. To appoint an Ombudsman to investigate human rights violations, issue findings, and bring proceedings before a newly created Human Rights Chamber. OSCE would also play an important role in monitoring human rights; and
3. To begin negotiations within seven days after final signature on 14 December in Paris, under OSCE auspices to agree on a set of confidence-building measures (restrictions on military deployments and exercises, notification of military activities, exchange of data) to be applied within 45 days. OSCE would also assist the parties with arms control negotiations and the implementation and verification of resulting agreements that would set numerical limits within 180 days on holding of tanks, armoured combat vehicles, combat aircraft and attack helicopters, and a ban on the import of any weapons for 90 days and on any heavy weapons for 180 days.

In Budapest the OSCE Foreign Ministers accepted this challenge. But the military and civilian sides will have to work very closely together for several reasons. For example, NATO will be separating the forces that OSCE has been called upon to subject to arms control, whereas the NATO High Level Task Force on Conventional Arms Control and the Verification and Implementation Co-ordination Section of the NATO International Secretariat can provide essential and expert advice on the required speedy implementation of the arms control provisions of the Dayton agreement. After all, Alliance arms control proposals have long provided the core for OSCE agreements.

NATO forces may also become engaged in one way or the other, regardless of their mission statement, with the other two OSCE tasks given the interface between the military and civilian dimensions--for example, when a security risk to OSCE personnel and facilities goes beyond a non-IFOR police function, or requests for facilitating freedom of movement of OSCE personnel.

In future, the same interactive nature may apply to a permanent cease-fire and political settlement in Nagorno-Karabakh and elsewhere in the OSCE region. What better demonstration of mutually-reinforcing institutions and of impartial peacekeeping on the territory of the former Soviet Union than a true partnership between OSCE and NATO, complementing the vital NATO partnership with Russia and Ukraine?

Another dimension concerns the Partnership for Peace. Because NATO has decided to support OSCE peacekeeping on a case-by-case basis and by consensus of the Allies, there is clearly a link between the PFP peacekeeping training and potential missions NATO and its Partners might decide to perform.

In addition, both OSCE and NATO together with Partners could combine efforts in fostering democracy. The need to share experience in the area of civil-military relations and democratic control of the armed forces is an obvious joint venture by way of organising and following-up events. A model on the parliamentary side is the close working relationship between the North Atlantic Assembly and the OSCE Parliamentary Assembly. The NATO Foreign Ministers declared at their December meeting:

The OSCE will be a valuable partner of the Alliance in the implementation of a peace settlement in Bosnia....The implementation of the peace settlement will be one promising test ground for co-operation in many areas between our two organisations....[We] will continue our efforts to improve the pattern of contacts between NATO and the OSCE, including through senior representation at Ministerial Meetings and, on a more routine basis, through the international Staff.

Thought will need to be devoted to the most practical ways of doing so. For example, should the OSCE Partner for NATO be the OSCE Secretary General or the Chairman-in-Office (a Foreign Minister who rotates every year)? If the latter, would formal links be necessary if the Chairman was the Foreign Minister of a NATO nation? At the working level, should a "hot-line" be established between the

Secretariats, or can delegates in Vienna from NATO nations serve this function? Can a diplomat or officer serving his nation also "think NATO" given his or her many responsibilities?

Nevertheless, by way of food for thought, consideration could be given to:

- Mutual representation at headquarters
- Permanent NATO representation at security-related OSCE deliberations
- NATO input to the OSCE High Level planning Group in Vienna, responsible for peacekeeping planning
- OSCE liaison at the Partnership Co-ordination Cell in Mons, Belgium
- Joint review of work plans (co-ordination of seminars on similar topics)

Politically, the argument will arise that if NATO is represented in OSCE as an institution then other organisations will seek the same status despite the objections of some participating States. This is for the OSCE as a whole to decide. But given the OSCE vision of a community working towards common democratic values subject to monitoring, the more are drawn closer to the heart of the organisation the better.

Operation Joint Endeavour is the largest military operation ever undertaken by the Alliance. It will no doubt prove a very demanding mission. But the historic opportunities it provides for a real and functioning partnership between NATO and OSCE should not be left to temporary *ad hoc* measures. In this way the concept of mutually-reinforcing institutions can be put on a firmer basis, for this is the real answer to European security challenges both today and into the next millennium.

About the Author

Bruce George MP is Vice Chairman of the House of Commons Select Committee on Defence, Rapporteur of General Committee on Security and Political Affairs of the OSCE Parliamentary Assembly, and former Chairman of the Political Committee of the North Atlantic Assembly.

MEDIA IN THE TRANS-CAUCASUS- INFLUENCE OF POLITICS AND MONEY

THE

Yasha Lange and Elizabeth Fuller

Last year, elections were held in all three republics of the Trans-Caucasus. On 5 July 1995, the Armenian electorate voted in their country's second parliamentary election and in a national referendum on a new constitution. On 5 November 1995, the population of Georgia chose a new president and a new parliament, in a rather unique combination of presidential and parliamentary elections. Finally, on 12 November 1995, the Azerbaijani voters elected a new parliament and cast their ballot in a referendum on a new constitution.

The elections in Armenia, Georgia and Azerbaijan were important events in a region recently troubled by ethnic conflicts, coups or rebellions. The strategic importance of the area at a cross-road between Europe, Central Asia, Russia and the Middle East and the ethnic composition caused instability in the past four years.

Nevertheless, last year showed signs that the Trans-Caucasus may become more tranquil. The cease fire between Armenia and Azerbaijan persists, the upheavals in multi-ethnic Georgia are currently more or less under control. The population longs for stability and an improved economic situation. The outcome of the elections (the incumbents won in all three republics) illustrated this desire.

Trans-Caucasus

Developments in Armenia, Georgia and Azerbaijan since the late 1980s show certain broad similarities. In all three countries, the emergence of a national movement had been heavily influenced by territorial conflict (i.e. the conflict between the Georgian leadership in Tbilisi and the breakaway regions of Abkhazia and South Ossetia, and the struggle between the Azerbaijani leadership in Baku and the predominantly Armenian population of Nagorno Karabakh).

Although these conflicts predated the demise of the USSR, they have continued to overshadow domestic political developments since. For instance, two successive Azerbaijani presidents were used as scapegoats and then ousted from power because of military defeats in Nagorno Karabakh. Moreover, the conflicts have consumed a disproportionately large share of public funds, thus aggravating the economic decline that resulted from the severing of traditional ties with Russia. Indeed, economic collapse in Armenia and Georgia in 1993-1994 was so catastrophic that tens, if not hundreds of thousands of people emigrated in search of a better life in Russia or Europe.

In addition, both Georgia and Azerbaijan have experienced the ouster of elected presidents (Georgia's Zviad Gamsakhurdia in January 1992; Azerbaijan's Abulfaz Elchibey in June 1993) and the repression of his supporters by former Communist Party leaders currently governing as national democrats (Eduard Shevardnadze and Heidar Aliyev).

Despite these parallels, however, the domestic political situation, the conduct of the elections, the role of the media and the coverage of the elections in the media were unique and different in each country.

Armenia had been the first union republic, in the summer of 1990, to elect a parliament in which the nascent national movement, rather than the Communist Party, had a majority. Levon Ter Petrossian,

head of the Armenian National Movement, was duly elected parliament chairman in August 1990 and Armenian president one year later. Yet his initial reputation as a liberal had been tarnished by his ongoing feud with the opposition Dashnaksutyun party, which in January of last year was barred from contesting the July 1995 elections.

In Georgia, the political scene had been dominated over the past six years by individuals, rather than political parties. Yet by late summer of 1995, Parliament chairman Eduard Shevardnadze had succeeded in sidelining virtually all those who could have challenged his authority. Consequently, a total of 53 parties from across the political spectrum were permitted to contest the elections, including two groups representing Gamsakhurdia's supporters and three separate Communist Parties.

In Azerbaijan, the picture was less felicitous. Since late 1994 President Heidar Aliev has arrested hundreds of people suspected of plotting his dismissal, and has systematically harassed opposition political parties. Several opposition parties were barred from participating in the elections and prior censorship of a dual nature (military and political) remains in force in direct contravention of the existing media law.

Russia

Russia has played a key role in shaping political developments in the Trans-Caucasus. Primarily, although not exclusively, by using the conflicts over Nagorno Karabakh and Abkhazia to exert pressure on the respective leaderships in Baku and Tbilisi.

Anti Russian sentiments were widespread in the wake of the Soviet military intervention in Baku in January 1990. Consequently, the parliament, under pro Turkish president Abulfaz Elchibey, voted against CIS membership in September 1992. It has been suggested that Moscow may subsequently have initiated the bloodless coup in June 1993, which culminated in Elchibey being ousted from power and the return of Heidar Aliev. Aliev, for his part, stubbornly resisted Russian pressure for the deployment of a Russian peacekeeping force in Nagorno Karabakh. Finally, Moscow expressed its displeasure with the Baku leadership by closing the frontier in December 1994, ostensibly to prevent Azerbaijan channelling aid to Dzhokhar Dudayev.

Georgia has experienced similar pressure, with hard line elements within the Russian military providing logistical support to Abkhaz separatist forces in 1992-1993. The Georgian membership of the CIS was the price the then parliament Chairman Eduard Shevardnadze was constrained to pay Russia to help quash a comeback attempt by ousted president Zviad Gamsakhurdia in October 1993. Georgia subsequently agreed to lease military bases to Russia.

Armenia's leadership enthusiastically agreed to membership of the Commonwealth of Independent States in December 1991, and in March 1995 to the permanent stationing of Russian troops on its territory. The exceptionally harmonious relation between Russia and Armenia has made considerable amounts of financial aid available, specifically to counter the effects of the economic blockade imposed by Azerbaijan.

Media and elections

Against this background of internal struggles, complicated mutual and external relations and dismal economic conditions, elections took place. These elections were, it has become a normal feature of elections campaigns, observed by international organisations.

The European Institute for the Media (EIM) has over the past years monitored the media coverage of elections in various countries of central and eastern Europe and the New Independent States. The media have a crucial role to fulfil during elections and are often the sole source of information on the candidates and issues under debate. Unprofessional or unbalanced information or the non participation in the election campaign can prejudice the results.

The EIM therefore also observed the coverage of the elections in Armenia, Georgia and Azerbaijan. The team was present in the countries approximately three weeks prior to the respective elections and analysed the media coverage both quantitatively (by putting the time and space devoted to candidates and parties in tabular form) and qualitatively (by conducting interviews with media professionals and politicians). Additionally, the legal framework regarding the coverage of the elections was assessed.

The conclusions drawn by the monitoring teams are provided below. The combination of information concerning the political situation, the democratic conduct of the elections and the situation of the media enable both in country and comparative conclusions. The state of the media in Armenia, Georgia and Azerbaijan can be assessed, compared and linked to the political and economic situation in the countries.

Firstly, attention will be devoted to the democratic conduct of the elections in the three republics. Subsequently, it will be made clear that there appears to be a parallel between procedural violations in the course of the electoral process as observed by international organisations and the freedom and independence of the media as observed by the European Institute for the Media.

Secondly, some remarks regarding the regulatory framework for the media will be made. Thirdly, and rather importantly, the structural difficulties for the media will be outlined. This mainly concerns the financial problems for independent outlets and the influence of the authorities on the state owned media. Finally, the nature of the editorial coverage and the professionalism of the journalists will be addressed.

Democratic elections and the media

The conduct of the elections in Armenia, Georgia and Azerbaijan was observed by various international organisations (EU, OSCE, UN). Their conclusions can be summarised as follows:

The elections in Armenia were marred by the suspension of the Dashnaksutyun party, by the manipulations of the elections of chairmen of the Regional Electoral Commissions and by the large number of votes rejected as invalid. Although imperfect, the elections were considered free and there was no strict condemnation. The elections in Georgia were generally considered to be democratic, free and fair. There were no problems regarding the registration of parties/candidates, and the counting of votes was also deemed to have been conducted in a correct manner. The Azerbaijan elections, in contrast, were openly denounced even before the arrival of most observers. This was mainly due to the large number of parties/candidates whose registration was refused. The procedural violations on election day merely exacerbated the assessment of the observers.

In summary, on a sliding scale of democratic conduct, Georgia tops the list, followed by Armenia and then Azerbaijan. This order parallels the freedom of the media and the absence/presence of interference by the authorities as observed in this report. The (independent) media in Georgia were hardly

pressurised. Some degree of self censorship (see below) did exist according to most interviewees, yet genuine fear of pressing reprisals or interference was not apparent.

The situation in Armenia is somewhat more ambiguous. Editorial offices of independent papers were destroyed, set on fire or visited by certain uninvited individuals; several journalists were beaten up. However, the authorities are most probably not responsible for these acts. It can, on the other hand, be attributed to the government that the perpetrators were never found; that nine newspapers and one news agency were closed down in conjunction with the suspension of the Dashnaksutyun party; that the independent opposition paper Golos Armenii had continuous problems with the state printing house Periodika, which has a monopoly; and that the Director of the state TV channel was dismissed the day after the elections.

These incidents illustrate the dual situation for the Armenian media. On the one hand, media outlets enjoy autonomy and immunity, and some opposition papers actually go rather far in their criticism of the government. On the other hand, the climate for the media is significantly hampered by a series of attacks and hindering activities, which, it should be mentioned, cannot all be attributed to the authorities.

The situation in Azerbaijan is not quite so ambiguous. Editorial offices are regularly raided by the police and reprisals against journalists have become routine. In addition, military and political censorship have been institutionalised. Consequently, issues of opposition papers such as Azadlyg, yet also of independent quality papers like Zerkalo, regularly appear with surrogate material (or white space), or even fail to be published altogether. State television devotes the lion share of the editorial coverage to the activities of the president and his associates.

The above indicates indeed a relation between the procedural violations in the course of the respective elections, and the freedom of the media to cover these elections. This, in turn, may imply that the situation of the media is indicative for the progress towards a democratic state.

Regulatory framework for the media

The observed interference in the media in Azerbaijan contravenes the provisions of the law on the mass media. In fact, Armenia, Georgia and Azerbaijan all have a media law and a constitution which state freedom of speech and deem censorship impermissible. The incorporated exceptions – protection of state security, social order, mores of society, slander etc. – can apparently be subject to opportunistic interpretations.

The legal and regulatory framework for the media coverage of the elections in Armenia, Georgia and Azerbaijan provided free access for all parties/candidates. The broadcast media in the three republics made a clear attempt to allocate the free time equally. Although this attempt at fairness is laudable, the hours of political advertising on television and radio daily (particularly in Georgia and Azerbaijan) may have saturated the audience and induced fatigue, rather than contribute to viewers enlightenment. It is, therefore, recommendable to limit the free time to perhaps one hour a day in future elections.

The free space in the state owned newspapers was allocated equally in Armenia and Georgia, yet not in Azerbaijan. The regulations governing the media coverage in Armenia, Georgia and Azerbaijan did not contribute to even and fair reporting. The necessity of balanced coverage in newscasts, documentaries or analytical programmes was not stipulated in any of the guidelines for media coverage. The unbalanced reporting of state owned outlets combined with the dominant position of government controlled TV, indicated the importance of such guidelines (and, for that matter, the adherence to them).

Financial constraints

The occasional problematic political situation for media outlets in the Trans-Caucasus is exacerbated by severe structural economic difficulties. The dismal picture of the interrelated problems for the printed press can be summed up in the following examples: the cost of newsprint has become unbearable (as much as \$1,200 per ton in a country where the average wage is \$6); the circulation of newspapers has decreased (from 15,000 to 3,000); there is habitually no alternative to the state controlled printing house; the advertising market is underdeveloped; equipment is often obsolete; and distribution is monopolised by the state, is too expensive and has consequently virtually ceased to exist outside the capital.

The independent broadcasting outlets struggle due to a reduction in energy resources. Moreover, there is a strong connection between the authorities and the energy supply. Furthermore, the number of hours of electricity per day allotted to citizens has diminished; there is scarcity of video, filming and editing equipment; the financial situation is precarious at best; advertising rates are largely symbolic and some potential advertisers are unwilling to advertise since they fear subsequent tax inspection.

In summary, the financial situation of virtually all official and (especially) independent media in the Trans-Caucasus is catastrophic.

Nature of editorial coverage

In general, the political and economic situation in Armenia, Georgia and Azerbaijan have created a polarised press and a one sided broadcasting landscape. The print media are either government supported or strongly aligned with opposition parties. In these papers, no priority is given to separating reporting from commentaries, and objectivity is not the most highly prized journalistic virtue. Quality papers, which provide balanced and more or less neutral information, are an exception rather than a rule. Nevertheless, the popularity of such papers as *Rezonansi* in Georgia and *Zerkalo* in Azerbaijan indicate the demand for professional, independent and good quality newspapers.

None of the state owned broadcasting media, in all three of the republics, could fulfil the role of a “public service”. Radio and television were largely subservient to the authorities. In Armenia and Azerbaijan, this was illustrated by the openly pro government stance, some blatantly biased programmes and the quantitative dominance of coverage of the activities of the parties and candidates related to the president. Although a parliament decree enacted during the summer of 1995 did stipulate detailed guidelines for the coverage of internal political developments, the situation in Georgia was somewhat different. In the course of the campaign, the free time for parties and candidates consumed most of the daily airtime on the first channel and editorial coverage was reduced to a minimum. Whether this approach is particularly desirable remains debatable. The independent broadcasting media could not (yet) act as a purposeful antidote in Armenia, Georgia or Azerbaijan.

In a country where the circulation of newspapers is low and their distribution outside the capital virtually non existent, the national television has an increased responsibility in informing the audience. The situation described above therefore was a concern for the monitoring teams.

The financial constraints have an influence on the nature of the editorial coverage as well. Firstly, low salaries and lack of liquid assets make media outlets liable to influences from sponsors and concealed advertising. The extent to which this influenced the coverage of the campaign is, however, virtually impossible to determine. Secondly, the low salaries deter many talented would be journalists from entering the profession.

Another factor influencing the nature of the editorial coverage is the rather deeply institutionalised self censorship in all three republics. In Azerbaijan, few independent outlets have the courage and determination to argue with the censors or run the risk of reprisals. In Georgia and Armenia, the self censorship within the state owned media is due to the remaining control of the authorities. Nevertheless, also independent outlets exercise a certain degree of self censorship, due to the government monopoly over facilities and the fear of running foul of other influential forces in society.

It is understandable that in the climate described above, independent analysis, investigative journalism, balanced reporting, etc. may be too much to ask. Nevertheless, the monitoring teams met in each of the republics with professional journalists and editors, determined to provide sound coverage of the events influencing the course of their country. With remarkable ingenuity and tenacity, they managed to circumvent some of the problems they face in informing their audience. Such initiatives are not only laudable and promising, they also deserve support.

The elections in Armenia, Georgia and Azerbaijan provided an indication of the democratic calibre of the three Trans-Caucasian republics and of the attitude of the different governments towards the media. Considering the media proved to be an integral part of the economic and political developments in a country, improvement of their position depends on a delicate transitional process. Ergo, merely economic growth and a stimulating rather than a hindering role of the authorities can guarantee a lasting improvement of the independent working conditions for the media. The intricate yet vital (geo)political, economical, ethnical and social situation in the region without any doubt deserves this.

About the Authors

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THE OSCE AND THE PROBLEM OF TORTURE

Nigel S. Rodley²

"No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". So proclaims the Universal Declaration of Human Rights in its Article 5. Few of the Declaration's provisions can be said to have passed so securely into the corpus of general international law as the prohibition of torture or other ill-treatment.

This human rights obligation does not appear to have surfaced within the OSCE until the 1889 Vienna Document. This can be explained by the essentially East-West bloc nature of human rights discourse, as reflected in its Helsinki Final Act and subsequent documents.

Torture was not a systemic problem in either bloc and thus not the stuff of strategic human rights neuralgia. On the other hand, as a human rights issue of global dimensions, it was appropriate that its occurrence within the participating states be addressed as a part of a "normalising" human rights discussion. Thus, the Vienna Document (paragraph 23 (a)-(f)) affirms the prohibition and commits participating states to a number of measures aimed at preventing violations.

That commitment was reaffirmed in the Copenhagen Document the following year (paragraph 16 (1)-(7)). Further measures of implementation were also envisaged. The prohibition of torture and other ill-treatment was again affirmed by the Heads of State or Government subscribing to the Charter of Paris for a New Europe later in 1990. The 1984 Budapest Document (paragraph 20) contains similar exhortations to those contained in the earlier documents, albeit with some discrepancies.

How do the commitments translate into treaty obligations? Of the 54 OSCE participating states (including the presently suspended state of Yugoslavia (Serbia and Montenegro)), only the Holy See and Kazakhstan are parties to no human rights treaty prohibiting torture. All the others are bound by the European Convention on Human Rights (Article 3) and/or the International Covenant on Civil and Political Rights (Article 7). Furthermore, all but seven (Azerbaijan, Estonia, The Holy See, Kazakhstan, Kyrgyzstan, San Marino and Turkmenistan) are parties to the 1984 United Nations' Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The picture deteriorates when we look at the record of acceptance of supervisory obligations under the relevant treaties. No individual petition procedure (either under Article 25 of the European Convention or under the Optional Protocol to the Covenant or under Article 22 of the Torture Convention) is recognised by 10 states; Albania, Azerbaijan, Estonia, Former Yugoslav Republic of Macedonia, the Holy See, Kazakhstan, Moldova, Tajikistan, Turkmenistan or the United States of America[2]. Four OSCE states parties to the UN Convention against Torture have deposited reservations which prevent the Committee against Torture from studying *ex officio* under its Article 20, alleged systematic practices of torture: Belarus, Bulgaria, Czech Republic and Poland. Where a systematic practice occurs, an individual petition procedure may not be an adequate means of addressing it.

It may also be noted that 30 of the OSCE states are parties to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1987). These include, from among the states mentioned in the foregoing paragraph, Bulgaria, Czech Republic, Poland and Romania. In keeping with its preventative purpose, this Convention does not purport to offer redress for

² The United States, although not a party to the American Convention on Human rights (1969), is subject to the individual petition procedure of the Inter-American Commission on Human Rights under the Charter of the Organisation of American States.

victims. Rather, operating on a mainly confidential basis, it seeks to deter torture and other ill-treatment.

In any event, the fact remains that both the Vienna and Copenhagen Documents had committed participating states to "consider acceding" to the UN Convention against Torture ("as a matter of priority" in the Copenhagen Document) and, as we have seen, seven have still not done so. The Copenhagen Document also committed participating states to consider withdrawing reservations to Article 20 of the Convention, but four remain. The same document further committed them to accepting the rights of individual and interstate complaint. 20 OSCE states parties to the Convention have yet to accept the former and 18, the latter.

The OSCE itself has failed to contribute substantially to efforts to combat torture. The Copenhagen Document (paragraph 16.6) committed participating states:

"to take up with priority for consideration and appropriate action, in accordance with the agreed measures and procedures for the effective implementation of the commitments relating to the human dimension of the OSCE, any cases of torture and other inhuman or degrading treatment or punishment made known to them through official channels or coming from any other reliable source of information".

The procedures presently include the (earlier) Vienna and (later) Moscow Mechanisms.

As far as I am aware neither mechanism has been successfully invoked to address torture problems within the OSCE. (The closest attempt was the (unusual) CSO initiative in June 1983 in respect of Yugoslavia (Serbia and Montenegro). The mission which would have examined reports of human rights violations, including a specified instance of beating, was not allowed to visit the country. This is regrettable, but hardly surprising, since both mechanisms are of an interstate nature. Interstate complaints procedures are notoriously inadequate, as states are reluctant to bring complaints against each other, especially, as with the CSCE mechanisms, several states must agree to the initiative. That they worked partially in the Cold War period of the CSCE is attributable precisely to the role of human rights in the ideological face-off.

It is true that implementation meetings on human dimension issues can consider problems raised, for example, by non-governmental organisations. Thus, the International Helsinki Federation for Human Rights presented a "Report to the OSCE Implementation Meeting on Human Dimension Issues, Warsaw, 2-19 October 1995". Its chapter on torture and related issues (pages 33-42) listed a number of problems in 19 participating states. Also a substantial number of OSCE countries, from both East and West, are mentioned in the annual reports of the Special Rapporteur on Torture of the UN Commission on Human Rights and in the Budapest Document the Organisation was urged to "draw on the experience of the Special rapporteur" (paragraph 20). Yet, all that emerged in the official consolidated summary were three short paragraphs mentioning the existence of the problem in unnamed states (page 33). In brief, the implementation meetings do not implement.

Of course, international treaty rules and machinery cannot, of themselves, put an end to torture where it exists, any more than they are needed where it does not exist. A state may submit itself to all the rules and procedures and torture may still continue (see, for example, Council of Europe, European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment, "Public Statement on Turkey - Adopted on 15 December 1992" and "Summary account of the result of the proceedings concerning the inquiry on Turkey", Report of the Committee against Torture, UN Document A/48/44/Add.1 (1994)), while a state such as the Holy See, which played a positive role during the drafting of the UN Torture Convention, is party to no instrument, but, of course, generates

no complaints. Yet the OSCE, of all organisations, must be committed to the notion that international action can help to alleviate human rights problems.

Accordingly, I venture to make a few proposals:

1. The OSCE could consider whether its virtual total reliance on interstate complaints mechanisms remains appropriate. Perhaps it should envisage an ex officio system, analogous to that found in the UN Torture Convention, whereby an OSCE body could investigate any apparent extensive practice of human rights violation, including torture and ill-treatment.
2. A high-level function, say, a Committee or Commissioner, could be established with a mandate to visit relevant states and engage in dialogue with their governments, with a view to promoting:
 - a) full ratification by participating states of the UN Convention against Torture;
 - b) withdrawal of reservations to Article 20 of the Convention;
 - c) acceptance of the optional individual and (for the sake of completeness) interstate complaints procedures under Articles 22 and 21 of the Convention respectively;
 - d) ratification of Protocol 1 of the European Convention for the Prevention of Torture which would permit states not members of the Council of Europe to become parties to the Convention; and
 - e) once d) is achieved, full ratification of that Convention by OSCE participating states.

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PRISONS AND HUMAN RIGHTS LAW

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The treatment of people in prisons has always been a central concern of human rights law. The appalling treatment of people in prison camps before and during the Second World War was a very fresh memory to those who drafted the United Nations Declaration of Human Rights in 1948. A determination to prevent such treatment occurring again has been an important influence on those who drafted subsequent human rights Conventions, such as the European Convention on Human Rights in 1950 and the International Covenant on Civil and Political Rights of 1966. Two of the most important human rights treaties of the 1980s, the United Nations Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment of 1984 and the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment of 1987, have particular significance for those detained in prisons or police stations. These treaties reflect the continuing concern on the part of the international community that the means be found to ensure that people in prisons are treated humanely.

The emphasis on humane treatment is important. As Article 10(1) of the International Covenant on Civil and Political Rights, to which Armenia is a party, provides:

All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

Human Rights law is thus opposed to any idea that those detained in prison, whether they be convicted of a criminal offence or not, can no longer be regarded as deserving of treatment appropriate to a human being.

However human rights law is not opposed to the idea of imprisonment as such. All human rights treaties recognise that states may legitimately deprive people of their liberty on conviction of a criminal offence and, in more limited circumstances, that they may deprive someone of their liberty in order to bring them to trial for an offence. Moreover human rights law recognises that many of the rights people are entitled to in the outside world may legitimately be reduced in order for prison to function safely and efficiently. Some rights simply do not apply to those in prison. The right to be free from compulsory labour is a good example. Both the International Covenant on Civil and Political Rights and the European Convention on Human Rights contain an exception to this right in respect of those who are detained. Presumably this is because those who drafted these Conventions recognised that prison systems throughout the world required prisoners to work and that man prisons would become very much more difficult if this requirement were to be taken away. Overall therefore one can see that human rights law seeks to strike a balance between the rights of prisoners and the needs of prison administration. Its aim is to ensure that prisons are run safely, humanely and efficiently in the interests of both those in them and those who operate them.

What do I mean when I talk of human rights in this context and where can they be found. Human rights as an idea of humane treatment of people, of respect for each individual, can be found in most of the world's religious and philosophical systems. However both within and between such systems there is great dispute as to what rights exist and how they should be respected. A greater measure of treatment on human rights can be found in international law, at least following world war two. International lawyers believe that some rights, of which the right to be free from torture is the one perhaps most relevant to the prisons context, are guaranteed to people regardless of whether or not the state they find themselves has signed up to any international treaty or not. Greater rights are accorded to people if their state has become a party to an international human rights treaty. These treaties may be general in character, such as the International Covenant on Civil and Political Rights or the European Convention on Human Rights, which establish a range of rights (for example to liberty, free expression, privacy, fair trial, freedom from torture) which apply to everyone. Alternatively they may be specifically concerned with particular circumstances or groups of people. The United Nations Convention on the Rights of the Child, the United Nations Convention Against Torture and the European Convention for the Prevention of Torture are the most relevant for the prisons context. Much of what I have to say about specific human rights standards in relation to prisons draws on these international conventions and on the interpretations of them made by international human rights tribunals and committees of experts which have been established to implement these conventions. Finally, again in the prisons context, it is worth mentioning standard setting instruments such as the United Nations Standard Minimum Rules on the Treatment of Prisoners or its Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. While these do not give rise to individual rights in international law they are generally much more detailed than human rights treaties and provide a set of standards for prison officials. Prison systems which comply with such standards are unlikely to violate human rights.

All these international provisions are designed, however, only to set minimum standards, The protection of human rights is primarily a task for national law and national administration. International provisions are there to provide a check on the quality of human rights protection by national authorities. They are not a substitute and ultimately the best means of securing human rights is to have national authorities which are committed to their protection and a national system of law which ensures that they live up to such commitments.

In a short talk such as this it is not possible for me to cover all the human rights provisions relating to prisons but I hope that I will say something useful about the most important ones.

The right to trial within a reasonable time

Ensure that someone is brought to trial within a reasonable time is usually a matter for the prosecuting and judicial authorities rather than prison officials. However failure to guarantee that right can cause major problems for prison authorities as prisons become overcrowded with people awaiting trial. As there can be many reasons for delay in bringing people to trial international institutions have been reluctant to lay down precise time limits for this. However some principles have emerged One is that a person should only be kept in prison awaiting trial where good reasons for doing so, either because there is good reason to believe that if released they would not come to trial or because it is a very serious offence. The authorities should consider whether other measures, such as requiring someone to pay a bond or report regularly to a police station, might satisfy their concerns. A second principle is that a person detained in prison before trial should be entitled to seek a review of his detention before an independent court. The prosecution would have to establish before that court that good reasons exist for keeping someone in prison before their trial As regards what is a reasonable time to be in prison before trial the European Court of Human Rights has indicated that a number of factors must be considered including the complexity of the case and the need for the prosecution to assemble its case, the conduct of the defendant and whether he or she seeks to delay the trial in order to better prepare their defence, and the

conduct of the prosecution, as to whether it seeks to process the case promptly or not. The European Court has generally found a period of anything above two years to be unreasonable, unless exceptional circumstances exist. Lack of resources on the part of the state has not been regarded as an exceptional circumstance, the European Court has indicated that state might seek to organise their legal system in such a way that people do not remain in prison awaiting trial for unnecessarily long periods. The Civil and Political Covenant also requires that, save in exceptional circumstances, people awaiting trial be kept from those who are convicted and that they be treated in a manner which acknowledges that they have not been convicted.

Living Conditions in Prison

One basic requirement in relation to living conditions in prison is that juvenile offenders be separated from adults. The Civil and Political Rights Convention establishes this as a requirement and the Rights of the Child Convention, to which Armenia is a party, also provides for it "unless it is considered in the child best interests not to do so". The other basic requirement is that living conditions should not amount to torture or to cruel, inhuman or degrading treatment or punishment. As with the right to trial in a reasonable time international human rights institutions have been reluctant to spell out who exactly prison conditions may amount to inhuman or degrading treatment. It is accepted that prisoners may well find any experience of imprisonment degrading and that the normal consequences of imprisonment in terms of reduced freedom and reduced facilities do not amount to a breach of human rights. However there is a minimum below which conditions must not fall. Things which may amount to inhuman or degrading treatment include excessive use of physical force to control prisoners, keeping people in solitary confinement for long periods when their conduct does not require it, putting several prisoners into a small cell for lengthy periods, denying prisoners frequent access to washing and toilet facilities, denial of regular access to exercise, conditions which are especially dirty, smelly or noisy and lack of medical care. These things may be looked at cumulatively and matters such as the age and health of the prisoners involved must be taken into account. The attitude of the authorities is also important. Prison authorities which act in an arbitrary way or which display indifference to prisoner's medical or sanitation needs are much more likely to be found to have been guilty of inhuman and degrading treatment. One of the best sources of guidance on what amounts to inhuman or degrading treatment in the prison context can currently be found in the reports of The European Committee on the Prevention of Torture, Inhuman or Degrading Treatment, the body which seeks to implement the European Convention on Torture. The Committee has published general comments on the interpretation of inhuman or degrading treatment which develop our understanding of the term. In its Third Report, for example, it considered the issue of medical care and sets out a number of standards. These included the idea that there should be an "equivalence" between medical care available in prison and that available in the rest of the country, that a prisoner should be able to have confidential access to a doctor at any time and that medical personnel who work in prisons should be aligned as closely as possible with mainstream healthcare services in order to ensure the doctor's independence.

The Maintenance of Order within a Prison

Prisons are often difficult and dangerous places to manage. International human rights law recognises that prison authorities may need powers not usually granted in the outside world to maintain order and prevent disturbances within a prison. This may include powers to search prisoners and their cells, to remove them from the general prison population to particular parts of the prison or to solitary confinement, to transfer them to a different prison or to remove their access to benefits like early release. However again there are limits on what may be done consistent with respecting the human rights of prisoners. We have already said that using excessive physical force to retrain a prisoner or putting them in solitary confinement for long periods can amount to inhuman and degrading treatment. The use of harsh disciplinary punishments, such as removing any entitlement a prisoner had to early

release, may also infringe the right to a fair hearing if a prisoner is not given the opportunity to answer allegations made against him and to put his case. Punishments which involve interference with a prisoner's contact with their family or the outside world may also raise human rights concerns if used excessively.

Rights to Contact with Family and the Outside World

The Civil and Political Rights Covenant states that "the penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their information and social rehabilitation". Such reformation and rehabilitation will be much harder if someone comes out of prison without a family to return to. In addition imprisonment imposes a loss of family contact on those family members, such as wives, husbands or parents who are not sent to prison. It is therefore important that prison systems are run in such a way as to reduce the damaging effect on family unity.

Letters and visits are the main ways by which such contact is maintained Human rights law recognises that prison authorities may interfere with a prisoner's right to privacy in their correspondence by reading and in some cases censoring letters. However both the European Court of Human Rights and the Human Rights Committee have clearly indicated that total prohibition on prisoners sending and receiving letters is in violation of their humans rights. Restrictions on letters should be few in number (where a letter discusses an escape plan or issues a threat against someone they may clearly be stopped) and should be set out in law. The authorities should also provide facilities to enable regular visits by family members to take place, subject to reasonable security considerations. Denial of visits over a long time may infringe the right to family life of both the prisoners and the other family member.

The European Court of Human Rights has also recognised the rights of prisoners being able to have confidential contact with their lawyer and the courts. Such contact is vital if prisoners are to be able to vindicate their rights. Where a prisoner clearly indicates that a letter is being sent to his lawyer, or has been received from a lawyer, then the authorities should not stop or open it unless they have good reasons to suspect that something is wrong. When prisoners meet with their lawyers, for example to prepare their defence, they are entitled to a confidential conversation with them.

As I indicated before this is only a brief summary of the most significant implications that human rights law has for the operation of prisons. Before ending though I would only like to make a few brief comments on what the most important requirements are for the guaranteeing of these rights in practice. I would highlight two. Firstly prisons must not become entirely cut off from the outside world. In addition to contact with that world through correspondence and visitors it is important that some impartial outsider, perhaps a judge, regularly visits prisons to inspect them and that he or she then makes public their findings. Secondly, and most importantly, there must be a prison staff who do not see the protection of human rights as an impediment to their work but as something which helps them run a prison in a safe, efficient and professional way.

I would like to thank the ODIHR for their assistance in possible my attendance at this workshop.

About the Author

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CONTEMPORARY CHANGES IN PRISON POLICY AND PRACTICE

POLISH

Dr. Monika Platek

It has been frequently argued that prisons mirror society. It is less often noted, however, that the overall state of a prison can shape society. This is because imprisonment is not a one, but a two way process. Penal institutions not only demonstrate a great deal about social development; they also strongly influence it. Prison conditions, prison mentality and specific prison subcultures do not stay within prison walls, they expand and are transferred to society.

Polish society, perhaps more than any other, is illustrative of this observation. Several periods of freedom were followed by periods of its loss. This oscillation in its history has created a subtle paradox. Within Polish society, a rather strong punitive attitude has been combined with a heightened awareness of problems within the nation's penitentiaries. As a result, Polish reformers, academics, as well as prison officials, believed that it was not possible to build a democratic Poland without reforming its prison system.

A visit to Polish prisons in early 1989 would have demonstrated tremendous overcrowding and poor prison conditions. At that time, there were still nearly 100,000 prisoners housed in 156 prisons built for a maximum of 80,000. Prison guard and prisoner relations were tense, and work by prisoners was a great source of State revenue. In many ways, Polish prisons reminded one of a factory complex. Late 1989, in contrast, illustrated an entirely different situation. The number of prisoners dropped to 40,000 and access to prisons was dramatically eased. As a result, when visiting a prison one was often joined by members of Parliament, researchers, famous writers, and famous singers as well as visiting family members.

What really happened in Polish prisons? How did Polish authorities manage to reduce the prison population in the course of only a few months? What had changed and how profound are those changes? Why can the Polish prison system be treated as a model for other Eastern and Central European countries? This article will attempt to answer all of these questions.

THE HERITAGE OF THE PAST

Poland, a country centrally located in Europe with a population of over forty million inhabitants has undergone revolutionary changes in the past ten years. While harsh criminal policy was the rule in the eighties, in the nineties the policy can be characterized as reformist. Although having had an extremely clandestine prisons, the Polish system managed to open its gates and allow a flow of information, programs and people working for and with prisoners.

THE COMMUNIST REGIME

Prior to World War II, Poland enjoyed a short period of sovereignty following nearly a hundred years of dependency on Russia, Prussia and Austria. During that period a new progressive Code of Criminal Procedure (1928) and Criminal Code (1932) were introduced.³ Although crime statistics rose in the 1930s, imprisonment was used as a last resort and the average term of imprisonment did not exceed six months. Following World War II, Poland was only formally a sovereign nation. The communist system gave the Soviet Union the authority to control many aspects of Poland's political, economic and social life. Important

³ Poland is a civil law country with a legal tradition based primarily on Roman, French and German tradition

positions in the Polish criminal justice system until 1956 were occupied by Soviet "advisors" who often were able to influence not only the substance of the law, but also actual court decisions.

The new regime, which then wanted to be perceived as the successor to the pre-war free Polish government, did not abolish the old legislation but preferred instead to introduce several amendments. The old law acquired new substance, and new communist laws severely restricted the independence of the judiciary and introduced extremely severe decrees and punishments. Consequently, especially during 1944-1956, jails and prisons filled up not only with criminals in the Western sense of the word, people who rob and murder, but also those who were late for the third time for work, who stole a bottle of milk or were political prisoners. Additionally, many of those who fought against Nazi occupation as members of the Polish Underground Army survived World War II only to be persecuted, tortured and imprisoned by the new Communist regime.

Not much was known during these years about the conditions people faced in Polish prisons. Although most people could distinguish "real" crime from what the State perceived as crime, very few dared to question sentences because inquiry concerning political prisoners could bring imprisonment and torture to those "too curious". Not many were willing to question the condition of imprisonment of those perceived as social parasites. Moreover, given the brutality of the Nazi regime and the wounds so many suffered for merely being Polish, many felt that those guilty of breaking the law should spend time in prison.

Polish people had good reason to fear the State. During almost forty five years the prison rate in the Polish Peoples' Republic was consistently among the highest in the world. The number of Polish prisons grew from a low of 107 in 1945 to 372 in 1973. Although several protest movements in 1956, 1970 and 1976 were able to achieve slight modifications in the criminal justice system, it was not until the "Solidarity" movement that the ban on free press was broken and access allowed to Polish penal institutions.

THE YEARS BETWEEN 1980 AND 1989

The declared statutory aim of imprisonment in Poland is re-socialization. Under the Polish Penal Code (1970), this is understood as a process of shaping a prisoner's socially desirable attitude through socially beneficial work and the observance of law and order. This aim of re-socialization is to be attained by submitting the prisoner to discipline and order in an appropriate institution and through a treatment which consists of work, education and cultural activities.

From the time that the Criminal Code of 1970 entered into force, imprisonment prevailed in judicial decisions. Drafts of reforms prepared in 1980 and 1981 during the "Solidarity" movement tended to encourage decriminalization of many criminal provisions. However, the activities aimed at liberalization of criminal responsibility never went beyond the stage of drafts. In fact, the permanent and short-term changes introduced by the penal law of 1982 under Marshall Law, tended to make the law even stricter than before and a number of new activities were criminalized. In many situations, judicial proceedings were simplified and hastened, and the defendant's right to defense and the presumption of innocence were limited. Moreover, the discretionary power of judges was limited by severe and mandatory penalties to such a degree that the illegal sale of vodka would result in nearly two years of imprisonment. The standards of space per prisoner existed only on paper and it was common for six prisoners to be kept in a cell built for two. Soon even prison staff began to criticize the State.

The reaction of Polish society was compassion for the perpetrators. The administration of justice had made victims of those who engaged in black market offenses to supply basic commodities to the consumers of a country suffering from a profound economic crisis. However, following the initial successes of the "Solidarity" movement which sought to raise interest in the rights of political prisoners, the public was subjected to a media campaign which highlighted a rising crime rate in order to create a climate of panic and

intimidation. Thus, while the people remained aware of absurd sentences which made them lose respect for the law, they were fearful of a surge of crime in the country.⁴

MADE IN PRISON

In Poland there are currently 240 penitentiary units. Of those, 151 are prisons, and most were built in the last century. Since World War II not a single prison has been built in Poland and several penal institutions are located in army barracks or monasteries dating to the times of Polish partition. There are even two castles used as penal institutions which date back to the 13th and 14th centuries. Although many Polish prisons have undergone modernization several still lack sewage systems or central heating.⁵

The Polish prison system has traditionally owned its own production base. During the Communist era, more than sixty independent industrial, agricultural and construction prison units brought to the system very inexpensive or free manpower. Many auxiliary workshops were developed by employing prisoners directly from their prison cells, and the majority of these enterprises had contracts with key State enterprises. "Speaking half-serious and half-jokingly, when constructions sites in the country needed locksmiths, locksmiths were put in prison".⁶

Today everyone admits that prison production was not always cost effective. Yet, it is obvious that it played an important role in the national economy. By law, prisons could not employ more than 30,000 people so the remaining prisoners worked in prison kitchens, laundries or bakeries. However, prison-run enterprises were frequently the only industries on the national scale which produced more than was planned. Officially, prisoners' wages were equal to those outside prison, however, few earned any money. Even a highly skilled worker was paid the lowest rates and eighty percent of his wages were deducted for the State treasury. The remaining funds were used to pay fines, court fees, the costs of proceedings and family maintenance because a failure to pay these fees could lead to an additional three year sentence. What was left to the prisoners was usually reserved for food and cigarettes.

In the mid-1980s this system began to shatter as the national economy weakened. However, the courts continued to sentence people. Given the lack of effective communication between the two branches of the criminal justice system, the prison authority had to deal with overcrowding as well as with the sudden phenomenon of unemployment. In February 1987, a popular weekly journal "Przegląd Tygodniowy" disclosed that the State Budget receipts from the prison system were expected to amount to three million zlotys, with expenditures of more than twenty million. Curiously enough, this data brought about demands not for a reduction in the number of prisoners, but for more severe penalties, reductions in the costs of imprisonment and for increased prisoner contributions.⁷

SEEKING IMPROVEMENT

The distinctive nature of the changes which occurred within the Polish prison system began from the inside. The spirit of the "Solidarity" movement brought the issues of prisons and prisoners out of seclusion and started a social debate that never faded. After the imposition of Marshall Law, press censorship made it difficult to inform society of the changes which were being made because researchers perceived as too critical

⁴ PLATEK, Monika. (1991); The Sluzewiec Prison in Warsaw, Poland: A Penal Labour Centre, or Half-Open Prison. In the State of the Prison -200 Years On. Ed. by D. Whitfield. Routledge London and New York: 56-69. This article describes the everyday life, routine and activities of Polish prisons.

⁵ Parliament's Bulletin nr 315/IX term from January 21, 1987:5-16.

⁶ BERES, Witold; BURNETKO, Krzysztof (1994) Nightstick and Narrow Doors. An Interview with Pawel Moczydlowski, Director of the Central Board of Penal Institutions. The Warsaw Voice. February 5, 1994.

⁷ Malachowski Andrzej; (1987) Za Murem (Behind the Wall). Przegląd Tygodniowy, No2:6-7

were not allowed access to prisons.⁸ In order to survive, the prison system had to initiate the process of reform itself.

Between 1980-1981 there were more than one hundred prison riots. The "Solidarity" movement empowered correctional officers and prisoners with self-respect and made them conscious of their specific rights. Although the flow of information and the activities of prisoners were abruptly curtailed with the imposition of Marshall Law, both prison staff and prisoners agree that the reforms that began in 1986 were the result of the "Solidarity" movement.⁹

In 1987 the Director General of the Polish Prison Administration addressed the Parliament. Although making it clear that he did not wish to criticize State criminal policy, he noted that if a person serving six years in prison could be employed outside prison facilities and if there were 30,000 such workers who could leave prison daily without becoming a burden for social security; then other punitive measures should be considered. In presenting this argument the Director revealed prison statistics never before revealed to the public.¹⁰

The statistics showed that the Director General oversaw an army of 200,000 prisoners, the majority of whom were under twenty-five years of age and had little or no education or professional training. The average length of imprisonment was twenty-three to twenty-seven months, but young offenders often served from four to ten years. As ex-prisoners there were few state enterprises where they could work given that most would not hire ex-convicts. The policy remained one of revolving doors with a growing number of recidivists. In 1987 over 100,000 people were imprisoned in Poland, but in 1988 the number had dropped to 67, 824.

Beginning in 1986, one could also observe changes in prison personnel. Top administrators were no longer high ranking military officers but civilian judges. Re-socialization as a penitentiary goal which began in 1956 was again taken seriously and prisoners work was now accompanied by school programs. There were constant debates between academics working on prison reform and prison staff. The media were bringing information about prisons and prison reform from all over the world and the administrations began to inform the public more about problems within the prison system. The idea of prison reform, although present since the 1950s, was being implemented.

THE FIRST CHANGES

The prison administration managed in the late 1980s to convince the Prosecutor General to introduce a new policy towards women. For many years, offenses committed by Polish women constituted about ten to eleven percent of the crime rate or a total of about 5,000 prisoners. Given that prison administrators were desperately looking for new space for men who provided a more attractive workforce, a new humanitarian trend in penal policy toward women was initiated. The new regulations were to sentence women to isolation only in exceptional cases and to release them on bail whenever permitted by law. This experiment produced an interesting result. At the end of the 1980s there were approximately 2,000 women in prison while statistics still showed that females still continued to commit an average share of ten to eleven percent of all criminal offenses. Despite reducing the prison population by over 3,000 prisoners, the crime rate remained stable; illustrating, as well, the lack of correlation between the number of crimes committed and those sentenced to imprisonment.

⁸ The author, together with several other colleagues including the newly appointed Director in 1989 were on the so called "black list" suppressing access to prison, and information concerning prisons. We were literally not allowed to enter the prison, but not placed in any imminent danger of imprisonment for activity we carried out at the University or graduate level.

⁹ PLATEK, Monika (1990); Prison Subculture in Poland. "International Journal of the Sociology of Law" 18:463

¹⁰ Polish Parliament's Bulletin Nr 315/IX Term:9

THE THRESHOLD OF A NEW ERA

Although it happened without violence and bloodshed the process Poland started in 1989 can rightly be called a revolution. In 1989 the cabinet did not eliminate the entire system of communism and forty percent of the seats in Parliament remained Communist until 1991. The Polish revolution occurred by small steps and was rather evolutionary.¹¹ In December 1989, the prison population fell to 40,321. The next significant step was the implementation in October 1989 of new rules regulating imprisonment and pre-trial detention. The new rules replaced the "transitory" regulations of 1974 which in many ways violated the Polish Penal Executive Code and significantly liberalized the regime inside Polish prisons.

One had to wonder whether these changes were the result of a desire merely to liberalize severe rules or the result of a changing philosophy and new attitude towards prisoners and prison institutions. This is not an easy question to answer given that prison and business have gone hand in hand for centuries.¹² Sometimes prisons serve as a cheap source of labor and in times of unemployment they help to ease a certain population out of the labor market. Sometimes prisons bring fortune to prison construction companies and to all those providing equipment, supplies and services. But in 1989, Poland experienced a unique situation in which none of these elements could have been used to legitimize imprisonment on a large scale. There was no work for prisoners but the country did not yet face acute unemployment. There were no plans or money to construct new prisons. Perhaps, therefore, the answer is that there was a genuine movement towards an apolitical and reform oriented criminal justice system in Poland.

THE NEW IMAGE OF CORRECTIONAL STAFF

The two most visible changes one can observe after 1989 besides the dramatic drop in the prison population, are the relationships between public administration and society and between correctional officers and prisoners. The new Director General and his Deputy who served from 1990-1994, both received their Ph.D in sociology and law Each came to the service making it clear that he did not wish to create borders and expected society to be informed about the condition of prisons. Suddenly, researchers previously barred from prisons by so-called proscription lists joined prison administrations as advisers, priests began to enter facilities to hold religious ceremonies and artists, activists, rock groups and students were all given permission to visit prisons on a regular basis. The prison system opened its gates to the public.

The relationship between correctional officers and prisoners surprised even the well experienced penitentiary. Many international contacts established years earlier resulted in visitor exchange programs to the West and efforts were made to keep contact with the administrations of Central and Eastern European prison systems. The results of these visits were quite positive. One such example is the introduction of AA and DA programs throughout the prison system following the assistance of the Minnesota Prison Administration. Today, highly qualified university graduates seek positions in prison management because new prison policies and attitudes toward correctional officers have created challenging positions for young, ambitious people.

Even the prisons themselves look different. The dull gray color is gone. Empty walls are gone, impersonal cells are gone and the depressing, ugly environment is gone. Prisoners are now permitted to paint their walls, decorate their cells, and keep their belongings. Even electronic devices are present in many cells. Prisoners now talk less about the brutality they face everyday in prison and more about re-thinking their lives and the reason they are behind bars.

¹¹ POKLEWSKI-KOZIELL, Krzysztof, Threshold of Legality and Social Change (typescript): 2

¹² MELLOSI, Dario (1982); Punishment and Social Structure. In: Punishment and Penal Discipline. Essays on the Prison and Prisoner's Movement. (Ed. By) T. Platt and P Tagaki. Crime and Social Justice Associates. San Francisco 17-27.

THE POLISH PENAL SYSTEM AS A MODEL

It is important to underscore that the Polish Prison system does not claim that reform is complete, but that the process may serve as a good example of a positive transformation. Despite facing the same economic and social problems as other Central and Eastern European countries and many newly independent States, the Polish Prison Administration has been able to demonstrate many achievements in a short period of time. They have been able to renovate buildings, create positive work for prisoners, introduce new prison rules concerning space, cooperate with outside organizations and experts, and introduce educational and training programs for prisoners despite very limited resources.

In recent years a disturbing trend has developed which will determine the future of Polish prison reform. In the past four years, the prison population has increased from 40,000 to over 63,000-one thousand more than capacity. Again, the system is at a turning point and is facing overcrowding. The big difference today is that prison officials and their staffs have bluntly expressed their disappointment, have blamed the State for violating its obligations and are actively seeking a resolution of this potential setback. Through new programs, Parliamentary debates, and international symposia, the Polish prison administration continues to make numerous efforts to continue the process of reform and provide a good model for the countries of Eastern Europe and other newly independent States.

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ODIHR MANDATE - ASSISTANCE TO THE OSCE MISSIONS

The importance of a close co-operation between the ODIHR and the OSCE Missions has been underlined in several OSCE Documents.

The Rome Council Meeting of 1993 decided that

"... the ODIHR will be given an enhanced role in the preparation of CSCE missions, inter alia, in providing information and advice to missions in accordance with its expertise".

More recently, the 1994 Budapest Document provided that

"the ODIHR will be consulted on a CSCE mission's mandate before adoption and will contribute to the follow-up of mission reports as decided by the Permanent Council. The ODIHR's knowledge of experts on the human dimension should be used to help to staff missions. These missions will also designate a mission member to liaise with the ODIHR and with NGOs on human dimension issues".

It is the primary responsibility of the ODIHR Human Rights Unit (HRU) to maintain contacts with the OSCE Missions. In accordance with the provisions of the Budapest Document, the HRU advises Chairman-in-Office on the formulation of mandates before the creation of a long-duration mission, often sending experts as part of exploratory visits. The unit is also consulted by the Conflict Prevention Centre in Vienna on the appointment of Mission personnel. Once the Mission has been established the HRU is organising training courses for new members, on the human dimension, monitoring and on reporting techniques.

The ODIHR regularly informs the missions of its projects, activities of other international organisations and those of non-governmental organisations in the regions. It supplies the missions with human rights documentation, international conventions and provides advice in cases of human rights violations. Frequently, the unit is requested to comment upon draft legislation concerning, for example, citizenship, the protection of minorities and national human rights institutions.

In co-operation with the Missions, the HRU designs specific projects, which may relate to the rule of law, aimed at promoting the informal sector and strengthening grassroots organisation. Lately, several Missions have devoted much effort to assist states in establishing national human rights institution, such as ombudsmen. The ODIHR has consequently extended its technical assistance to these projects, including the evaluation of draft laws, training seminars for ombudsmen, promotion of study visits and formulation of comprehensive human rights programmes. The HRU has a pool of renowned international experts which, upon request, provide advice and participate in these projects.

Since human dimension commitments are scattered over a great number of documents, it is often difficult for the individual to comprehend fully the implications of a specific fight. Therefore, the HRU has prepared compilations of commitments, concerning issues such as equal opportunities, racial discrimination, freedom of religion, the protection of minorities, international humanitarian law, etc. In this manner, the ODIHR wishes to give effect to the 1992 Helsinki Decisions which welcomed "The drawing up of compilations of existing CSCE Human Dimension commitments in order to promote greater understand for the implementation of these commitments". Disseminating information also implies providing guidelines for human rights activities, giving lectures at universities and participating in public debates. The Unit is also consulted by Universities on the elaboration of human rights courses.

REPORT ON THE REPUBLIC OF BOSNIA-HERZEGOVINA

Note from the Editor: In the previous issue we initiated this section and we wish, in this and in the future editions, to use this page to brief you on the ODIHR work in Bosnia-Herzegovina reconstruction process. In the past three months, ODIHR provided assistance to the OSCE Mission in Sarajevo mostly with respect to the upcoming elections.

The ODIHR has commissioned experts from IFES who are presently working in Sarajevo on a voter information programme. This is essential given the fact that the aftermath of the war and fragile peace have left most citizens confused and uninformed about their status and rights and responsibilities. The conditions imposed by the Dayton Agreement for the conduct of the electoral process including the right of eligible citizen refugees and displaced persons to vote, the unusual circumstances which designate 69% of the electorate as "absentee voters," and the short time in which to prepare and conduct the elections magnify the need for an intensive voter information programme. ODIHR, together with IFES, are well equipped to undertake this work. This project follows earlier IFES Election Assessment Missions which had prepared election rules and codes and made a number of recommendations to the Provisional Election Commission (PEC) in Bosnia-Herzegovina.

Other technical assistance already provided to the OSCE Mission in Sarajevo, includes a training programme for newly deployed OSCE Human Rights Mission Monitors as well as translating a number of Bosnia-Herzegovina laws for use by the international community.

ODIHR's most recent priority has been acting as Secretariat to set up, at very short notice, a series of meetings with those countries which are hosting large numbers of Bosnia-Herzegovina refugees. These were needed to discuss with Governments the practical arrangements which will be necessary to ensure that refugees are properly registered and are then able to exercise their right to vote. In most cases voting will be by postal ballots. This will involve an enormous amount of organisation by OSCE member states, much of which is already in hand.

Another major, ongoing, activity for ODIHR is to provide advice to Mr Ed van Thijn, the OSCE appointed Election Monitor Co-ordinator and his team in Sarajevo. There will be an important co-ordination meeting, hosted by ODIHR, in Warsaw on 3 June 1996 to meet international organisations which are planning to send Monitors to the seven different elections due to take place in Bosnia-Herzegovina on the same day. ODIHR have also identified and sent out election experts to assist Mr van Thijn in his difficult mission.

Without doubt, the most eye-catching part of ODIHR's work for Bosnia-Herzegovina elections has been the voter information posters. These were designed in Poland by Prof. Marian Nowinski, an award winning artist. The posters embrace the theme of people working together for a better future. All of us would hope that this theme will lead to successful elections being held in September.

Rapporteur: Donald Holder

ELECTIONS

THE ELECTION FRAMEWORK FOR CO-OPERATION DOCUMENT

Rapporteur: Helene Lloyd

After much time and thought, the Election unit have finalised the contents of “the Election Framework for Co-operation” which outlines how ODIHR/OSCE is to execute its mandate and fulfil the objective of long-term election observation. Since July 1995, ODIHR has carried out more long-term observations with the Election Adviser or an ODIHR Co-ordinator arriving up to 2 months in advance of the date of the election.

In order to implement its mandate successfully, the ODIHR/OSCE will need the collaboration of the participating States in providing long-term observers (those who stay up to 2 months) and short-term observers (those who arrive up to one week before the election) as well as Co-ordinators who will be able to lead the observers at the on-site office. The document reiterates that invitations to observe a given electoral process should arrive with sufficient time so that a long-term observation mission can be launched.

The document also outlines how ODIHR intends to collaborate and harmonise its activities with other international organisations by providing briefing and debriefings around the election day and by providing a deployment plan. ODIHR will also continue to observe the freedom of the press and liaise with organisations which are specialised in this sphere.

A good example of the implementation of the Election framework document has been the Presidential Elections in the Russian Federation. After having received an invitation from the Russian government in March, a needs assessment was carried out by Michael Meadowcroft, the OSCE/ODIHR Co-ordinator and Helene Lloyd, the Elections Assistant. The ODIHR/OSCE was able to set up an International Observer Office at the beginning of April and establish 6 regional observer posts manned by long-term observers by May. A Regional Co-ordinator and a Deployment Officer were provided by the European Commission with whom the ODIHR closely co-ordinated all their actions during the Russian Presidential Elections.

EXTRACTS FROM THE ELECTION MONITORING FRAMEWORK

I. INTRODUCTION - THE MANDATE

In response to the Budapest Document, the ODIHR has re-oriented its activities to be consistent with the mandated objective for long-term election observation. The emphasis for ODIHR is now not only on election day, but also through the various stages of the election process necessary for a meaningful and democratic exercise.

The original mandate entrusted to the CSCE Office for Free Elections (OFE), under the Charter of Paris for a New Europe (1990), was to assist new European democracies in establishing a tradition of free elections, to assist in electoral administration and in the writing of electoral codes. The Budapest Document broadened ODIHR election related responsibilities within the original mandate to include:

- ☛ an enhanced role in election monitoring before, during and after elections;

- ☞ an improved co-ordination between the various international, regional and non-governmental organisations involved in election monitoring;
- ☞ enhanced election monitoring preparations and procedures, including the production of a handbook for election monitors;
- ☞ the assessment of conditions for a free and independent functioning of the media.

II. THE CHALLENGE OF LONG-TERM ELECTION OBSERVATION

In recent years, the observation of election and referenda has emerged as an important task in support of democratic transition and universal human rights. In the OSCE region, election observation continues to be an invaluable service provided among participating States to promote democratic elections in accordance with the commitments of the Copenhagen Document.

ODIHR's enhanced mandate for long-term observation is the result of the increasing realisation that an informed assessment of an election process cannot be made on the basis of election day observations only. Observers must take into account the various stages of the election cycle, from the registration of voters and the commencement of the campaign through to the final voting and counting stages. The electoral process has to be seen as a film rather than an instant photo.

1. Conditions for Long-Term Observation

All invitations to observe elections will receive full consideration, but all invitations need not necessarily be taken up by ODIHR. ODIHR reiterates that the mere presence of observers does not legitimise an election process. It is the observers methodology and the resulting conclusions that will form the basis of opinion on the election. In order to make this assessment, the ODIHR expects assurances from the inviting government that observers will be able to:

- ☞ obtain information regarding the election process from electoral authorities at all levels;
- ☞ meet representatives of all parties and individuals randomly selected;
- ☞ travel in all regions of the country during the election campaign;
- ☞ have unimpeded access to polling sites and counting centres throughout the country;
- ☞ authority to issue public statements,
- ☞ enjoy the privileges and immunities of members of OSCE missions
(decision of the 4th CSCE Council Meeting, Rome, 1993)

2. Operational Structure

The operational structure needed to implement long-term observation missions is based on three closely co-ordinated components: The ODIHR Election Unit in Warsaw; Long-Term Observers (LTO) and Short-Term Observers (STO)

The ODIHR Elections Unit

The Election Unit serves as the ODIHR focal point for election related matters. It is charged with both monitoring and supporting compliance with the election related Commitments of the Copenhagen Documents and serves as: a point of contact for information on elections; the liaison between observers and host countries; and the co-ordinating and support office for observers missions.

Long-Term Observers

In order to fulfil ODIHR's commitment to longer term election observation, a core group of long-term observers will be requested from participating States for a period of approximately two months. The work of the long-term observers will be supervised by an on site Co-ordinator. In addition to the Co-ordinator, two key positions that will be designated from among the long-term observers are the regional liaison officer and the deployment officer.

Long-term observers are responsible for observing the entire election cycle, and gaining an in-depth understanding of the political environment and the election campaign prior to voting. They will submit weekly reports based on their assessments and findings. These reports will be used to brief short-term observers and will contribute to the final election report.

Long-term observers should pay particular attention to the following aspects of the election cycle: voter identification and registration; procedures for registration of candidates and political parties; the extent and effectiveness of civic and voter education; observance by electoral participants to established codes of conduct; the effectiveness of dispute resolution procedures; political rallies and other relevant campaign activities; election administration, especially preparation for the voting and counting phases; the independence of media coverage - in specific cases, the Elections Unit will request an analysis of media issues to be conducted by a specialised agency; overall neutrality and independence of election and government authorities; and immediate post-election complaints and resolution of disputes.

The ODIHR On Site Co-ordinator

An ODIHR on site Co-ordinator is designated to co-ordinate the activities of both long-term and short-term observers, and will be operational two months prior to the election. The Co-ordinator will liaise closely with the Election Unit /Warsaw on all matters. The Co-ordinator will also consult with OSCE Embassies and with the OSCE Mission staff, if such a Mission is established in the respective country.

The Regional Liaison Officer

A Regional Liaison Officer will be designated to brief long-term observers and assist their accreditation and other necessary arrangements to facilitate their deployment to their regional posts. Maintain regular contact and visit long-term observers posted in the regions and report this information directly to the ODIHR on site Co-ordinator and brief short-term observers going out to the regions.

The Deployment Officer

The Deployment Officer will usually arrive three weeks before the election. S/he will assist the on site Co-ordinator in the development of a deployment plan in liaison with OSCE embassies, ODIHR long-term observers and other observer groups. As well as provide support for incoming international observers (accreditation, general logistical information).

Short-Term Observers

Short-Term Observers normally arrive a few days before the election, providing a broad presence throughout the country to assess the close of the campaign, election day and the vote count.

Short-Term Observers need to receive their accreditation from the relevant authority (normally the Central Election Commission) before they can undertake their observer duties. The ODIHR will provide observers with the necessary information about the accreditation process. While observers normally have to be

accredited in person, upon prior notification of arrivals, the ODIHR will forward the names in advance to facilitate the accreditation process.

Short-Term Observers (possibly with support from their respective embassies) should be self-sufficient in terms of financing and arranging their own hotel, in-country transportation, and if necessary interpreters. ODIHR will share logistical information whenever and wherever possible.

The on site Co-ordinator will organise an in-depth briefing covering: the codes of conduct and methodology of an OSCE observation; assess the pre-election period based on the long-term observation; assess the conditions for a free and independent functioning of the media and the election law and its practical implementation. Other information to be provided will include a translated copy of the national election law and relevant regulations, and general logistical information.

The Deployment Officer will assist in developing a consensual deployment plan in co-operation with other observers and local embassies. The deployment plan is intended to avoid the duplication of observer efforts, and can help to ensure that teams of observers are not covering the same territory.

A de-briefing will be organised by the ODIHR Field Representative the day following the election day. This should provide an opportunity for all observers to report their findings to the OSCE Field Representative. For those observers who logistically may not be able to return in time for the debriefing, arrangements should be made to receive reports by fax or telephone.

A post-election statement will be issued by the on site Co-ordinator within 24-36 hours after the election. The statement will reflect the collective findings of the pre-election period as reported by long-term observers and the election day findings of short-term observers.

The on site Co-ordinator will submit a short but comprehensive analytical report, including recommendations for improvements in the election process. The report will reflect the cumulative findings of both long- and short-term observers.

III. CO-ORDINATION FRAMEWORK

While ODIHR recognises the reality that different organisations may have differing mandates and observation methodologies, ODIHR does offer a framework for co-ordinating the efforts of international observers. ODIHR provides observers with a common briefing, a common methodology as outlined in the ODIHR Election Observation Handbook, a deployment plan developed in a consensual and co-operative spirit, and a forum for de-briefing and reporting.

In implementing the mandate given by the Budapest Summit, ODIHR maintains regular contact and seeks co-operation with the United Nations Electoral Assistance Unit, the European Commission, the European Parliament, the Council of Europe, the OSCE Parliamentary Assembly, the International Parliamentary Union, Parliamentarians for Global Action, International Institute for Democracy and Election Assistance (IDEA), the International Helsinki Federation for Human Rights, the International Foundation for Electoral Systems (IFES), the National Democratic Institute (NDI) and the International Republican Institute (IRI).

1. Informational Co-operation

In order to exchange information on upcoming elections and to avoid the duplication of efforts, ODIHR serves as a mechanism through which information can be exchanged and shared. ODIHR provides participating States with a rolling calendar of forthcoming elections. ODIHR notifies all participating States and relevant international organisations by note verbale upon receipt of an official invitation to send

observers. ODIHR regularly exchanges information such as constitutional and election laws, and major election issues that have been identified.

2. Operational Co-operation

On an operational level, ODIHR also exchanges information on issues such as delegation size and deployment plans, and other matters that contribute to the efficiency of the mission. ODIHR has participated in joint needs assessment missions with other organisations, and regularly consults with other organisations to share information on requirements for effective observation.

IV. MEDIA

While ODIHR does report on general conditions for free and independent media, media monitoring is in itself a specialised field, and co-operation with specialised agencies is necessary in order to have a precise and scientific analysis of the media.

The Election Unit of ODIHR is also pleased to announce that the OSCE/ODIHR Election Observation Handbook is now being printed and will be available to all observers working with OSCE/ODIHR.

NEWS FROM THE ODIHR

OSCE ROUNDTABLE ON THE INSTITUTION OF OMBUDSMAN,

11-12 March 1996

Tbilisi, Georgia

Rapporteur: Martin Alexanderson

The ODIHR and the OSCE Mission to Georgia organised jointly a roundtable on "Legal aspects of the ombudsman institution" in Tbilisi on 11-12 March. The roundtable was a follow-up to ODIHR's recent evaluation of the draft constitutional law on the Ombudsman of Georgia. Its objective was to allow the involved Georgian parties to become acquainted with the ombudsman institutions in other countries and discuss selected legal issues before the draft law is adopted.

The Georgian participants included members of the State Committee on Human Rights, the Parliamentary Committee on Human Rights, the Head of the Supreme Court, representatives of the Ministry of Justice, the Ministry of Interior Affairs and prominent Georgian scholars. The ODIHR invited four international experts to present the Ombudsman institution in their respective countries : Sweden, USA, Portugal and Russia. Key-issues raised during the roundtable concerned methods of appointment, powers and restrictions of the ombudsman's jurisdiction, his relations with other national institutions (in particular the courts) and means of establishing an efficient institution at a cost-effective level. The ombudsman law of Georgia was finally adopted on 16 May 1996, and the ombudsman is expected to be appointed soon by Parliament.

GEORGIAN CORRECTIONAL OFFICER TRAINING PROGRAM

April 17-26, 1996

Warsaw, Poland

Rapporteur: Robert M. Buergenthal

The second phase of a four part training activity for Georgian correctional officers concluded on April 26. Developed jointly by the Programme for Co-ordinated Legal Support, Warsaw University Law Professor, Dr. Monika Platek and Mirosław Nowak of the Polish Central Prison Administration, the intensive training program sought to expose Georgian officials to realistic and attainable prison reform goals through an apprenticeship programme in Polish prisons.

During the course of the activity, twelve intermediate and senior Georgian correctional officers led by the General Director of the Georgian Prison Service worked alongside their counterparts in four Polish prisons. The Georgian officials were exposed to the day to day activities of Polish prisoners in adult, youth, recidivist and a city detention centre in addition to the Polish Correctional Officers School.

Midway through the activity, Georgian officials participated in a special workshop on prison reform and management. Led by Dr. Platek, Polish prison officials, professors, students and representatives from the Ministry of Justice presented a review of successful Polish prison reform activities and the philosophy behind such initiatives. The objectives of these presentations were to illustrate that dramatic improvements in Polish prison conditions were made without new facilities or extraordinary funding sources and to encourage similar improvements in Georgian correctional facilities. To further support this program, international experts Professor Nils Christie, University of Oslo Faculty of Law; Professor Roy King, Director of the Centre for Comparative Criminology and Criminal Justice, University of Wales; and Andrew Barclay, H.M. Prison Service/Penal Reform International led a series of sessions on prison practices, effective prison management, criminal justice policy and alternatives to prison.

The use of this practical "country to country" approach was the first in an ODIHR Rule of Law Project, and was enthusiastically received by both the Georgian and Polish participants. In order to measure the impact of the project on Georgian correctional institutions as well as its potential application in forthcoming projects, the third phase of the Georgian initiative will involve follow-up visits to Georgian institutions and a locally developed training initiative supported by the Programme for Co-ordinated Legal Support.

ROUNDTABLE ON COMPARATIVE ELECTORAL SYSTEMS

April 22-23, 1996

Skopje, Macedonia

Rapporteur: Robert M. Buergenthal

At the request of the Dean of the Faculty of Law of the University of St. Cyril and Methodius University in Skopje, the ODIHR Programme for Co-ordinated Legal Support with the assistance of the OSCE Mission in Skopje and the International Foundation for Election Systems (IFES) prepared a two-day program on comparative electoral systems. The objective of the activity was to review the electoral experiences of newly independent states, to examine the legal and legislative foundations of democratic development and to examine possible future technical and legal assistance programs in the FYROM.

The program included discussions on the evolution of electoral legislation, election administration, electoral systems in Eastern Europe and citizen participation. The international experts participating in the activity included: Dr. Juliana Geran Pilon, IFES; Dr. Carlos Flores Juberias, University of Valencia; Bernard Owen, University of Paris; Paul DeGregorio, University of Missouri; and Brenda Pearson, National Democratic Institute for International Affairs.

CONFLICT IN TRANS-CAUCASUS AND THE ROLE OF MASS MEDIA

22-25 April 1996

Kobuleti, Georgia

Rapporteur: Paulina Merino

On 22-25 April 1996 in Kobuleti, Georgia a Conference on Conflict In Trans-Caucasus and The Role Of Mass Media took place. The conference was organised by OSCE ODIHR, OSCE Mission In Georgia, Council of Europe and the Black See Press Agency from Tbilisi. The participants represented media professionals from the Trans-Caucasus region and also governmental institutions responsible for creating mass media policies. The aim of the conferences was to develop awareness of and working recommendations for the journalists working in the conflict regions on the role that media can play in preventing and resolving conflicts. Another goal of these conferences is to give the journalists across the conflict borders an opportunity to meet, discuss common problems and establish personal contacts, promoting the exchange of information among the sides of the conflicts.

The Conference in Kobuleti achieved its goals. As noted by the participants, the most important results of it were firstly, the possibility of re-establishment of contacts and channel for future communications among them and secondly, the conclusions they came to about the role, responsibilities and ethics of the journalistic work, and its influence on the peace-building process in their countries. The conference was a challenging experience. The magnitude of sensitivities constantly coming up, required careful negotiations which were conducted by the organisers. At the same time however, it provided a good working experience for the participants to learn, during the negotiations processes, to overcome long-existing communication difficulties, animosities and prejudices.

**EXCERPTS FROM THE FINAL DOCUMENT
ADOPTED BY THE PARTICIPANTS OF THE CONFERENCE**

[...] The participants express satisfaction with the proceedings of the Conference which confirmed their adherence to the principles of the universality of human rights, freedom of speech, and objectiveness of information. [...]

The participants call upon all journalists reporting on the conflicts in Trans-Caucasus:

- To refrain from publishing materials based on unconfirmed data, which may lead in the end, to regarding whole nations as the personification of the image of the enemy;
- To refrain from approving cruelty and terror, no matter what seems have been proclaimed by the persons resorting them;
- To inform the broad public fully and in due time about the documents regulating the legal situation in conflict-ridden areas;
- To refuse using, in the material devoted to conflicts, propaganda clichés and mutual references to ethnic or confessional “inferiorities”;
- To refrain from using provocative or insulting language;
- To assist in the search of models of conflict settlement aiming to guarantee stable peace and eliminate the possibility of renewed militia actions; and also to support all efforts aimed at sustaining stability in the Region.

[...]

The conference condemns all cases of political censorship preventing the press from taking up important subjects and discussing important events. Or denying reporters access to the scene of action.

The conference calls upon the conflicting parties to broaden the scope for negotiated problems and address such issues as the necessity to overcome informational alienation and to stimulate information exchange.

[...]

The participants appeal to the conflicting parties and mediators in negotiations to assist in the execution of the agreements achieved by the Conference and to contribute to the convocation of further meeting of this kind.

**FACT-FINDING MISSION TO BOSNIA-HERZEGOVINA
ON THE SITUATION OF THE ROMA/GYPSIES
15-21 May 1996
Bosnia-Herzegovina
*Rapporteur: Jacek Paliszewski***

A fact-finding mission organised by the Council of Europe, on the situation of the Roma/Gypsies in Bosnia-Herzegovina took place from 15 to 21 May 1996. The mission was organised in accordance with the decision taken by the Committee of Ministers of the Council of Europe. The team was composed of the President of the Specialist Group on Roma/Gypsies, the Co-President of the latter Group, one representative of an association of Roma/Gypsy refugees from Bosnia-Herzegovina (based in Germany), the Co-ordinator of the Contact Point on Roma and Sinti Issues of the OSCE/ODIHR and of two members of the Secretariat.

On the basis of information provided by non-governmental organisations and refugees organisations, the team decided to visit the areas which had large Roma/Gypsy communities before the war. It travelled to Sarajevo, Tuzla, Bjeljina and Banja-Luka, in order to meet with Roma/Gypsy people, governmental and local authorities, international agencies acting in the field (UNHCR, OSCE, UN Human Rights Centre) and other organisations.

As a result of enquiries made, the group formulated its opinion that it is not yet time to return any refugees and displaced persons from third countries to Bosnia-Herzegovina., and that no return should be planned in areas where the returnees would not belong to the majority population. This is especially the case in the Republic Sprska where the team felt no security of the returnees would be ensured, because of the instability of the political situation and the still dominating atmosphere of ethnic cleansing.

Roma returning to the Federation would raise less interethnic problems but it is also not advisable - in view of the massive destruction's, the huge amount of internally displaced persons whose fate is not yet secure and the lack of plans and preparation to make the resettlement of the displaced persons and refugees operational. It could create additional problems in places already overwhelmed with internally displaced persons and could lead to further instability and tensions, in particular in attractive places such as Sarajevo and Tuzla where a relatively multicultural atmosphere still prevails. It appeared also that neither the local authorities nor the Ministry for Refugees are prepared to face the enormous problems resulting from the inflows of internally displaced persons, such as re-housing, setting up of basic infrastructures, job creation, return of properties and goods, etc.

The group recommended that both entities of the Republic recognise Roma as a national minority along the lines of the Council of Europe Framework Convention on the Protection of National Minorities. This would provide some guarantees compensating for the lack of protection by one of the three main communities. In addition it would support the recognition of their basic rights and foster self-organisation and self-confidence of the Romany community.

THE CIS MIGRATION CONFERENCE: A PROCESS TO ENHANCE STABILITY AND STRENGTHEN COMMITMENT TO DEMOCRACY IN THE OSCE REGION

Rapporteur: Vladimir Shkolnikov

The magnitudes of population movements in the OSCE region have risen dramatically in the recent years and have reached their post-Second World War peak. In the former Soviet Union alone, the number of persons who changed their place of residence is approximately 9 million, according to a recent United Nations study.¹³ As shown in the Table 1, these include not only displaced persons fleeing armed conflicts in various parts of the former Soviet Union. Indeed, the array of movements is bewildering - they range from persons leaving ecologically unsafe areas such as the Chernobyl zone; persons belonging to the groups which in the 1940s were *en masse* forced to leave their places of habitual residence for alleged but unproven crimes against the Soviet regime and until recently prevented from returning - to those who after the break-up of the Soviet Union found themselves outside a country they consider their homeland and are now returning there. In addition, there is a problem of persons who have entered the former Soviet republics illegally, in hope to find their way further westward.

Set against the backdrop of the process of nation-building in new states, scarce economic resources, ecological degradation, and nascent institutions, population movements present a serious challenge to the States belonging to the Commonwealth of Independent State (CIS). Because of the perception that migrants pose strain on resources and because of inadequate institutions that can facilitate the integration of migrants, there is significant risk of violations of human rights of migrants and conflicts between them and the local population. Because the flows are so massive while the resources are so scarce, there is also a potential for serious disputes between sending and receiving states on how the burden for accommodating migrants should be shared between these states. This is why at the 1994 Budapest Summit, the OSCE participating States made a decision to support the preparation of Regional Conference to Address the Problems of Refugees, Displaced Persons, Other Forms of Involuntary Displacement and Returnees in the Countries of the Commonwealth of Independent States and Relevant Neighbouring States which the United Nations General Assembly called upon the United Nations High Commissioner for Refugees (UNHCR) to organise. The Conference is scheduled for Geneva, May 30-31. According to the Budapest decision, the position on of a migration expert was established at ODIHR, to support the Geneva-based Conference Secretariat, on which, in addition to UNHCR, the International Organisation for Migration (IOM) is represented.

One of the successes of the preparatory process were two rounds of sub-regional meetings (for Central Asia; Trans-Caucasus, and the group consisting of Belarus, Moldova, the Russian Federation and Ukraine) which took place in late 1995 and early 1996. During these meetings the participants were able to present their views on problems they face and discuss possible approaches to their solutions. The preparatory process produced a shared understanding of issues and fostered co-operation among CIS countries. Since January 1996, the participants in the preparatory process (which included 48 states and 23 international organisations) convened four times for meetings of the Drafting Committee to produce the Programme of Action (the final document of the Conference). The non-binding Programme of Action reiterates the CIS States commitment to democracy, rule of law, and human

¹³ Open Media Research Institute, Daily Digest, No. 88, 6 May 1996.

rights and builds upon CSCE/OSCE commitments.¹⁴ It also includes Chapters on Institutional Framework (which includes sections on Policy, Legislation, and Administration), on Operational Framework, and on Co-operation. The most significant OSCE contribution is in the Chapter on Prevention, where the CIS states strengthen their commitment to using OSCE mechanisms and instruments in the fields of early warning, conflict prevention and conflict resolution. The participants also worked out a set of working definitions to systematise the types of flows currently observed in the region.

Although the CIS Conference was an intergovernmental process, the views and ideas of the non-governmental organisations and other independent actors were taken into account. The Secretariat of the Conference held four meetings with NGOs (in Washington, Tbilisi, Moscow, and Geneva) and two meetings with representatives of the academic community (in Washington in Paris) to discuss the Conference process. In addition, NGOs were invited to submit their comments on drafts of the Programme of Action. Many of these comments found reflection in the final version of the Programme of Action.

Regional conferences on migration and refugee matters have taken place in other parts of the world. Examples of such endeavours are the Comprehensive Plan of Action (CPA) for Indo-Chinese Refugees and the International Conference on Central American Refugees (CIREFCA) that took place in the 1980s. The difference between those Conferences and the CIS Migration Conference is that the former took place in response to large-scale humanitarian crises that already occurred, while the latter places strong emphasis on prevention for situations that could lead to involuntary population displacements. Because of prevention is one of the objectives of the CIS Conference process, the OSCE engagement in the process was critical. In the future OSCE can still play an important part in early warning and prevention. And, because the process of the implementation of the Programme of Action is about to begin and political support for the process is still crucial, OSCE will need to be engaged in the follow-up to the Conference.

TABLE 1
TEN LARGEST POPULATION SHIFTS WITHIN AND
FROM THE FORMER SOVIET UNION SINCE 1989

Direction	Number
Nagorno-Karabakh to Azerbaijan	684,000
Kazakhstan to the Russian Federation	614,000
Displaced inside of Tajikistan	600,000
Chechnya to the Russian Federation	487,000
Kazakhstan to Germany	480,000
Uzbekistan to the Russian Federation	400,000
Tajikistan to the Russian Federation	300,000
Azerbaijan to Armenia	299,000
Kyrgyzstan to the Russian Federation	296,000
Abkhazia to Georgia	273,000

¹⁴For example, Principle 10(a) of the CIS Conference Programme of Action states that "The implementation of commitments related to the rule of law; democracy and human rights are of legitimate and common concern to all States." An explicit commitment to democracy reinforces and strengthens the commitments of the CSCE Helsinki Document of 1992.

HIGH COMMISSIONER ON NATIONAL MINORITIES

Since late February 1996, the OSCE High Commissioner on national Minorities Mr. Max van der Stoel, has paid visits to Kazakhstan, Former Yugoslav Republic of Macedonia, Ukraine, Kyrgyzstan, Estonia, Russia, Latvia, Hungary and Slovakia

Kazakhstan

On 27 February - 1 March, the High Commissioner visited Almaty to attend a seminar entitled "Building Harmonious Inter-Ethnic Relations in the Newly Independent States - instance of Kazakhstan". The two-day seminar, which was opened by Deputy Prime Minister of Kazakhstan, Mr N. Shajkenov, was jointly organised by the High Commissioner on national Minorities, Foundation on Inter-Ethnic Relations, Administration of the President and the Ministry of Foreign Affairs of Kazakhstan.

The seminar brought together senior governmental officials, parliamentarians, minority leaders and NGO representatives from Kazakhstan. Minority education, language policy and mechanisms for dialogue between the Government and minorities were among the main topics of discussion.

The High Commissioner had meetings with President Nazarbayev, Deputy Prime Minister Shajkenov, Minister of Foreign Affairs K. Tokaev, minister of Justice K. Kolpackov, Deputy Head of the Administration of the President Mr M. Tazhin and the leadership of the Kazakhstani Parliament. The main subjects of discussion were the current state of inter-ethnic relations as well as future co-operation between the Office of the High Commissioner and the Government of Kazakhstan.

The High Commissioner returned to Almaty during a brief stop-over on 5 April. He used the opportunity to meet again with Mr Shajkenov, Mr Tazhin, and also with Chairman of the State Committee on nationalities Affairs Mr G. Kim. Among topics discussed were certain aspects of co-operation between the High Commissioner's office and Kazakhstani Government as well as possible assistance to the State' Committee on Nationalities Affairs.

Ukraine

From 14-17 March the High Commissioner convened a Round Table in Noordwijk (The Netherlands) to discuss a number of problems concerning the Autonomous Republic of Crimea. The Round Table, which was organised in collaboration with the OSCE Mission in Kyiv, was attended by senior officials of the Administration of the President of Ukraine, the Government of Ukraine and the Government of the Autonomous Republic of Crimea, MPs from the Supreme Rada (Parliament) of Ukraine and the Supreme Soviet (Parliament_ of the Autonomous Republic of Crimea.

A number of political, economic and legal problems, still dividing the central authorities in Kyiv and the Parliament of the Autonomous Republic of Crimea, were discussed. The debates took place in a positive atmosphere and contributed to the emergence and elaboration of some new concrete approaches which could speed up the process of finding satisfactory solutions for a number of remaining differences between the central authorities in Kyiv and the Parliament of the Autonomous Republic of Crimea (ARC).

On 2 April the High Commissioner took part in the UNDP sponsored Donor Conference in Geneva on the deported peoples of Crimea. He made a plea to the participants for substantial contributions aimed at assisting the Ukrainian Government in meeting the needs of the Crimean Tatars and other returning

peoples. In Geneva the High Commissioner met Deputy Prime Minister of Ukraine V. Durdinets and Prime Minister of the Autonomous Republic of Crimea Arkady Demidenko.

On 3 and 4 April 1996 the High Commissioner visited Kiyv. The aim of the visit was to discuss some aspects of the high Commissioner's recommendations on the partial approval of the Crimean Constitution with Ukrainian officials. The High Commissioner had meetings with Speaker of the Ukrainian Parliament O. Moroz, Minister of Foreign Affairs H. Udovenko, Minister of Justice S. Holovaty, Presidential Representative for Crimea D. Stepanyk and Deputy Speaker of the Parliament of the ARC A. Danelyan.

FORMER YUGOSLAV REPUBLIC OF MACEDONIA

The High Commissioner visited the Former Yugoslav Republic of Macedonia on 25-27 March. He had meetings with President Gligorov, Prime Minister Craenkovski, Foreign Minister Frckovski, Education Minister Mrs Todorova and Interior Minister Cokrevski. He also met with the Speaker of the Parliament, Mr. Petrovski, and the Presidents of the Albanian parties, Mr. Haliti of the PDP (Party for Democratic Prosperity), Mr. Xhaferi of the PDP-PAM (PDP - Party of Albanians in Macedonia) and Mr. Halimi of the NDP (People's Democratic Party). The main topic of the discussions concerned interethnic relations.

KYRGYZSTAN

On 5-9 April the High Commissioner visited Kyrgyzstan. The chief objective of the visit was to study the interethnic situation in Southern Kyrgyzstan. To this end the High Commissioner travelled extensively to Osh and Djalal-Abad regions of Kyrgyzstan and had numerous meetings with local officials and NGO representatives. Among his interlocutors were Deputy Governor of Osh Region Mr R. Joldoshev, Chairman of the Uzbek Cultural Centre and MP Mr D. Sabirov, Rector of the Uzbek-Kyrgyz Higher College in Osh Mr Beshimov, Governor of the Djalal-Abad Region Mr K. Bakiev. The High Commissioner also met with representatives of the Uzbek, Uigur, Slavic (Russian-speaking), Turkish, Tadjik and German National Culture Centres in the two regions.

On 9 April the High Commissioner also visited the capital of Kyrgyzstan, Bishkek, to share his impressions with government officials and to discuss future co-operation and assistance in the Assembly of the People of Kyrgyzstan. He met State Secretary Mr Ishenbay Abolurazakov, Deputy Prime Minister M. Djangaracheva, Deputy Minister of Foreign Affairs T. Chinotov, and Chairman of the Assembly of People of Kyrgyzstan S. Begaliev.

ESTONIA

On 7-9 May the High Commissioner visited Tallinn where he had meetings with President Lennart Meri, Foreign Minister Siim Kallas, Vice President of the Riigikogu (parliament) Tunne Kelam and other officials. The aim of his visit was to discuss further developments regarding the naturalisation process for citizenship in Estonia, the language requirements set for non-Estonians as part of this process, and the kind of help other states can provide for Estonian language education.

Among other issues discussed was the decision by President Meri in the early part of May to send back to parliament for reconsideration the new Law on Local Elections. The law set out, inter alia, requirements for citizens intending to stand as candidates in the local elections in October this year.

RUSSIA

On 12-15 May the High Commissioner paid a visit to Moscow and held a series of meetings with senior officials in the Ministry of Foreign Affairs, Federation Council and State Duma, and with a number of Russian specialists on ethnic and minority issues. The main objective of the visit was to gain a better understanding of Russia's views and policies regarding states which have Russian minorities.

At the Foreign Ministry the High Commissioner had talks with First Deputy Foreign Minister Igor Ivanov, and also with Deputy Foreign Minister Nikolaj Afanasievskiy, which focused on current Russian concerns on these issues. The high Commissioner also met with the Minister of Nationalities, Mr Vyacheslav Mikhailov.

LATVIA

The High Commissioner took part in a seminar on 16 May in Riga aimed at promoting government-minority dialogue. The seminar, addressed by both Latvian President Guntis Ulmanis and the High Commissioner, was organised under the auspices of the Latvian Centre for Human Rights and Ethnic Studies with the support of the Hague-based Foundation on Inter-Ethnic Relations as well as the Soros Foundation in Latvia. Participants included senior government officials, representatives from NGOs specialising in minority affairs, and other prominent researchers.

HUNGARY

Accompanied by a team of experts, the HIGH commissioner visited Budapest on 20-22 May with the aim of studying further the situation of the Slovak minority in Hungary. This was the 6th visit by the team of experts to Hungary. He had talks with Prime Minister Gyula Horn, Foreign Minister Laszlo Kovacs, and with State Secretary Csaba Tabajdi.

Other meetings included discussions with the Minority Ombudsman, with officials at the Office for National and Ethnic Minorities, representatives of various Slovak organisations, and regional and national representatives, as well as with local Slovak headmasters and teachers.

Topics of discussion focused on the rights of minorities, the system of their participation in the national parliament, education issues and provisions for minority languages.

SLOVAKIA

On 22-24 May the High Commissioner with his experts travelled on to Slovakia to study the situation of the Hungarian minority living in Slovakia. In Bratislava the High Commissioner met with President Michal Kovac, Prime Minister Vladimir Meciar, and Foreign Minister Juraj Schenk.

Together with the team of experts the High Commissioner met with Deputy Prime Minister Mrs K. Tothova, Deputy Prime Minister J. Kalman, Minister of Education Mrs E. Slavkovska, Minister of Culture I. Hudec, State Secretary of the Ministry of Foreign Affairs J. Sestak and State Secretary at the Ministry of the Interior P. Kacic. Meetings also took place with representatives of various political parties, including Hungarian parties, and representatives of cultural organisations. The High Commissioner and experts also travelled to Komarn, Kolarovo and Samorin. Discussion focused on education, the government's cultural policy towards minorities, administrative and territorial reform and the implementation of the state language Act.

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, Rytirska 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 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 may be obtained, free of charge, by writing to The Foundation on Inter-Ethnic Relations, Prinsessegracht 22, 2514 AP The Hague, the Netherlands.