

**Presentation Coşkun Çörüz**

**Rapporteur of the 3rd General Committee on Democracy, Human Rights and Humanitarian Questions**

**23 February 2012, 09.00 – 11.45**

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Mr Chairman, Dear Colleagues,

It is a great honour for me to speak to you as the Rapporteur of this Committee and to discuss with you my ideas and intentions regarding my report for our Annual Session this summer in Monaco. I am particularly happy with the themes we have chosen to discuss in our Committee this morning, as I think that judicial independence and prison reform are concrete issues that concern all of us in the OSCE. Also, I have a personal affinity for these themes as a lawyer, as a former Commissioner for Equal Treatment in the Netherlands and as my party's spokesperson for justice, security and human rights. So you will understand that in the Dutch Parliament I am often engaged in debates on the judicial branch and prison reform.

A famous Dutch statesman and long-time champion of the OSCE, the former High Commissioner on National Minorities, Mr Max van der Stoel, used to say: "International standards are minimum standards". I think it is good to keep that in mind when we are discussing how our countries live up to their OSCE commitments with regard to the independence of the judiciary and the condition of prisons. The administration of justice and punishment are closely interwoven with a country's national history and its culture. Indeed, one could

almost say that the way a country administers justice and passes sentences is in many respects the *result* of its history. This is something we need to recognize and respect.

As a lawyer and a politician I realize and acknowledge that discussing these issues could place one in a dilemma. When a country is called to account in a human rights case, it may experience this as interference and point to other cases in other countries, that also have their shortcomings.

Still, the idea behind the Helsinki Agreements and the OSCE, particularly in the field of human rights, has always been that certain principles transcend national boundaries and are applicable to anyone, in any situation, anywhere, regardless of culture, religion and politics. They are applicable not just East of Vienna or West of Vienna, but everywhere in the OSCE area. If we don't live up to these principles, we end up on a slippery slope and perhaps will be no better than the criminals that we are trying to fight. That basic assumption is important to me as I will prepare our Committee's report for this summer.

I think that the themes of judicial independence and prison conditions are connected in their need for *transparency*. Both the judicial process and the execution of court decisions and sentences need to be understandable for outside observers. If that is not the case, the judicial system risks the loss of its legitimacy and rule of law is in danger. Our governments – *all* our governments

– have committed themselves time and again to prevent that from happening.

There is a substantial and venerable *acquis* within the OSCE regarding independent judicial systems and prison system reforms.

Why are these particular elements of rule of law so important? The Ministerial Council has answered this question clearly in Ljubljana in 2005 with Decision No. 12/05, where they stated that it is not about “merely a formal legality which assures regularity and consistency in the achievement and enforcement of democratic order”. No, our governments said, ensuring rule of law, judicial independence and decent prison conditions promises “justice based on the recognition and full acceptance of *the supreme value of human personality*”.

Our governments have specified their commitments in the field of judiciary independence and prison conditions, among other documents, in the 1990 Copenhagen Document, in the 1991 Document of the Moscow Meeting on the Human Dimension of the CSCE, in the Charter for European Security of the 1999 Istanbul Document, the 2002 Final Report of the Supplementary Human Dimension Meeting on Prison Reform and in the 2006 Brussels Declaration on Criminal Justice Systems. All OSCE participating States have by now become parties to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (but not yet to the Optional

Protocol). Still, there are difficulties in the ways our countries live up to these commitments.

For example in my own country, the Netherlands, we are currently groping for a way to balance the independence of the judiciary with the need to maintain integrity and professional standards within the judicial branch. Just last month in my Parliament we debated how to expand a range of possible disciplinary measures against dysfunctional or corrupt judges, while maintaining judicial independence. In that context we are discussing how desirable it really is to appoint judges for life. Just two weeks ago, in a notorious case, the Public Prosecutor in the Netherlands announced his decision to prosecute two former judges who have been charged with perjury. Without casting doubt on the Public Prosecutor's decision, I am concerned about the consequences of this case for the regard for the judicial branch in my country.

The Netherlands, of course, is not the only country groping with these issues. In Europe great work is being done by the European Judicial Training Network (EJTN) as the principal platform and promoter for the development, training and exchange of knowledge and competence of the judiciary in the EU. They have, for example, an exchange program which allows judicial authorities in EU-countries or candidate countries to familiarize themselves with a judicial

system other than their own. In this way mutual trust and recognition of judicial decisions are promoted. Perhaps the OSCE can follow this example.

I have just been on a visit to Ukraine, where I learned about the work of the OSCE Project Co-ordinator in the development of administrative justice. The OSCE's Rule of Law unit in Ukraine works together with that country's administrative courts, the Academy of Judges and the Ministry of Justice to facilitate the drafting of legislation regulating citizen-state relations, the training of judges and the monitoring of court practices. Especially the improvement of legal education is seen as a prerequisite for the protection of human rights and the independence of the judiciary. I applaud these efforts and the willingness of the Ukrainian government to join hands with the OSCE. But I also have to mention that I am deeply concerned about the situation of Yulia Tymoshenko, who was sentenced last October in a court case that appeared to be politically motivated. We now hear reports that Mrs Tymoshenko is possibly being maltreated in prison. I have tried to verify these reports for myself while I was in Ukraine and requested permission to visit her in the prison in Kharkiv, where she is being held. Unfortunately the Ukrainian authorities have not granted me permission to visit her, just as they also refused President Efthymiou several months ago. I call on them, in the name of

transparency, to change their course and allow an observer from our Assembly to visit Mrs Tymoshenko in prison.

This Assembly has repeatedly criticized the lack of due process and competent tribunals in the Guantanamo detention facility and has called for the permanent closing of this prison as soon as possible. The last time we did so was at the Annual Session in Oslo in 2010, when it looked like the new President would live up to the high expectations of change he had raised in this regard during his election campaign. However, Guantanamo is still open. In January it celebrated its 10<sup>th</sup> anniversary. 171 terrorism suspects are still being detained there indefinitely without a trial. In fact, in the U.S. there is now a debate whether President Obama's recent signing of the National Defense Authorization Act has made it possible to jail even United States citizens in Guantanamo without trial. To anyone who values the integrity of the judicial process and the United Nations Standard Minimum Rules for the Treatment of Prisoners, this must be cause for concern. I think that at this year's Annual Session we need to come back to this issue again.

Prison reform has also been high on the agenda in Kyrgyzstan, where only last month almost 7,000 prisoners went on hunger strike to demand more freedom in jails. According to media reports newly installed prison officials in January took away special privileges for jailed criminal bosses who were living

in large rooms, equipped with big-screen televisions and modern furniture. But according to the same reports the strikes ended with prison authorities allowing reforms that seem moderate and reasonable, like the changing of mattresses and bed covers, permitting more frequent visits of relatives, shortening of the pre-trial detention time, speeding up of court dealings and installing telephone booths. I know from my own visit there last September that the OSCE Centre in Bishkek is doing great work in facilitating a new vision for prisons in Kyrgyzstan. The situation there also shows a dilemma which I am sure we all face in our own countries: how to ensure that all individuals in detention will be treated with humanity, while at the same time not to raise the public perception that prison conditions resemble those in luxury hotels? How to strike a balance between punishment and lawful deprivation of freedom on the one hand and a prison regime in accordance with international standards of human rights on the other hand? I am interested to hear your comments on this.

I would like to pay tribute here to the valuable work that the OSCE Field Missions are conducting in the field of prison reform. I already mentioned the OSCE Centre in Bishkek. The OSCE Office in Yerevan, Armenia, recently supported a study on the conditions of persons deprived of their liberty in disciplinary cells of the Armenian Defence Ministry, proposing to bring them in

line with the UN Standard Minimum Rules for the Treatment of Prisoners. The OSCE Centre in Dushanbe, Tajikistan, has, together with the UN, facilitated dialogue between representatives of penitentiary institutions, non-governmental organizations and international agencies to strengthen future co-operation in prison reform. And the OSCE Mission to Bosnia and Herzegovina has initiated a project to monitor prison conditions, specifically for vulnerable groups like women and juveniles. The OSCE assists the Bosnian authorities with the establishment of a National Preventive Mechanism in line with the Optional Protocol to the UN Convention against Torture and promotes the inclusion of civil society into the monitoring work.

I believe that the long term that is usually required for prison reform and the valuable assistance that the OSCE Missions can provide in this field, should be another argument for the Ministerial Council to adopt long-term, at least three-year mandates for OSCE Field Missions.

Both elements of our Committee's discussion today – the integrity of the judicial branch and prison conditions – seem to come together in the harrowing case of Sergei Magnitsky, the Russian lawyer for Hermitage Capital Management, who died in custody after eleven months of pre-trial detention. I will not need to go into the details of that case here as Mr Browder, who hired Magnitsky, will speak to us later. But I do want to point out that this case

involves a third element that should concern us as well. I am talking about the fight against corruption and the OSCE's efforts to strengthen good governance. After all, the reason that Sergei Magnitsky ran into trouble with the Russian justice system is that he accused Interior Ministry officials of using false tax documents to steal \$230 million from the state. It were those same officials who then had the lawyer arrested with such tragic consequences.

The report of the Kremlin's own human rights commission from July 5, 2011, was clear in its conclusions that the arrest of Sergei Magnitsky was unlawful, that he was beaten in prison, possibly tortured, and that medical assistance was withheld from him. These are extremely serious allegations that the Russian authorities need to investigate further. Almost two-and-a-half years after his death and with widely-publicized credible evidence of criminal conduct in Magnitsky's case, I call on the Russian authorities to finally bring to justice those responsible.

Dear Colleagues, it was Max van der Stoep, the former OSCE High Commissioner on National Minorities, who said: "The greatest challenge is to make international standards relevant in people's everyday lives". That is where we as parliamentarians have a role to play. We have to explain the necessity and the functionality of international human rights to our constituents. That is the contribution we can make to enhancing the

transparency and credibility of the international legal system. This cause, by the way, would be greatly aided by a swift ratification, by those countries that have not already done so, of the Rome Statute, the treaty on which the International Criminal Court is based. In the past our Assembly has been outspoken on a number of human rights cases and issues in the OSCE area. I need just to mention Kimmo Kiljunen's inquiry into the violence in Kyrgyzstan, the resolution we passed in Belgrade last year for a similar investigation into organ trafficking crimes committed in Kosovo and Metohija or visits that some of us have paid to imprisoned human rights defenders, such as Yevgeny Zhovtis in Kazakhstan, who now, fortunately, has been released. I think this is where our Assembly can make a difference and I believe we should build on that tradition.

So here are some of the ideas and issues that I believe need to find their way into our Committee's Report for the Annual Session in Monaco. I am looking forward to hearing your comments and suggestions, now, in the debate that we are about to have, or in the coming months, leading up to the Annual Session.

Thank you.

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