



# HELSINKI COMMISSION REPORT

May 12, 2020

## IN BRIEF

### Human Rights and Democracy in a Time of Pandemic

#### *Reviewing OSCE Commitments and Recent Developments during the Coronavirus Outbreak*

The outbreak of the novel coronavirus pandemic has prompted governments around the world to take extraordinary measures in the interest of public health and safety. As of early April, nearly two-thirds of the 57 participating States of the Organization for Security and Cooperation in Europe had declared “states of emergency” or invoked similar legal measures in response to the crisis.<sup>1</sup> Often such measures have enabled governments to enact large-scale social distancing policies and suspend economic activity to save lives and preserve the capacity of national public health infrastructure to respond to the spread of infections. At the same time, human rights organizations and civil society activists have expressed concern regarding the breadth of some emergency measures and recalled the long history of government abuse of emergency powers to trample civil liberties.

Exactly three decades ago, OSCE participating States unanimously endorsed a set of basic principles governing the imposition of states of emergency, including the protection of fundamental freedoms in such times of crisis. In 1990 in Copenhagen, OSCE countries affirmed that states of emergency must be enacted by public law and that any curtailment of human rights and civil liberties must be “limited to the extent strictly required by the exigencies of the situation.”<sup>2</sup> According to the Copenhagen Document, emergency measures furthermore should never discriminate based on certain group characteristics or be used to justify torture.

Building on these commitments a year later in Moscow, participating States underscored that states of emergency should not “subvert the democratic constitutional order, nor aim at the destruction of internationally recognized human rights and fundamental freedoms.”<sup>3</sup> The Moscow Document stresses the role of legislatures in imposing and lifting such declarations, the preservation of the rule of law, and the value of guaranteeing “freedom of expression and freedom of information...with a view to enabling public discussion on the observance of human rights and fundamental freedoms as well as on the lifting of the state of public emergency.”

In some corners of the OSCE region, however, national authorities are violating these and other OSCE commitments in the name of combatting coronavirus. While many extraordinary responses are justified in the face of this crisis, government overreach threatens the well-being of democracy and the resilience of society at a critical time.

#### **States of Emergency**

Despite dozens of emergency declarations among OSCE participating States, Hungary is the only one to empower the head of government to rule by decree without any sunset clause or requirement to secure parliamentary re-authorization at a specified time in the future. The Hungarian measure sidelines democratic institutions and human rights in direct violation of Budapest’s commitments made in Copenhagen and Moscow.

On April 2, 2020, Helsinki Commission Chairman Rep. Alcee L. Hastings (FL-20) denounced Hungarian Prime Minister Victor Orban for taking “gross advantage of the fear and uncertainty brought on by a global pandemic to secure the power to rule by decree in perpetuity.”<sup>4</sup>

Further echoing the language of Hungary’s OSCE commitments, the Director of the OSCE’s Office of Democratic Institutions and Human Rights (ODIHR) criticized the Hungarian state of emergency ahead of its passage insisting that it “must be proportionate to its aim, and only remain in place for as long as absolutely necessary.”<sup>5</sup>

### **Freedom of Information, Expression, & the Media**

The Moscow Document makes special mention of the importance of respecting freedom of expression and information amidst a crisis. In particular, it commits OSCE countries to “take no measures aimed at barring journalists from the legitimate exercise of their profession other than those strictly required by the exigencies of the situation.” As a result, governments holding prisoners of conscience, such as journalists<sup>6</sup>, politicians, and religious prisoners<sup>7</sup>, should heed international calls<sup>8</sup> to release them now, thereby mitigating the virus’ spread among prison populations and building public trust in national institutions.

Since the start of the pandemic, OSCE Representative on Freedom of the Media Harlem Desir has repeatedly highlighted the importance of press freedom to “providing the public with information on the vital measures needed to contain the virus...[and] report on the pandemic and governmental policies.”<sup>9</sup>

Encouragingly, in response to input from Desir, Armenia<sup>10</sup> and Serbia<sup>11</sup> recently dialed back draft restrictions on media freedom that were under consideration to address the pandemic. These reversals underscore the important role that OSCE institutions play in promoting best practices at critical junctures.

Nevertheless, several participating States, including Azerbaijan, Hungary, and Russia, have adopted laws or decrees punishing individuals and outlets

for spreading “false,” “misleading,” or unofficial information about the outbreak.<sup>12</sup> The broad scope of these provisions enables governments to silence anyone who speaks against official policy. Some countries, such as Kazakhstan, are enforcing existing disinformation statutes to crackdown on activists who highlight government failures or worsening living conditions arising from the pandemic.<sup>13</sup> In Kyrgyzstan, there are reports that individuals who criticized the government’s response have been forced to publicly disavow their reporting and apologize.<sup>14</sup>

Moscow is one of the chief violators of its namesake commitments to respect free expression amid national emergencies. Earlier this month, Russian authorities arrested a doctor who criticized Moscow’s response to the pandemic.<sup>15</sup> On April 17, 2020, Helsinki Commission Chairman Hastings and Co-Chairman Sen. Roger Wicker (MS) condemned Russian authorities after a *Novaya Gazeta* journalist who reported critically on Chechnya’s coronavirus response was threatened by leader Ramzan Kadyrov and had her article removed from the paper’s website.<sup>16</sup>

Governments also have used coronavirus movement restrictions to silence oppositionists and constrain the work of journalists. In Azerbaijan, authorities have detained more than a dozen opposition members and reporters ostensibly for violating the country’s stringent stay-at-home orders,<sup>17</sup> while others have faced physical<sup>18</sup> and online<sup>19</sup> harassment. Meanwhile, in Kyrgyzstan officials appear to be selectively enforcing movement restrictions to constrain the reporting of independent journalists while allowing state media greater leeway.<sup>20</sup>

In violation of its freedom of information commitments, Turkmenistan<sup>21</sup>—and until recently, Tajikistan<sup>22</sup>—appears to be withholding information on the pandemic from its people. Ashgabat claims to have no confirmed cases, despite civil society reports that coronavirus deaths are simply being categorized as pneumonia.

### **Elections**

The body of OSCE commitments does not specifically address the difficult legal and practical matter<sup>23</sup> of determining whether and how to proceed

with elections under a state of emergency, much less a pandemic. Currently, participating States are split almost evenly on the question of whether to proceed with elections in 2020 (of 40 countries with upcoming elections, 22 plan to proceed as scheduled).<sup>24</sup> In March, ODIHR suspended election observation missions, but the cancellation or postponement of recent elections means ODIHR has yet to miss a planned observation.

Poland's May 10 presidential election was to be the first national election in the OSCE region since coronavirus spread across the globe and the first to take place without planned ODIHR observation; however, the government postponed the vote this week to sort through complex legal and practical challenges, including building the necessary political consensus for making changes to the electoral process. Earlier this month, ODIHR Director Gisladdottir acknowledged that organizing an election during a pandemic poses significant challenges to, on the one hand, ensuring equal opportunity to vote for all citizens and, on the other, avoiding rushed changes to voting procedures that might curtail important debates over electoral rules and risk complicating the vote's smooth administration.<sup>25</sup>

### **Surveillance**

Leading OSCE parliamentarians and many human rights organizations have warned that the wide use of technology by some governments to track the spread of the virus and monitor the movements of infected individuals could impinge on civil liberties.<sup>26</sup> In early April 2020, the leadership of the OSCE Parliamentary Assembly's human rights committee governments to restrict data collection to "meeting a legitimate health-related purpose, with a limited timeframe and appropriate oversight measures in place to ensure personal data cannot [be] misused."<sup>27</sup>

Government and civil society watchdogs will be critical to ensuring that governments respect these guidelines. According to the OSCE PA, at least 12 OSCE countries have implemented electronic monitoring to counter the pandemic.<sup>28</sup> In Russia, the government's deployment of additional surveillance cameras and facial recognition technology in response to the coronavirus has sparked concern.

Activists fear that these will not ebb with the tide of infections and instead will form part of a newly permanent surveillance network that encroaches on privacy and curtails freedoms.<sup>29</sup>

### **Meanwhile...**

Authoritarian governments stand to benefit from the way the pandemic consumes the attention of both international and national institutions and constrains normal mechanisms of public expression, such as peaceful assembly, parliamentary oversight, and elections. As a result, they may use this time to seize greater power, raise barriers to transparency, reap more ill-gotten gains, or simply continue their usual forms of repression and exploitation with greater ease.

In some cases, governments may rush through policy changes to take advantage of the distraction. Kazakhstan, for example, in late March 2020 advanced a draft bill concerning peaceful assembly, despite official promises to submit it beforehand for ODIHR review and ensure a transparent debate.<sup>30</sup>

In addition, despite global calls<sup>31</sup> for ceasefires in international conflicts during the pandemic, belligerents in eastern Ukraine, and elsewhere beyond the OSCE, are using this time to strengthen their hand and seize the initiative. Russian-backed forces in eastern Ukraine have even invoked the pandemic to deny OSCE monitors access to the occupied territories.<sup>32</sup> On April 23, 2020, Helsinki Commissioner Rep. Richard Hudson (NC-08) called for an immediate end to these unprecedented restrictions, noting that "the increasing limitations by Moscow-led forces also stall crucial humanitarian shipments and services by international organizations."<sup>33</sup>

The public health, economic, and social consequences of the pandemic can also reactivate old hatreds, strain social ties, compound existing inequalities, and overtax developing institutions. Religious and ethnic groups, particularly minorities, often bear the brunt of destructive manifestations of heightened social anxiety at times of flux. In a joint statement in March 2020, the leadership of OSCE institutions highlighted the need to protect national minorities and vulnerable individuals and guard

against discrimination, hatred, and domestic violence.<sup>34</sup> Furthermore, regions where democratic institutions and practices are established but still developing, such as the Western Balkans, will face particular challenges if popular frustration mounts and social trust wanes.

Speaking in his capacity as the OSCE Parliamentary Assembly’s Special Representative on Anti-Semitism, Racism and Intolerance, Helsinki Commission Ranking Member Sen. Ben Cardin (MD) recently warned OSCE parliamentarians that “minority and immigrant communities are already more vulnerable to the impact of the pandemic because of past inequalities.”<sup>35</sup> Similarly, in a statement on April 8, International Roma Day, Helsinki Chairman Hastings noted that “this health crisis has spotlighted many of the consequences of systemic racism long faced by Romani communities,” including “unequal access to care [that put] not only Roma but also other socially excluded groups in great danger of infection.”<sup>36</sup>

### **Conclusion**

The novel coronavirus pandemic should be a time for governments to reaffirm—not suspend—respect for the human dimension of “comprehensive

security” rooted in OSCE commitments, which regards human freedom and dignity as integral to international security, prosperity, and human flourishing. While some exceptional safety measures are needed to protect public health at this time, fundamental freedoms are critical to responding to the pandemic. These freedoms ensure that societies receive credible information about the virus, debate and influence government responses, hold leaders and institutions accountable, and respond dynamically to emerging needs.

This global threat to public health poses bewildering policy predicaments for even the world’s most established democracies. Reflecting on her upbringing in Communist East Germany, German Chancellor Angela Merkel recently remarked that “for someone like myself, for whom freedom of travel and movement were hard-won rights, such restrictions can only be justified when they are absolutely necessary.”<sup>37</sup> In navigating such difficulties, and the pandemic’s attendant consequences for democracy and human rights, the robust body of OSCE commitments, the expertise of OSCE institutions, and the unique fora for dialogue and cooperation the OSCE offers remain as invaluable as ever.

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## **About the Helsinki Commission**

The Commission on Security and Cooperation in Europe, also known as the U.S. Helsinki Commission, is an independent commission of the U.S. Government charged with monitoring compliance with the Helsinki Accords and advancing comprehensive security through promotion of human rights, democracy, and economic, environmental, and military cooperation in 57 countries. The Commission consists of nine members from the U.S. Senate, nine from the House of Representatives, and one member each from the Departments of State, Defense, and Commerce.

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