



**Intervention before the Organization for Security and Cooperation in Europe (OSCE)
Participating States and Office of Democratic Institutions and Human Rights (ODIHR)
At the Human Dimension Implementation Meeting (HDIM), Warsaw, Poland
Working Session 10: Fundamental Freedoms I
September 17, 2018**

Why is ODIHR defending perhaps the greatest threat to Fundamental Freedoms in the OSCE region, the totalitarian Islamic doctrine of Sharia?

The European Court of Human Rights has ruled “the institution of Sharia law [is] incompatible with the requirements of a democratic society.”¹

Yet last year at this meeting, the moderator first reminded and then required virtually every individual who spoke against Sharia’s threat to Fundamental Freedoms to practice tolerance and non-discrimination toward this most intolerant and discriminatory of all legal systems.

At the end of last year’s meeting, referring to civil society’ warnings about Sharia,² Director Ingibjörg Sólrún Gísladóttir said we had that “discourse...does not belong anywhere.”³

Going further, before a July meeting, ODIHR without consensus⁴ created a new power: The moderator could “interrupt any speech” that “attacks” anyone⁵ – regardless of the fact that for 1,400 years, no doctrine has generated more attacks, on Fundamental Freedoms or on human life itself, than Sharia.

This time the U.S. delegation stepped up, saying that:

1. You can’t simply insert new rules outside the consensus process
2. This rule violates guidelines about civil society participation; and
3. Civil society doesn’t have to follow Participating States’ commitments – because they’re not Participating States.

A group of Parliamentary Assembly Members went further, writing:

¹ European Court of Human Rights, “JUDGMENT IN THE CASE OF REFAH PARTISI (THE WELFARE PARTY) ERBAKAN, KAZAN AND TEKDAL v. TURKEY,” Press release issued by the Registrar, July 31, 2007, available at <http://www.webcitation.org/query?url=http://web.archive.org/web/20010811161803/http://www.echr.coe.int/Eng/Press/2001/July/RefahPartisi2001jude.htm&date=2013-09-14>, retrieved on September 16, 2018.

² Based upon a direct conversation with the Director.

³ See “2017 HDIM: Working Session 8,” The Organization for Security and Co-operation in Europe (OSCE), published on Sep 20, 2017, available at <https://www.youtube.com/watch?v=fPGc4CRTGp0&feature=youtu.be&t=66>, retrieved August 3, 2018.

⁴ OSCE, Supplementary Human Dimension Meeting, Countering Violence against Women – Everyone’s Responsibility, 2 – 3 July 2018, Hofburg, Vienna, available at <https://www.osce.org/odihr/384282?download=true>, retrieved August 3, 2018.

⁵ OSCE, Supplementary Human Dimension Meeting, Countering Violence against Women – Everyone’s Responsibility, 2 – 3 July 2018, Hofburg, Vienna, available at <https://www.osce.org/odihr/384282?download=true>, retrieved August 3, 2018.

[E]ither...permit free and open debate...on immigration, Jihad, and Sharia, or admit...your...misguided policy preferences prevent you from carrying out [your] mission...- **and resign.**⁶

Secure Freedom recommends:

1. That OSCE allow those concerned about Sharia “to participate in the discussion of the selected topics and to provide their suggestions and recommendations;”⁷
2. The OSCE Ministerial require ODIHR to allow freedom of thought, belief, conscience, and expression, especially with respect to concerns about Sharia, which is incompatible with democratic institutions, as the European Court of Human Rights has ruled; and
3. That ODIHR staff think seriously about whether they can in good faith continue to sacrifice Fundamental Freedoms of those critiquing Sharia on the altar of Sharia itself.

⁶ See Center for Security Policy, “LETTER RELEASE: OSCE Parliamentary Assembly members denounce speech-restricting policy,” September 10, 2018, available <https://www.centerforsecuritypolicy.org/2018/09/10/letter-release-osce-parliamentary-assembly-members-denounce-speech-restricting-policy/>, retrieved on September .

⁷ Modalities for OSCE Meetings on Human Dimension Issues, 23 May 2002 (OSCE PC Dec.476, Section I paragraph 9), available at <https://www.osce.org/pc/13198?download=true>, retrieved August 28, 2018.



**Recommendations to the Organization for Security and Cooperation in Europe (OSCE)
Participating States and Office of Democratic Institutions and Human Rights (ODIHR)
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Working Sessions 10 and 11: Fundamental Freedoms I and II
September 17, 2018**

Pursuant to PC.DEC/476 23 May 2002, Annex I, Paragraph 5,¹ below please find the recommendations of Secure Freedom, a civil society organization engaged in the human dimension in the United States of America, with respect to Fundamental Freedoms, including *inter alia* freedom of expression, thought, belief, conscience, and political opinion.

I. Background: ODIHR Makes Multiple Attempts to Violate Freedom of Expression

On behalf of the 28 civil society representatives from 14 countries who signed a letter of concern to ODIHR Director Ingibjörg Sólrún Gísladóttir over repeated attempts to shut down fundamental freedoms including freedom of expression within the OSCE context,² and recalling the letter from Members of Parliament expressing a similar concern,³ Secure Freedom now welcomes and reinforces the Opening Statement by the United States, objecting “to certain provisions of the Code of Conduct promulgated by ODIHR [that] amount to content-based restrictions on the participation of civil society.”⁴

It is shameful that an organization founded to safeguard fundamental freedoms, which has human rights in its very name, should resort to censorship as ODIHR has.

As described multiple times in the past, the facts are these.

During the 2017 HDIM, the ODIHR moderator first reminded, then required, virtually every civil society intervenor who expressed concerns over Europe’s inadequately vetted immigration and continued illegal

¹ Organization for Security and Cooperation in Europe, “DECISION No. 476 MODALITIES FOR OSCE MEETINGS ON HUMAN DIMENSION ISSUES,” 395th Plenary Meeting, PC Journal No. 395, Agenda item 4, available at <https://www.osce.org/pc/13198?download=true>, retrieved on September 16, 2018.

² See Center for Security Policy, “LETTER RELEASE: Organizations express concerns about OSCE’s attempts to shut down free speech,” September 6, 2018, available at <https://www.centerforsecuritypolicy.org/2018/09/06/letter-release-organizations-express-concerns-about-osces-attempts-to-shut-down-free-speech/>, retrieved on September 16, 2018.

³ See Center for Security Policy, “LETTER RELEASE: OSCE Parliamentary Assembly members denounce speech-restricting policy,” September 10, 2018, available <https://www.centerforsecuritypolicy.org/2018/09/10/letter-release-osce-parliamentary-assembly-members-denounce-speech-restricting-policy/>, retrieved on September .

⁴ See United States Mission to the OSCE, “Opening Statement As prepared for delivery by Ambassador Michael Kozak, Head of Delegation to the 2018 Human Dimension Implementation Meeting, Warsaw,” September 10, 2018, <https://www.osce.org/odihr/393305?download=true>, retrieved September 16, 2018.

presence of those who subscribe to the totalitarian Islamic doctrine of Sharia, to abide by OSCE commitments with respect to tolerance and diversity.⁵

II. European Court of Human Rights Held Sharia was Incompatible with Democratic Society

ODIHR did this in spite of the decision of the European Court of Human Rights (ECtHR) on July 31, 2001, that “the institution of Sharia law and a theocratic regime, were incompatible with the requirements of a democratic society.”⁶

The Court held that the sanctions imposed on the applicants could reasonably be considered to meet a pressing social need for the protection of democratic society, since, “on the pretext of giving a different meaning to the principle of secularism, the leaders of the Refah Partisi had declared their intention to establish a plurality of legal systems based on differences in religious belief, to institute Islamic law (the Sharia), a system of law that was in marked contrast to the values embodied in the Convention.”¹¹

The ban was upheld by the ECtHR on February 13, 2003. Noting that the Welfare Party had pledged to set up a regime based on the Shari'ah, the Court found that, “a sharia-based regime was incompatible with the Convention, in particular, as regards the rules of criminal law and procedure, the place given to women in the legal order and its interference in all spheres of private and public life in accordance with religious precepts.”¹² It considered that “sharia, which faithfully reflects the dogmas and divine rules laid down by religion, is stable and invariable.”¹³

III. ODIHR, Not Civil Society, Must Conform to OSCE Commitments

Regardless of the merits, Secure Freedom challenges ODIHR staff to produce a single joint statement by Participating States that stipulates civil society must conform to Participating States’ commitments.

Ironically, it is *ODIHR staff*, not civil society, that must adhere to OSCE Participating States’ commitments.

The OSCE Code of Conduct for Staff/Mission Members, which is agreed upon by Participating States and not simply an ODIHR fabrication, states that OSCE Staff and Mission Members “shall comply with the...commitments of the OSCE.”⁷

⁵ See Christopher C. Hull, “European Confab Pushes Censorship, Shelters Sharia,” *Breitbart*, September 29, 2017, available at <https://www.breitbart.com/national-security/2017/09/29/hull-european-confab-pushes-censorship-shelters-sharia/>, retrieved September 16, 2018.

⁶ European Court of Human Rights, “JUDGMENT IN THE CASE OF REFAH PARTISI (THE WELFARE PARTY) ERBAKAN, KAZAN AND TEKDAL v. TURKEY,” Press release issued by the Registrar, July 31, 2007, available at <http://www.webcitation.org/query?url=http://web.archive.org/web/20010811161803/http://www.echr.coe.int/Eng/Press/2001/July/RefahPartisi2001jude.htm&date=2013-09-14>, retrieved on September 16, 2018.

⁷ “OSCE CODE OF CONDUCT FOR STAFF/MISSION MEMBERS: Appendix 1 to the OSCE Staff Regulations and Staff Rules,” Permanent Council Decision 550/Corr.1, 27 June 2003, available at <https://www.osce.org/secretariat/31781?download=true>, retrieved August 30, 2018.

IV. ODIHR Must Abide by Commitments to Freedom of Thought, Conscience, Belief, Information, and Expression

OSCE commitments by which ODIHR is bound include, *inter alia*:

1. First, the commitment to act in this space only while “respecting human rights and fundamental freedoms, including the freedom of thought, conscience...or belief, for all without distinction as to...belief, political or other opinion” (Ljubljana, 2005);
2. Second, the commitment to take only “measures which do not endanger freedom of information and expression” in this space⁸ (Ljubljana, 2005); and
3. Third, that “NGOs, specifically those with relevant experience, are particularly encouraged to participate in the discussion of the selected topics and to provide their suggestions and recommendations.”⁹ (“Modalities for OSCE Meetings on Human Dimension Issues,” 23 May 2002 (OSCE PC Dec.476, Section I paragraph 9))

V. ODIHR’s New HDIM Code of Conduct Violates Agreed-Upon OSCE Code of Conduct

Moreover, OSCE’s own Code of Conduct for Missions and Staff stipulates that:

1. “OSCE officials shall ensure that their own personal views and convictions, including their political and religious convictions do not adversely affect their official duties,” which ODIHR is doing in this case; and that
2. “OSCE officials shall respect the laws and regulations of the host country, as well as its local customs and traditions,” in this case those of Poland, one of the Participating States whose laws, regulations, customs and traditions ODIHR is violating with this policy.¹⁰

In spite of these modalities, at the end of the 2017 HDIM, referring to one or more of these interventions, Director Sólrún stated that participants had “unfortunately witnessed discourse which does not belong in a forum set on how we can further tolerance. In fact, it does not belong anywhere.”¹¹

ODIHR has neither the responsibility nor the right to decide which discourse belongs *anywhere* – thank goodness, or freedom of expression would be stamped out everywhere.

⁸ See “13th OSCE Ministerial Council Ljubljana, 5 December 2005 (All day) - 6 December 2005 (All day),” available at https://www.osce.org/event/mc_2005, retrieved August 28, 2018.

⁹ Modalities for OSCE Meetings on Human Dimension Issues, 23 May 2002 (OSCE PC Dec.476, Section I paragraph 9), available at <https://www.osce.org/pc/13198?download=true>, retrieved August 28, 2018.

¹⁰ “OSCE CODE OF CONDUCT FOR STAFF/MISSION MEMBERS: Appendix 1 to the OSCE Staff Regulations and Staff Rules,” Permanent Council Decision 550/Corr.1, 27 June 2003, available at <https://www.osce.org/secretariat/31781?download=true>, retrieved August 30, 2018.

¹¹ See “2017 HDIM: Working Session 8,” The Organization for Security and Co-operation in Europe (OSCE), published on Sep 20, 2017, available at <https://www.youtube.com/watch?v=fPGc4CRTGp0&feature=youtu.be&t=66>, retrieved August 3, 2018.

Then, at a February 2018 OSCE meeting, a senior ODIHR official again asserted civil society needed to adhere to Participating State commitments at OSCE meetings.¹²

To restate, this position is nowhere reflected in OSCE modalities, as literally not a single member of civil society is signatory to a single OSCE commitment. (See Section III above.)

Yet in the lead-up to a July OSCE meeting, ODIHR staff circulated a document containing a radical policy change in violation of all three of the commitments named above, taken ostensibly without the knowledge or consent of OSCE's 57 Participating States, including *inter alia* the United States.¹³

That document created a new power for an ODIHR moderator to "interrupt any speech" that "attacks" anyone¹⁴ – knowing that ODIHR's Director has stated that expression with respect to concerns over Sharia "does not belong anywhere."¹⁵

VI. The U.S. Delegation to the OSCE Had Already Expressed Concern Informally

In response, Secure Freedom's understanding is the U.S. OSCE delegation communicated to ODIHR that:

1. ODIHR cannot simply insert new rules outside of the consensus process without receiving approval for them;
2. Regardless, this particular new policy would violate OSCE modalities about civil society participation; and finally
3. Civil society is in fact under not the slightest obligation to follow OSCE Participating State commitments, given that they are not themselves Participating States.

Yet in spite of U.S., OSCE-PA, and civil society concerns, ODIHR actually went still further for the 2018 HDIM, unilaterally requiring acknowledgement of a so-called "Code of Conduct" that directs that civil society "Participants shall refrain from presenting...any slogans that might be provoking,...likely to give rise to violence, [or] discriminating [against] other persons on the basis of," *inter alia*, "religion or belief, political or other opinion."

The standard that civil society may not present any expression that might be *provoking* contradicts the entire spirit of the human dimension process, and the HDIM in particular.

¹² According to meeting participants.

¹³ OSCE, Supplementary Human Dimension Meeting, Countering Violence against Women – Everyone's Responsibility, 2 – 3 July 2018, Hofburg, Vienna, available at <https://www.osce.org/odihr/384282?download=true>, retrieved August 3, 2018.

¹⁴ OSCE, Supplementary Human Dimension Meeting, Countering Violence against Women – Everyone's Responsibility, 2 – 3 July 2018, Hofburg, Vienna, available at <https://www.osce.org/odihr/384282?download=true>, retrieved August 3, 2018.

¹⁵ OSCE, Supplementary Human Dimension Meeting, Countering Violence against Women – Everyone's Responsibility, 2 – 3 July 2018, Hofburg, Vienna, available at <https://www.osce.org/odihr/384282?download=true>, retrieved August 3, 2018.

VII. New HDIM Code of Conduct Conforms with Specific Sharia Teachings

Worse, the extent that the standard that civil society must censor its remarks because it might cause others to inflict violence upon someone applies to those who express concern about Sharia, is an open acknowledgement that those who wish to impose Sharia on the OSCE region are willing to use violence to punish criticism.

This is provably true. The Qur'an tells believers that Allah wants them to behead those who do not believe in him. (Q 47:4) Likewise, Sharia and multiple Quranic passages explicitly stipulate that:

1. Verbal or written criticism of your religious beliefs should be criminalized, possibly even by the death penalty (see for instance Reliance of the Traveler/*Umdat al-Salik*, Book R, Holding One's Tongue, Section r2.0, Slander, p. 730; Q 49:12; Q 104.1; Q 68:11); and
2. Offensive warfare to force those who don't accept your religion to submit to it is not only permissible but obligatory before God (Reliance of the Traveler/*Umdat al-Salik*, Book O, Justice, Section 01.2, p. 584; Book O, Justice, Section o9.0, Jihad, p. 599, Q 8:39)

These doctrines in turn demonstrate that individuals who embrace them should not be permitted to enter the OSCE region, that those here illegally should be expelled, and that we should use "extreme vetting" to decide who should enter our countries, much as both American President Trump and Hungarian Prime Minister Viktor Orban have argued.

VIII. New HDIM Code of Conduct Not Supported by Cited Ministerial Decisions or Consensus

Regardless, ODIHR once again granted its moderator the extraordinary "right to interrupt any Participant who speaks in violation of these principles" or go so far as to expel them from the HDIM, whose purpose is to include civil society.

What is more, the two ministerial decisions ODIHR cites to justify this portion of the Code of Conduct cites are out of context. Neither Maastricht 2003 nor Ljubljana 2005 make any mention of violating fundamental rights with respect to freedom of expression, in OSCE or outside it.¹⁶¹⁷

Finally, because ODIHR's past behavior suggests that the Code of Conduct is aimed at least in part at those attempting to raise concerns with respect to censorship, migration and terrorism, the policy is in practice in direct conflict with the positions on terrorism and migration taken by current governments of OSCE Participating States including not only the United States, but also Hungary, Slovakia, the Czech Republic, Poland, Austria, and Italy.

Therefore, the policy should never have taken effect at this meeting, nor should it be permitted at subsequent OSCE or ODIHR events.

¹⁶ See "Final Document of the Eleventh Meeting of the OSCE Ministerial Council, Maastricht, 1-2 December 2003", available at <https://www.osce.org/mc/40533>, retrieved August 28, 2018.

¹⁷ See "13th OSCE Ministerial Council Ljubljana, 5 December 2005 (All day) - 6 December 2005 (All day)," available at https://www.osce.org/event/mc_2005, retrieved August 28, 2018.

IX. Recommendations

Accordingly, Secure Freedom recommends that:

1. ODIHR immediately:
 - a. Explicitly rescind the HDIM Code of Conduct § 3(1)(a-c) and §4¹⁸ and pledge not to continue attempting to impose similar restrictions again; and
 - b. Pledge that on the issues surrounding Sharia in particular, it will abide by:
 - i. The Modalities for OSCE Meetings on Human Dimension Issues, 23 May 2002 (OSCE PC Dec.476, Section I paragraph 9), which states that “NGOs, specifically those with relevant experience, are particularly encouraged to participate in the discussion of the selected topics and to provide their suggestions and recommendations;”¹⁹ as well as by
 - ii. The OSCE Code of Conduct for Staff/Missions, which states not only that
 1. OSCE officials “shall comply with the principles, norms and commitments of the OSCE”²⁰, but that
 2. “OSCE officials shall ensure that their own personal views and convictions, including their political and religious convictions do not adversely affect their official duties,” as well as that
 3. “OSCE officials shall respect the laws and regulations of the host country, as well as its local customs and traditions,” in this case those of Poland, one of the Participating States whose laws, regulations, customs and traditions ODIHR is violating with this policy;²¹ and
2. Participating States including *inter alia* the United States, Hungary, Slovakia, the Czech Republic, Poland, Austria, and Italy use their right of response at this Plenary, as well as opportunities at future human dimension fora including but not limited to the December 2018 Ministerial in Milan, to state that ODIHR has violated its Code of Conduct and failed to abide by consensus on this matter; and
3. The OSCE Ministerial consider a decision requiring ODIHR to cease restricting freedom of thought, belief, conscience, and expression with respect to concerns about Sharia.

Thank you for the opportunity to share this background and these recommendations.

¹⁸ See “CODE OF CONDUCT AT THE OSCE HUMAN DIMENSION IMPLEMENTATION MEETING (HDIM),” Organization for Security and Cooperation in Europe, Office of Democratic Institutions and Human Rights, https://meetings.odihr.pl/dl/2943/f85414/CODE_of_CONDUCT_HDIM-1.docx, retrieved August 30, 2018.

¹⁹ Modalities for OSCE Meetings on Human Dimension Issues, 23 May 2002 (OSCE PC Dec.476, Section I paragraph 9), available at <https://www.osce.org/pc/13198?download=true>, retrieved August 28, 2018.

²⁰ “OSCE CODE OF CONDUCT FOR STAFF/MISSION MEMBERS: Appendix 1 to the OSCE Staff Regulations and Staff Rules,” Permanent Council Decision 550/Corr.1, 27 June 2003, available at <https://www.osce.org/secretariat/31781?download=true>, retrieved August 30, 2018.

²¹ “OSCE CODE OF CONDUCT FOR STAFF/MISSION MEMBERS: Appendix 1 to the OSCE Staff Regulations and Staff Rules,” Permanent Council Decision 550/Corr.1, 27 June 2003, available at <https://www.osce.org/secretariat/31781?download=true>, retrieved August 30, 2018.