



United States Mission to the OSCE

Intervention by the US Delegation Supplementary Human Dimension Meeting Session 2 PROMOTING TOLERANCE AND FREEDOM OF RELIGION OR BELIEF

Freedom of thought, conscience, religion or belief is a cornerstone of OSCE commitments protecting human rights. The 1989 Vienna Concluding Document declared that participating States will “take effective measures to prevent and eliminate discrimination against individuals or communities on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, political, economic, social and cultural life, and to ensure the effective equality between believers and non-believers.” The document went on to declare that participating States will “foster a climate of mutual tolerance and respect between believers of different communities as well as between believers and non-believers.” Corporately, the participating States have agreed to a rich body of commitments meant to facilitate not frustrate the profession and practice of religion. In too many OSCE countries today, however, government officials use restrictive laws and ignore constitutional protections in such a way as to unjustifiably limit the practice of religion for members of many unpopular groups.

The drafters of OSCE agreements on religious freedom evidently recognized the important role governments play in fostering a climate of tolerance in their societies. Government intolerance of religious groups, in most cases, will only lead to greater intolerance among their populace. One elementary responsibility of the state in this regard is non-discrimination towards individual members or groups. This issue was addressed at the *ad hoc* meeting hosted by the Dutch in the summer of 2001, which highlighted how, in the OSCE region, policies that favor certain religious groups tend to, as a corollary, penalize other religious groups by denying legal personality or equal status. By institutionalizing discriminatory policies toward a group, government actions can have the effect of stigmatizing certain religious communities. In some OSCE countries, this has taken the form of special lists, centers offering one-sided information or burdensome registration laws creating hurdles impossible to overcome. Such acts, especially by EU countries, are especially worrisome as many incoming EU countries are copying such acts and regulations, often without the long-standing democratic practices and protections to prevent discrimination or abuse. We urge countries that have hierarchical structures to examine their laws carefully to determine if they are unjustifiably restricting or penalizing those citizens who do not belong to these particular religious bodies.

Fostering tolerance can occur by encouraging all religious communities to participate in civil society. Tolerance should not mean the weakening or renouncing of someone’s own religious principles, but rather the freedom to adhere to one’s own convictions and the acceptance for others to do the same. Recent well-publicized efforts by some Western European countries to engage their large Muslim populations display an understanding of the importance of openly receiving all religions into society.

Alternately, burdensome registration requirements that limit the ability of groups to operate freely and openly or that deny legal personality are incongruent with efforts to cultivate tolerance. This type of legal system often creates either *de jure* or *de facto* hierarchical systems, with groups placed on different tiers receiving different rights and privileges. While religion has played a different role in the historical development of individual participating States, such differences cannot be used as a reason to overlook, foster, or perpetuate discrimination or subordination.

For example, the countries of Slovakia, Austria, and the Czech Republic have established registration schemes that predicate full recognition as a religious community on whether a group has 16,000 to 20,000 members. Smaller minority religions are therefore excluded from the highest registration status under this system with the result that the larger religious groups are advantaged over the smaller. One commonality is that many of the “official” groups in these countries do not have the membership numbers to satisfy the requirements, but have been grandfathered in or were directly bestowed the status by the state. These inequities have real consequences; for example the small Muslim community in Slovakia is reportedly unable to build a mosque because it is not an “official religion,” but must operate as a “civic association.” The answer is not appointing religious groups to the highest level on an *ad hoc* basis, but making systematic changes that facilitate religious freedom for all groups.

Notably, many OSCE participating States do not use numerical thresholds as a tool in providing legal personality. The Netherlands, France, Germany and the United States are all examples of this approach. However, in situations where States believe registration for legal personality is necessary, such requirements, if established, should facilitate freedom of religion by being *de minimis* in nature. Furthermore, criminal penalties for claiming to have met the requirements yet falling short should not exist. Criminal prosecution should only occur if criminal activity is evident, not for administrative failures or infractions. Indeed, governments should grant religious communities the ability to carry out the full range of religious activities without state interference, including in a religious community’s internal organization.

Another hallmark of a tolerant society is the ability for all groups, majority or minority to share their beliefs freely. Unfortunately, we have also observed majority groups attempting to criminalize legitimate religious activity of the minority, with religiously motivated speech being a prime example. Often established religious communities pressure governments to enact laws that stifle the speech rights of newer religious groups. Bans on proselytization, as in Greece, prevent individuals from evangelistic groups from practicing their faith, while also frustrating efforts by the religious community to share its message broadly. In 1919, U.S. Supreme Court Justice Oliver Wendell Holmes declared that “the best test of truth is the power of the thought to get itself accepted in the competition of the market.” This “marketplace-of-ideas” approach encourages the free exchange of views, empowering the audience to choose ideas that resonate with it. This principle is highly relevant to religious speech. Laws that infringe on speech rights, be they religiously motivated or not, offend democratic ideals and, therefore, OSCE standards, and hinder individuals in making decisions for themselves. A truly tolerant society will have space for free expression of a wide spectrum of religious beliefs.

In closing, governments have a solemn duty to promote tolerance and to facilitate the free practice of religion for everyone. Legal schemes discriminating against groups, denying them equal status or rights, will only make more difficult genuine efforts to fight intolerance. The United States would, therefore, look favorably upon any new OSCE commitment addressing the problem of discriminatory registration policies, and would hope that all participating States work constructively to eliminate barriers that foster or perpetuate discrimination or subordination of religious communities.