

OSCE PA Web Dialogue

Respecting human rights and maintaining democratic control during states of emergency - 8 May 2020 -

HIGHLIGHTS¹

SUMMARY

With the onset of the COVID-19 pandemic, some two thirds of OSCE participating States declared a state of emergency or a similar regime establishing different degrees of containment and mitigation measures. Given that such scenarios typically entail not only additional powers to governments, but often place restrictions on the enjoyment of human rights, the OSCE Parliamentary Assembly organized a web-based seminar on 8 May 2020 focused on ‘*Respecting human rights and maintaining democratic control during states of emergency*’. Moderated by Secretary General Roberto Montella, and with the participation of some 50 parliamentarians, the web dialogue aimed at better understanding the human rights and democratic challenges associated with states of emergency and sharing views and experiences of how parliaments are addressing the challenges caused by the COVID-19 response. The seminar was the second in a series organized by the OSCE PA on COVID-19 related topics.

The web dialogue participants included parliamentarians and staff from Albania, Andorra, Austria, Azerbaijan, Belarus, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Estonia, Finland, France, Georgia, Germany, Hungary, Iceland, Ireland, Italy, Kazakhstan, Latvia, Liechtenstein, Lithuania, Malta, Netherlands, Norway, Poland, Portugal, Romania, Spain, Sweden, Switzerland, Turkey, Ukraine, the United Kingdom and the United States, as well as a range of OSCE experts and others.

Opening the event, **OSCE PA President George Tsereteli (Georgia)** stressed the importance of continued parliamentary dialogue during this period of separation. President Tsereteli remarked that governmental and parliamentary actions these days would have long-term consequences for public trust in institutions, and expressed his hope that when the crisis was over history would find that we had held true to principles and commitments at this difficult time.

Welcoming participants, the **Chair of the OSCE PA’s human rights committee, Kyriakos Hadjiyianni (Cyprus)** introduced key topics for discussion, stressing the importance of careful parliamentary scrutiny of all conferral of power under extraordinary measures, highlighting in particular the importance of limiting the time of application of such measures. He raised concerns related to the use of surveillance tools, and respect for freedoms of assembly and expression, as well as protections in conflict areas.

¹ DISCLAIMER: The Highlights from the OSCE PA Web Dialogue are not intended to be official conclusions, nor an exhaustive list of all issues raised during the discussion, but rather a collection of interesting points noted by the International Secretariat for possible future reference. As such, the OSCE Parliamentary Assembly makes no claims nor warranties of any kind, expressed or implied, about their completeness and reliability.

EXPERTS' KEY POINTS

Ingibjorg Gisladottir, Director of the OSCE Office for Democratic Institutions and Human Rights

- The COVID-19 pandemic is a severe stress-test for democracies, putting pressure on democratic institutions, and the safeguarding of human rights and fundamental freedoms.
- Parliaments must play an important role in shaping immediate responses, as well as longer-term solutions. Parliaments must help ensure all voices in society are heard, that there is diligent oversight of governments, and inclusive and transparent legislative procedures.
- ODIHR is closely monitoring the effects of the states of emergency on human rights. Monitoring so far has led to three observations: a warning, a lesson, and an opportunity.
 - The Warning: the crisis is widening pre-existing cracks in democratic systems, including related to trust in institutions; political polarization; and an increasing trend of strong executives. Some parliaments have not been able to adapt and shape national responses to the crisis.
 - The Lesson: several parliaments have quickly adapted and responded effectively to the crisis. Actions have included amending regulations, oversight through special committees or parliamentary enquiries, and boosting transparency.
 - The Opportunity: after the crisis the world will be different than before, and it is possible seize this as an opportunity to craft better, more inclusive and responsive societies. Parliamentarians should play an important role in this transformation, re-thinking interaction with citizens, modernizing procedures, and ensuring inclusive decision-making.
- ODIHR is also developing a study on e-parliaments and the use of new technologies, to contribute to future assistance in this field.
- OSCE PA work in advancing multilateralism and contributing to debate is very important.

Michael Abramowitz, President of Freedom House

- There are broad standards that apply to emergency restrictions. Any restrictions should be: proportionate and limited to the situation; consistent with other legal obligations; and be non-discriminatory. It is also important that restrictions are limited in duration and that legislative bodies continue their functioning to the degree possible.
- Key categories that raise concerns about respect for rights and democratic practice include:
 1. Violations of freedom of expression, including through efforts to criminalize false information and forcing journalists to report only official information. Human rights defenders are also being targeted.
 2. Electoral process will need some adaptation of procedures to safely hold elections, but this process takes time. This may require postponement of elections; proceeding with elections immediately can stress untried procedures and result in limited and unfair opportunities for campaigning.
 3. Surveillance is an important tool in pandemic response, but firewalls between public health uses of personal data and national security uses must be maintained.
- This is not an appropriate time to make permanent changes that may restrict people's rights. With the functioning of parliaments limited, it is inappropriate to take permanent steps such as criminalizing false information or permanent changes to laws on assembly.
- Elections must be free and fair, so that the political consequences of the crisis do not continue into the future.
- The crisis should not be a pretext for persecution of the opposition, or for the opposition to target the government in bad faith. There has been a disturbing trend in parts of the OSCE

region towards a breakdown in parliamentary tolerance for the other side. All political actors should work in good faith at this time, and governments should look for ways to strengthen co-operation across party lines to improve responses to the crisis.

THE DISCUSSION

In the ensuing discussion, more than twenty parliamentarians shared their perspectives, experiences and concerns on enjoyment of human rights during the pandemic. The long-term consequences on democratic processes of the pandemic response was a prominent recurring theme, with Members stressing the importance of parliamentary action and international solidarity.

Highlights:

- Parliamentary oversight under current circumstances was particularly important, it was noted by many speakers. In this regard, respect for parliamentary minorities' role and ability to conduct robust questioning and oversight was stressed. Respect for the independence of the judiciary was also noted as critical to maintaining rule of law.
- Long-term trust in governing institutions was at stake in the pandemic response, it was noted. Careful scrutiny of governmental actions both related to COVID-19 and other issues must be maintained.
- The need for international co-ordination was highlighted, including in steps to re-open societies following lockdowns and recommencing international travel. Parliamentarians should lead this effort for international co-operation and solidarity.
- Many Members expressed concern about restrictions on freedom of expression, stressing that the COVID-19 response should not be exploited as an opportunity to crack down on free speech. Others stressed that misinformation was problematic and needed to be addressed.
- Concern was expressed regarding the potential misuse of private data collected in the fight against the pandemic.
- Concern was expressed about countries in which an expiry date for emergency measures was not enshrined. This can serve as a dangerous opportunity for repression, it was noted.
- The important role played by civil society was noted by several Members, particularly given their potential to provide information based on their networks at a time when travel is restricted. Continued funding for civil society efforts was urged.
- There had been a worrying rise in domestic violence following lockdown procedures that needed to be addressed, it was said. Hate-based incidents appeared to be on the rise, including an increase in incidents of intolerance including anti-Semitism; attention must be paid to the pandemic's impact on discrimination.
- An appeal to release all prisoners of conscience was made, particularly considering the vulnerability of prisons to the spread of infectious diseases.
- Several perspectives related to the holding and conduct of elections were offered. Changes of timing and procedures needed to be carefully considered, it was said. It was stressed as unacceptable to use the pandemic as an opportunity for holding elections within a severely restricted campaign.
- ODIHR's monitoring efforts was appreciated, and hope for clear recommendations from their work was expressed.
- Members shared their experiences regarding imposition and legal provisions related to emergencies measures. Not all countries had legislation in place at the beginning of the crisis that could be invoked, requiring intensive work by parliaments. In some cases parliaments specifically demanded greater ability to intervene and maintain oversight than originally proposed by governments.

- Members shared a range of procedural adaptations that their parliaments had made, including: reduced presence to a minimum required quorum; increased video conferencing; and increased use of written questions.
- Challenges faced by parliamentarians in their work, such as meeting with constituents in a safe manner, were also raised.
- Members discussed some of the particular challenges related to stopping the spread of the pandemic in their countries. Several Members noted that the crisis had clarified that access to health care services should be seen as a basic human right.
- Migrants and refugees continue to be a particularly vulnerable population, and special attention should be dedicated to their needs, it was said.