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Introductory Presentation

Session I – The Role of Legislative, Regulatory and Institutional Frameworks as well as Governments and Civil Society in the Promotion and Protection of Human Rights

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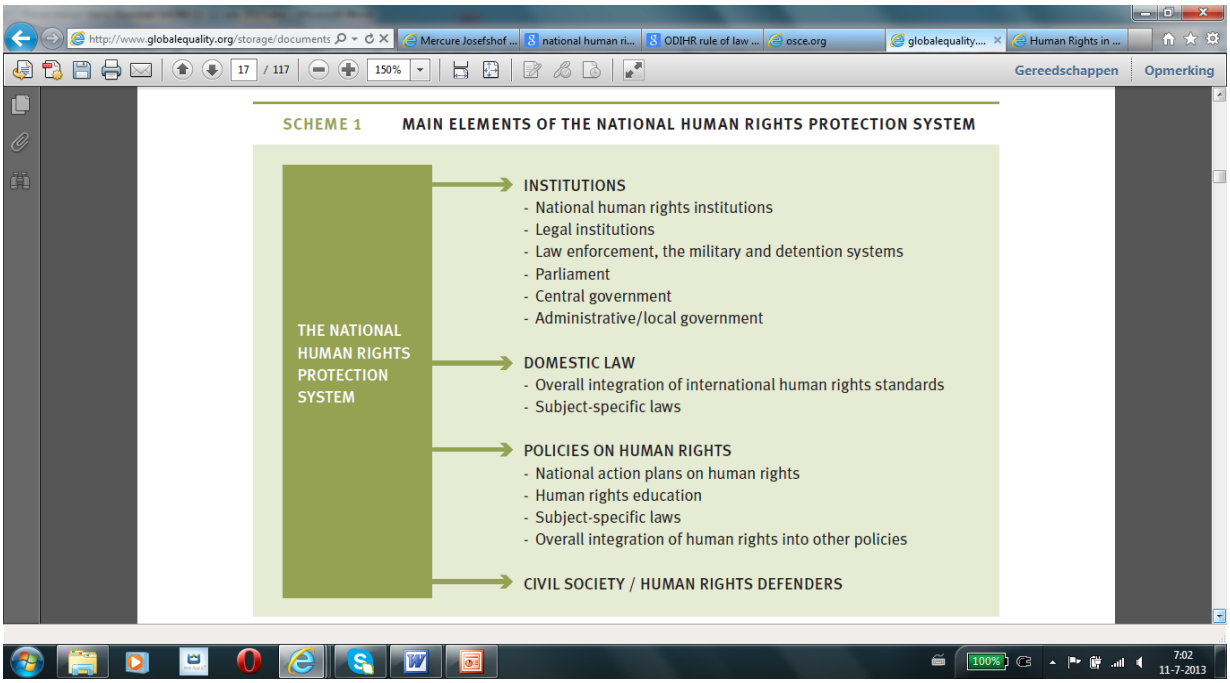
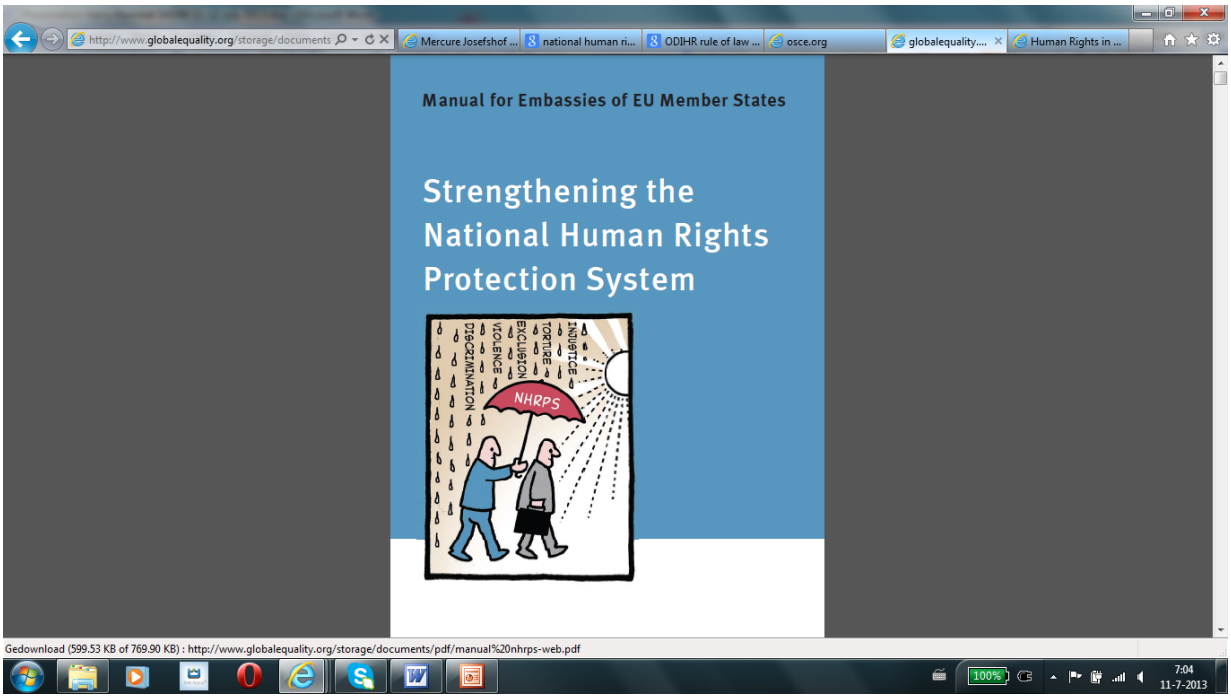
Your excellencies, dear delegates, dear colleagues,

The title of this session reminded me of the concept of National Human Rights Protection Systems that is used by the United Nations. A National Human Rights Protection System is defined as "the sum of a state's laws, policies and institutions that promote and protect human rights". it is the overall human rights infrastructure. Every country has a distinct National Human Rights Protection System embedded in a broader cultural, political and historic context. Yet certain universal elements can be defined in all National Human Rights Protection Systems.



The scheme in the picture comes from a handbook on National Human Rights Protection Systems that was prepared several years ago in cooperation between the Netherlands Ministry of Foreign Affairs and the Czech presidency of the European Union. It can be found online (in several places, e.g. at http://www.globalequality.org/storage/documents/pdf/manual%20nhrps-web.pdf), I can highly recommend it. (Actually a couple of the elements of the protection system that the document deals with, are just at the moment under development in the Netherlands, so also there we could still learn from what is in the handbook.)



I want to briefly touch now on some of the elements of the National Human Rights Protection System. First, the integration of international human rights standards in domestic law.

Integration of international human rights standards in domestic law

The most commonly used definition of 'rule of law', which I also found in ODIHR's factsheet on the subject, says that the rule of law is about enforcement of laws "that are consistent with international norms and standards". So for the rule of law to exist, international human rights law must be implemented at the national level. Most of the OSCE participating states are party to the European Convention on Human Rights and all of them to at least some of the UN human rights treaties.

In many jurisdictions, international treaties are not self-executing. That means they cannot be applied directly by judges in the national court. The judges can

only apply national legislation. This is not per se problematic as long as the national legislation has been brought fully in line international norms and standards. And as long as any new legislation is carefully monitored for being in line with human rights requirements. International treaties cannot just be signed without consequences for national legislation and national legal practice. I want to submit that these processes in many states need further development. ODIHR as well as the Venice Commission of the Council of Europe play an extremely useful role here, which can and should be enhanced.

Almost all OSCE participating States are member of international mechanisms that allow submitting individual complaints about human rights abuse. Either through the European Convention on Human Rights, with the Court in Strassbourg, or through the Optional Protocol to the UN Covenant on Civil and Political Rights, with the Human Rights Committee. This means that all these states get feedback from the international level on specific issues in which there are individuals who feel their rights have been violated. When the feedback concludes that a violation has taken place, this does need to be taken most seriously. When we look at the implementation of verdicts of the European Court of Human Rights, usually a number of steps with respect to the individual whose rights have been violated, are taken up by the State that has been convicted. However, more often than not a verdict also requires structural steps, the development of new legislation or a changes of policies and practices. This does not operate so fluidly in most situations.

The Open Society Justice Initiative, which has produced several reports about this subject[1], speaks about an "implementation crisis" afflicting the regional and international legal bodies charged with protecting human rights. Infrastructure and procedures for dealing with the follow-up of Court decisions are underdeveloped in many States. Academic research[2] has shown that this follow-up process works better when not just the ministry of Foreign Affairs in involved in dealing with the Strassbourg court processes but a wider set of state bodies, in particular the ministry of Justice. This is an issue of management capacity and attention. In other cases, it is primarily political will that is lacking for policy changes arising out of Court verdicts.

[1] http://www.opensocietyfoundations.org/voices/making-rights-real-challenge-implementing-human-rights-decisions

[2] www.juristras.eliamep.gr

This is where civil society comes in. I am now shifting to my second point, the role of human rights civil society groups.

The role of civil society human rights groups

My organization, the Netherlands Helsinki Committee, has done a large amount of work together with partner organizations on training and accompanying lawyers and legal aid NGOs in using the European Human Rights Convention and bringing cases before the Strassbourg court. Increasingly however we have come to realize that the struggle for justice does not end with a Court finding that a violation has taken place. As the Director of the European Roma Rights Center wrote some years ago, talking about some of the verdicts on Roma discrimination in Central Europe: "… the morning after a European Court judgment is the time when the real work of the human rights defender begins. Years of effort are required to make sure that the judgment sticks."[3] Civil society needs to form coalitions to stimulate state compliance not just with the letter but also with the spirit of Court verdicts. Political will needs to be generated if it is not there.

This means engagement with government, civil servants, parliamentarians and the media. It is influencing government policy, it is a 'political' activity if you want to use that term. But it is needed because State bodies and institutions often do not automatically take the steps necessary for compliance with international human rights standards and mechanisms. They need to be pushed. Such is the reality. States should therefore refrain from intimidatory policies towards groups of citizens working to promote implementation of human rights standards.

I have one more example of how civil society can positively influence human rights practice. This is again from work of my own organization, in this case work with NGOs in a number of countries working with victims of human trafficking. The primary goal of these NGOs was and continues to be humanitarian assistance to the victims. At the same time, the victims are involved as witnesses in the legal prosecution of the perpetrators of trafficking. This is primarily a law enforcement and criminal justice procedure in which the aim is to prove the case against the traffickers. The position of the victims

[3] http://www.errc.org/roma-rights-journal/roma-rights-1-2010-implementation-of-judgments/3613

requires special attention. With our partner NGOs we have worked to train lawyers on the rights of victims, and what we have seen is that their interventions make judges realize that special protection is needed for victims if they have to testify in trafficking cases. And that possibly they are entitled to financial compensation.

So in this case lawyers played the role of stimulating judges to improve certain aspects of a criminal justice procedure[4].

I want to move to one more element of the National Human Rights Protection System, law enforcement.

Law enforcement policies

Even if police activity does not lead to detention or to a criminal procedure but is limited to stopping, searching and may be interrogating, if it is disproportionately affecting certain sectors of society it still impacts the trust in the law enforcement system and more broadly in the rule of law among these sectors. Ethnic profiling by the police has been documented in a number of countries in the OSCE region[5], including by the UN Special Rapporteur on Racism.

An other persistent phenomenon in a range of countries is torture and ill-treatment in police detention, often in situations in which the police want to extract information or a confession. It is important that the work of the police be focused on obtaining other types of evidence rather than only a confession. This should be an underlying principle in police training and procedures. It also means that funding should be made available for investigative techniques. Once allegations of torture are made during the trial, obviously the judge should mandate independent investigation into the allegations and declare inaccessible the information or 'confession' presented.

A fundamental adaptation of police thinking and working on solving crime seems to be what is called for. Inspection systems such as mandated under the European Convention against Torture, and National Preventive Mechanism inspections are highly important but in my opinion are insufficient.

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[4] In one of the countries, a Manual for Lawyers'work for Victims of Trafficking has been produced, http://www.astra.org.rs/eng/?page_id=58

[5] See http://www.opensocietyfoundations.org/voices/policing-trial-europe-grapples-ethnic-profiling for a number of references

The temptation to engage in torture and ill-treatment in counter-insurgency and counter-terrorism operations has always been great I think, and continues to be a concern to human rights advocates. Allowing or even mandating torture is a fundamental denial of human rights. If those who are tortured have actually committed a crime, it makes a proper and credible trial impossible and in that way further undermines the rule of law. International human rights law is very clear about the importance, indeed the requirement, of legal prosecution of people who have engaged in or are responsible for torture. Even if this entails the prosecution of foreign visitors who walk free in their own country.

This is what civil society organizations are calling for if States themselves are failing to comply with what is required under international anti-torture law.

So I am back to the role of civil society. I said before that States should refrain from intimidatory policies towards groups of citizens working to promote implementation of human rights standards.

Extreme forms of intimidation of human rights defenders do indeed exist in some OSCE participating States, including by multi-year imprisonment. So my final recommendation is to immediately and unconditionally release anyone imprisoned in connection with legitimate human rights activity, such as Azimjan Askarov from Kyrgyzstan, and Ales Bialiatski from Belarus.