CIO.GAL/165/12
16 November 2012

ENGLISH only

Judge Catherine McGuinness

Personal Representative of the OSCE Chair-in-Office on Combating Racism, Xenophobia and Discrimination, also focusing on Intolerance and Discrimination against Christians and Members of Other Religions

Report to the OSCE Permanent Council

Vienna, 15 November 2012

This is my first Report to the Permanent Council in my role as Personal Representative of the Chair-in-Office. I was glad to accept the honour, in particular because of the unequalled work of the OSCE in promoting democracy and combating all forms of discrimination throughout the community of participating States. I also welcomed the appointment because of my own continuing involvement with human rights issues in a number of areas and my lifelong participation in ecumenical relationships both between Christian churches and through interfaith dialogue. At the time of my appointment, I had a welcome opportunity to discuss my role and mandate with the Chair-in-Office.

My appointment as Personal Representative also marked my first sustained contact with the OSCE. This first year has, therefore, been a steep learning curve for me. As a first step, in early January I visited ODIHR in Warsaw and there met with key figures in ODIHR and with those who dealt with specific aspects of racism, xenophobia and discrimination as they are found across the entire OSCE area. At this point I would like to express my gratitude to ODIHR and to its department on tolerance and non-discrimination for the continuing co-operation and assistance they have given to me throughout the year. It has also been a most valuable, and indeed enjoyable, experience to have worked together with my colleagues Rabbi Andrew Baker and Senator Adil Akhmetov. Both these colleagues have had longer experience in the role of Personal Representative so that their advice and assistance were particularly valuable to me.

Visits

In the earlier part of the year, the three Personal Representatives visited Austria and Norway, and during October we visited Azerbaijan and Armenia. In all four countries, we received a warm welcome and excellent co-operation from government authorities and were enabled to meet a large range of relevant official bodies. Meetings with Ombudsman authorities were particularly useful in providing statistical and other information on complaints of discrimination and the level of response to these complaints. In general, Ombudsman authorities were enabled freely to carry out their work of accepting and investigating complaints. It is of concern, however, that in quite a number of cases the rulings of Ombudsmen were not binding or enforceable against those who had operated discriminatory practices.

The Personal Representatives also met with civil society groups and NGOs during our visits. In some cases these were joint meetings, and at times individual Representatives met with groups that were closely connected with their particular mandates. Due to the broad nature of my own mandate I met in particular with representatives of Christian Churches and of other faiths, and in addition with NGOs and groups involved with those who suffered racism and

discrimination due to ethnic origin. In my original discussions with the Chair-in-Office and with ODIHR it became clear that the problem of discrimination widely suffered by the Roma population across the OSCE area was a primary area for attention. I therefore endeavoured to investigate the situation of Roma in the countries visited both through contacts with government agencies and through meetings with NGOs and individual Roma. It was helpful for me that the discrimination faced by the Roma in many countries throughout Europe is somewhat parallel to the situation of the traveller community in Ireland – a situation with which I have long been familiar.

It is understandably rather more difficult for the Personal Representatives to interact with non-governmental bodies and representatives of civil society than to meet with highly organised government departments and official bodies. It can be even harder to contact and to meet those belonging to very small minorities, yet these can be the very communities that suffer discrimination and hatred. It should be clear that where such meetings are arranged they should be private, in the sense that there is no need for a government or state representative to be present. In at least some of the meetings with small religious groups the assistance of an interpreter from the local OSCE office and of an extra note-taker provided by the Chair-in-Office was invaluable. In all future visits, the facilitation of meetings with non-governmental organisations and minority groups should continue to be encouraged.

Racism, Xenophobia and Discrimination

The OSCE's engagement on tolerance and non-discrimination issues goes right back to the Helsinki Final Act of 1975. Additional commitments were made in 1990, when the Copenhagen Document committed participating States to ensuring that "...the law will prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any grounds...", as well as other commitments in subsequent years.

As Personal Representative, I was very clear from the outset - when I addressed the Human Dimension Committee last March - that I was committed to combating all forms of racism, xenophobia, and discrimination, including bias against Roma and Sinti, bias against Christians and members of other religions, bias against LGBT persons, bias against persons with disabilities and bias on other grounds. One must always guard against attempts to create hierarchies of oppression, since competition between victims is unacceptable.

Hate Crime

Everyone has the right to live a life free from fear and discrimination. As is clear from successive annual reports on hate crime - Incidents and Responses – compiled by ODIHR, the OSCE region continues to experience problems of hate crime and violence perpetrated against certain groups within society on the ground of a bias motivation. Hate crimes constitute a serious breach of human rights and have a deep impact on victim communities. If left unaddressed, hate crimes pose a potential threat to domestic and international security, thus undermining societal cohesion by sowing the seeds of conflict and wider-scale violence. I would note that there are many difficulties in the actual definition of hate crimes, in the method of establishing evidence of such crimes in a prosecution and in the burden of proof in conviction of these crimes. All of these aspects need improvement as a foundation for realistic and credible reporting of hate crime. The full extent of the problem is also difficult to quantify as official data collection is still non-existent or requires further development in

many OSCE participating States. I strongly encourage participating States to address this shortcoming by submitting data on hate crimes to ODIHR in a timely manner.

Racism and Migrant workers

Migration and integration of third-country nationals is now a matter of considerable debate in many OSCE participating States. Some countries have only recently been faced with immigration. Others have dealt with immigration and integration challenges for decades but not always with satisfactory results. Across our region, migrants are adversely treated because of their legal status and are often subject to various forms of discrimination with regard to access to rights, employment, education, and social services. Many of the policy approaches to date have recognised that anti-racism and the fight against discrimination are an important element of an integration strategy. In fact, anti-discrimination measures are essential for successful integration and the absence of policy coherence between the areas of migration, integration, social inclusion and anti-discrimination can leave migrants exposed to social exclusion and discrimination. A holistic and coherent approach to integration should therefore be adopted, as well as developing a human rights-based approach to integration and migration policies.

Roma and Sinti

As part of my commitment to investigate the situation of the Roma across the OSCE region, I took part in the ODIHR Field Assessment Visit to the Czech Republic. In the wake of the judgment of the European Court of Human Rights in DH and others v. the Czech Republic, this assessment investigated the human rights situation of the Roma minority and, in particular, the realisation of equal access to quality education for Roma children. A number of schools were visited throughout the country and meetings were held with both governmental and non-governmental bodies and individuals. The valuable Report of the field visit is now available.

While the Report deals with the evolving position on Roma education specifically in the Czech Republic, there is no doubt that similar problems of educational discrimination exist in other countries. Tribute should be paid to the ODIHR team who carried out the assessment and prepared the Report. Education is an extremely important factor in providing a future of equality for Roma children, and it is excellent that ODIHR is taking a sustained interest in improving this aspect of Roma life. There have been continuing difficulties surrounding housing and ghettoisation of Roma populations in particular districts. Roma inclusion poses particular challenges arising from the complex combination of issues related to ethnicity, civil status, participation and representation, socio-economic status and culture of the Roma, Sinti and Traveller population. The Roma also face challenges related to institutional discrimination and political and popular hostilities. Tackling the structural and systemic inequalities affecting the Roma requires a comprehensive and multidimensional approach. In the past few years, there has been a resurgence of anti-Roma violence, and Roma are increasingly victims of racist attacks, serious human rights abuses and anti-Roma rhetoric by both state and non-state parties.

It is very important that a positive political discourse is promoted, and it is urgent to challenge the underlying perceptions and stereotypes regarding Roma populations, which are increasingly enhanced by the negative and racist discourses of politicians, policy makers and the mass media. Over the last years, the political discourse mainly focused on phenomena

such as begging and prostitution, false asylum seekers, "illegal immigrants", conveying the impression that Roma are linked with crime. OSCE participating States must work harder to promote a progressive narrative on equality and diversity, while ensuring the respect and fulfilment of Roma fundamental rights, and encouraging their active citizenship. The overall situation of Roma throughout the area must remain at the forefront of human dimension policies in the immediate future.

LGBT

A further pressing issue in the OSCE region is discrimination against LGBT persons. This discrimination can take many forms, including the prohibition of gay pride marches in violation of the right to freedom of assembly. While in many OSCE participating States, pride events are festive celebrations of diversity, LGBT persons in a small but significant number of countries face fierce opposition, assault and violence when they dare to come out in the streets. In some countries, authorities actively oppose the organisation of events, while in others the safety of marchers cannot be guaranteed by State authorities. Discrimination is also perpetuated through the promulgation of legislation in a number of participating States which risks criminalising legitimate speech and has the effect of legalising discrimination against LGBT persons. OSCE participating States must ensure that their national legislation is in accordance with the commitment they have made to "prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any grounds".

Intolerance and Discrimination against Christians and Members of Other Religions

Inter-church and inter-faith relations

It is clear that the development of inter-church and inter-faith relationships at leadership level is an important factor in increasing understanding and in combating the factors that lead to discrimination and, ultimately, to religiously-based hate crimes. The three Personal Representatives were enabled to attend the IV Congress of Leaders of World and Traditional Religions in Astana at the end of May, a remarkable example of the involvement of governments in the Caucasus region in interaction between leaders of faith communities. The Government of Azerbaijan has also recently been involved in promoting interfaith meetings. Such high-level meetings and conferences are much to be commended. In other countries we have visited, such as Norway and Austria, considerable progress has also been made in the public promotion of better relationships between members of different faiths. However, progress at leadership level does not always filter through to ordinary street level, and this weakness was clearly acknowledged to us by religious leaders. Indeed, there has been an increase of street-level hate speech and public encouragement of rejection of minority groups. As is pointed out by my colleague Rabbi Baker, there has also been an increase in overt anti-Semitism. Much of this has stemmed from the deliberate actions of extremist or neo-Nazi groups and political parties. It is widespread and very dangerous. In some cases, it has led to actual violence, both against individuals and against groups – typical hate crimes. There is also the position of smaller Christian or Christian-related groups, which can be seen as posing a threat to the more established churches because they endeavour to evangelise and convert among the established church membership. Rejection of these groups is most strongly illustrated in hostile attitudes to the Jehovah's Witnesses in evidence in many countries. The important values of religious tolerance and freedom of religion must be seen to apply

throughout society and in respect of minority as well as established religious groupings. Tolerance is important, but it needs to be expanded to include respect.

Religious Faiths and the Secular State

In my role as Personal Representative focusing on intolerance and discrimination against Christians, I have been made aware of a growing level of concern among certain Christians about the increasing secularisation of society and about the pressure that this may put on those who manifest deeply held faith-based views. This feeling is not limited to Christians – one could compare the controversy about the wearing of crosses by Christians in public employment with the controversy about the wearing of the headscarf by Islamic women. These controversies also arise in areas where international human rights treaties and conventions, binding on Governments, are mirrored in national legislation. Changes designed to establish human rights and equality for groups which in the past suffered discrimination and intolerance can be seen by the more established religious groups as a current threat to the exercise of their own religious freedom. Some of these complaints may seem to the majority of the population to be disproportionate, but others are more serious in nature and need to be considered by OSCE participating States as a whole.

There is a long historical background to these difficulties, particularly in the countries of Western Europe. In past centuries, established majority churches were closely involved with governing authorities, and, in effect, wielded considerable political power. Sadly, many countries have a past history of discrimination and indeed persecution of minority Christian and other groups, and also of those who rejected religion as a basis for society. In recent times, ecclesiastical power of this sort has ebbed away with the establishment of democratic Governments anxious to establish secular power and the separation of church and State. Memory remains, however, of the alliance of church and State power and of the wielding of that power in discriminatory and sometimes oppressive ways. Of course, neither history nor past abuse, including sexual abuse, is a proper reason for discrimination against ordinary practising Christians in their day-to-day lives, but both are reflected in an increase in overt rejection of religion and of those who practice it.

There is a danger, of course, that such rejection will go too far, and reach over into unjust discrimination. Participating States should be conscious of the need to ensure a balance, and to promote and uphold the fundamental right to freedom of religion or belief. Christians themselves must also remain aware of the human rights of those whom they oppose on religious grounds. This situation is sometimes complicated by divisions between fundamentalist and more liberal groups among Christians themselves, but to discuss this is rather beyond the reach of a report such as this.

To summarise, some of the key recommendations which I would wish to make are the following:

- To ensure that private meetings with NGOs and minority groups remain a key component of all future visit by Personal Representatives;

- To encourage participating States to improve data collection on hate crimes and to submit such data to ODIHR in a timely manner;

- To ensure that anti-discrimination measures are a key component of migration and integration policies;

- To ensure that the situation of Roma remains at the forefront of efforts by ODIHR and of participating States in the immediate future, including through tackling educational discrimination and encouraging a positive political discourse;

- To make greater efforts to combat discrimination against LGBT persons, including through upholding OSCE commitments on freedom of expression and freedom of assembly;

- To ensure that the right to freedom of religion is upheld by secular authorities in respect of mainstream and minority Ch