

THE ROLE OF OSCE IN PROTECTION OF HUMAN RIGHTS

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ABSTRACT

To protect and promote human rights, the European countries established the world's first international legally binding human rights protection system (Council of Europe and European Convention on Human Rights). Today in Europe, there are three supra-national organisations which aim to mandate in the area of human rights; The Council of Europe, The European Union and the Organisation for Security and Cooperation in Europe. In this paper I will examine the specific nature and mechanism of OSCE.

Key Words: OSCE, Intergovernmental Organizations, Human Rights, Security and Human Rights

İNSAN HAKLARININ KORUNMASINDA AVRUPA GÜVENLİK VE İŞBİRLİĞİ TEŞKİLATININ ROLÜ

ÖZET

Avrupa ülkeleri insan haklarını korumak için Avrupa Konseyi kapsamında Avrupa İnsan Hakları Mahkemesini kurarak dünyanın hukuken bağlayıcı ilk insan hakları koruma sistemini kurmuşlardır. Şu anda Avrupa'da insan haklarını korumak üzere Avrupa Konseyi, Avrupa Birliği ve Avrupa Güvenlik ve İşbirliği Teşkilatı isimleriyle üç tane hükümetlerarası örgüt bulunmaktadır. Bu makalede AGİT'in özel sistemi ve tabiatı incelenecektir.

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Anahtar Kelimeler: *Avrupa Güvenlik ve İşbirliği Teşkilatı, Hükümetlerarası Kuruluşlar, İnsan Hakları, Güvenlik ve İnsan Hakları*

Introduction

The continent of Europe, after World War II devoted its great endeavour to establish and maintain 'pluralist constitutional democracies' through the Europe.¹ The main basement for democratic society is the respect for human rights. To protect and promote human rights, the European countries established the world's first international legally binding human rights protection system (Council of Europe and European Convention on Human Rights). Today in Europe, there are three supra-national organisations which aims to mandate in the area of human rights; The Council of Europe, The European Union and the Organisation for Security and Cooperation in Europe. Among them, as an institute of Council of Europe, especially European Court of Human Rights has contributed greatly to the development of human rights. The EU increasingly gives importance to human rights. In this paper I will examine the specific nature and mechanism of OSCE. I will also examine whether can the OSCE contribute significantly in the field of human rights considering the role of the Council of Europe in the field.

The Specific Nature of the OSCE Process

The process of the Organisation on Security and Co-operation in Europe (OSCE)² initiated by the Final Act of Helsinki in 1975 was the unique basis for inter-state relationships in Europe during the Cold War. The idea of convoking a pan-European conference has been launched by the Soviet diplomacy in the 1960s. The agreement by the Helsinki Final Act primarily concerned with the inviolability of the frontiers, sanctioned de facto the division of Europe. The OSCE process had since then its own way, overshadowed or paralysed by the tensions between the

¹ Lauren, Paul Gordon, *The Evolution of International Human Rights*, (University of Pennsylvania, 2011)

² The Organisation on Security and Co-operation in Europe prior to 1 January 1995 was named as Conference on Security and Co-operation in Europe (CSCE)

superpowers in almost all fields of co-operation in Europe.³ The process, which created a framework of co-operation, has particularly been successful in the field of international protection of human rights issues during the Cold War. It moreover constituted the hard-core of an ‘international softlaw’.⁴ All participating States in the conference are in condition of sovereign and independent States and in conditions of equality.⁵ Originally thirty-five countries chose to participate in the process. The number of participating states has reached to fifty-five to date. The Organization for Security and Co-operation in Europe (OSCE) is the largest regional security organization in the world with fifty-five participating States from Europe, Central Asia and North America.⁶ The OSCE as its name indicates, differs radically in many aspects from the European Union and Council of Europe. The Helsinki Final Act provides that “the participating States will respect human rights and fundamental freedoms...”⁷ In general, OSCE commitments - such as the extensive provisions governing treatment of minorities found in the 1990 Copenhagen Document and various other OSCE instruments - are politically, but not legally, binding.⁸ The OSCE has no individual complaint procedure, and no reporting requirements. Similarly, OSCE commitments do not apply directly in the national laws of participating States.⁹ The agreement’s primary object is therefore issue of international security and relations between States.

³ Pieter van Dijk, Arie Bloed, *The Vienna Follow up Meeting and Its Aftermath*, International Studies in Human Rights, 1991 p.75

⁴ Bakir Caglar, *Avrupa yeni Mekanında Kurumsallasma: Hukuk ve Demokrasi*, (Istanbul, 1991) p.33

⁵ The Helsinki Final Act <<http://www.osce.org/docs/english/1990-1999/summits/helfa75e.htm>>

⁶ <<http://www.osce.org/general/>>

⁷ supra note 4

⁸ “[OSCE documents] are not treaties and, therefore, are not legally binding on the OSCE participating states” Jane Wright, “The OSCE and the Protection of Minority Rights” in *Human Rights Quarterly*, Vol.18 190, 192 (1996)

⁹ David Wippman, “Symposium: Human Rights on the eve of the next century: Aspects of Human Rights Implementation: The evolution and implementation

Structure of Helsinki Act : The Three Baskets

The Helsinki Final act consists of four sections namely; (a) questions relating to security in Europe, (b) co-operation in the fields of economics, science and technology and the environment, (c) co-operation in humanitarian and other fields (d) “follow up” the Conference.

The first three sections of the Final Act are commonly known as “three baskets”.

“ Basket I” starts with a ‘Declaration on Principles Guiding Relations Between Participating States’. This sets out ten fundamental principles known as “decalogue”.¹⁰

Principle No. 7 which requires “the respect for human rights and fundamental freedoms, including freedom of thought, conscience, religion and belief” is wide in scope but rather limited in its effect: these are simple intentions to promote and encourage, instead of affirmative statements of a determination to respect human rights.

Basket III of the Helsinki Final Act is entitled “Co-operation in Humanitarian and other Fields” and contains four sections.¹¹ The principles, which take place in this section, are not directly concerned with genuine human rights, they nevertheless have an unprecedented meaning in Cold War atmosphere.

of Minority Rights”. In *Fordam Law Review*, November 1997, accessing from lexis-nexis professional

¹⁰ These principles are: Sovereign equality and respect for the rights inherent in sovereignty; avoidance of the threat or use of force; inviolability of frontiers; territorial integrity of States; peaceful settlements of disputes; non-intervention in internal affairs; respect for human rights and fundamental freedoms, including freedom of thought, conscience, religion and belief; equal rights and self-determination of peoples; co-operation among States; fulfilment in good faith of obligations under international law.

¹¹ The reinforcement of peace and of comprehension between peoples and the spiritual fulfilment of human person without any distinction based on race, sex, language or religion were mentioned as the principal aims envisaged in these sections. The first relates to ‘human contacts’, the second one concerns the free flow of information. Basket III concludes with two brief sections about co-operation and exchanges in the fields of culture and education. *Supra* note 4

The integration and balance between all the Baskets of the Helsinki Accords have become a cornerstone of the process and helped to ensure that human rights are not subordinated to other questions.¹² The Final Act of Helsinki aimed at putting an end to the isolation of human rights issues with regard to other sectors and other finalities relevant in international relations. It incorporates human rights in a series of interdependent principles of crucial importance. The principle of human rights supremacy is recognised, but the modalities of their application have been conceived in a restrictive manner. Despite the fact that no real serious engagement has been provided by the signatory States in favour of human rights protection, the policies in this regard seem more than ever before related to other activities promoting peace and co-operation. A ‘procedural transition from agreements to process of Helsinki has been realised when the impact of the achievements expanded over relations between States and societies in Europe. These achievements contributed to the universalisation of human rights / humanitarian issues, which have, began to be considered as “inter-ideological common value.”¹³

The Final act has served as a constitution for a regime tearing down the Iron Curtain in Europe.¹⁴ A magnitude of treaties, resolutions and agreements appeared in Europe since 1975, quite a few of them have been conducted through the spirit of Helsinki. As a manifesto of human rights movement, Helsinki process paved the way for the most significant and far-reaching changes in Europe since the Second World War. In 1989, as the totalitarian regimes of the Eastern Europe began to topple, every emerging leadership pointed specifically to the Helsinki process as a catalyst in the drive for democracy.¹⁵

¹² E. B. Schlager; “The Procedural Framework of the CSCE: From the Helsinki Consultations to the Paris Charter” in HRLJ Vol.12 No. 6-7, July 1991 p.222

¹³ Munci Kapani, *Insan Haklarinin uluslararası boyutları*, Ankara,1991 p.98

¹⁴ Asbjorn Eide, Helgesen Jan; *The future of human rights protection in a changing world: fifty years since the four freedoms Adress: essays in honour of Torkel Opsahl*, (Oslo, Norwegian University Press, 1991) p.133

¹⁵ supra note 9, p.221

Innovations in the CSCE Process

Because of the effects of the Cold War, the period following the signing of Final Act in 1975 has been a fruitless one in respect to human rights issues. One of the striking features of the CSCE process under Cold War was its lack of a permanent structure.¹⁶ The establishment of a permanent supervisory mechanism for the “human dimension of the field of human rights and other issues of a humanitarian character, was one of the basic objectives of the Vienna Follow-up Meeting which took place on 15 December 1989. Thus, on the basis of the Vienna concluding document a special supervisory mechanism started operating. The mechanism, which is of non-voluntary character, constitutes a system of supervision that can permanently function.¹⁷ The final phase of the supervisory mechanism of Vienna Summit concerns matters relating to the first three phases of the mechanism on the agenda of the annual meetings of the Conference on Human Dimension of the CSCE. The meetings of the Conference on Human Dimension have a triple role: they review developments in the human dimension of the CSCE including the implementation of the relevant CSCE commitments, evaluate the functioning of the established procedure, discuss the provided information and consider practical proposals aimed at improving the implementation of commitments.¹⁸ The Vienna meeting deeply contributed to the international protection of human rights issues more by elaborating a certain institutional reformation than by deepening of those rights named in the context of Helsinki Final Act. Accordingly the “human dimension” of the CSCE refers to all human rights and humanitarian issues, which conceivably arise the principles and Basket III. Before the Vienna meeting, human rights were still considered as an issue of concern to the Western and Neutral Non-aligned countries. The criticism of a State’s human rights record was considered as interference

¹⁶ The participating States have avoided the establishment of an international organisation for their deliberations in the framework of the process. The structure of the process has been that of follow-up meeting and expert meetings. *Supra* note 2, p.76

¹⁷ *supra* note 2, p.72

¹⁸ *supra* note 2, p.135

in its internal affairs. This approach has been changed by the progress made in Vienna follow-up meeting.¹⁹

The Charter of Paris for a new Europe the first embryo of organisation of CSCE process, which supplements the Final Act of 1975, was concluded in 21 November 1990. It officially marks the end of Cold War. The Paris summit seriously envisaged the institutionalisation of the CSCE and gave a definition of a new programme in a more democratic, more pacific and united Europe. The Charter of Paris has lifted the human rights element up to an more prominent level. The operative paragraphs begin with human rights, democracy and the rule of law as the first sub-section of the Charter. Hence, the protection and promotion of human rights and fundamental freedoms is made a top priority, which encompasses the whole CSCE process.

The charter clearly indicates as follows;

“Human rights and fundamental freedoms are the birthright of all human beings, are inalienable and are guaranteed by law. Their protection and promotion is the first responsibility of government. Respect for them is an essential safeguard against an over-mighty State. Their observance and full exercise are the foundation of freedom, justice and peace.”²⁰

Paris summit has introduced two basic innovations: the protection of minorities and the technical assistance for democracy, for the consolidation of democratic institutions in Eastern and Central Europe.

The Copenhagen Meeting on human dimension took place between 5 June and 29 July 1990, in a drastically changed international context. At this meeting, the participants gave formal recognition to the relatively peaceful revolutions of the age, but also committed themselves to respect a broad range human rights and humanitarian goals. The agreement set forth the essential elements for a democratic system of government in which human rights and fundamental freedoms can be protected. Recognising the explosive potential of ethnic disputes in Central and Eastern Europe, the scope of the Copenhagen document

¹⁹ supra note 2, p.27

²⁰ <<http://www.osce.org/docs/english/1990-1999/summits/paris90e.htm>>

extended beyond individual civil and political rights and embraced provisions for the rights of minorities.²¹

The Moscow Meeting on Human Dimension was held from 10 September to 4 October 1991. In the final document of the meeting of the Conference on human dimension, the participating States have repeated their determination to achieve further progress in the implementation of the provisions of the document, as full respect for human rights and fundamental freedoms and the development of societies based on pluralistic democracy and the rule of law considered as prerequisites for a lasting order of peace, security, justice and co-operation in Europe.²²

The third conference on human dimension of the CSCE process was held in Helsinki on 10 July 1992. It reveals the necessity to adopt a careful approach towards the recent developments in Europe. The statements in the document reflect the will to protect the positive achievements in human rights field and the common commitment to construct a united front to prevent the expansion of regressive, totalitarian tendencies, which undermine peace and security in Europe.²³

The High Commissioner on National Minorities

The Helsinki Follow-up Meeting established the post of High Commissioner on National Minorities. The mandate and manner of function take place in the chapter II of Helsinki decisions. The mandate of the HCNM is to provide "early warning" and "early action" with regard to "tensions involving national minority issues" that have the "potential to develop into a conflict . . . affecting peace, stability, or relations between participating States. As the language of the mandate suggests, the High Commissioner does not represent an express advocate of national minority rights; rather the post is designed as "an instrument of conflict prevention. The High Commissioner is empowered to collect

²¹ <<http://www.osce.org/docs/english/1990-1999/hd/cope90e.htm>>

²² <<http://www.osce.org/odihr/docs/compilation/compilation-1991mos.htm>>

²³ <<http://www.osce.org/docs/english/1990-1999/summits/hels92e.htm>>

and receive information on national minority issues from any source except organizations that practice or condone terrorism.²⁴

The creation of post is a considerable innovation as it gives chance to take proper measures to prevent a possible conflict. However, some problems arise when performing the mandate. First of all, there is no a clear definition of minority concept in the international law. The OSCE does not make clear this definition problem as well.²⁵ Another problem is that like other international mechanisms OSCE does not provide group rights for national minorities but the individual rights.

Some remarks on the Protection and Promotion Mechanism of OSCE

The Organisation on Security and Co-operation in Europe has originally been set up as a conference but not an institution. The initial absence of any supervisory body or organ in the field of human rights was a serious deficiency of the organisation. The individual has had no access to the process. There was not a mandatory reporting system, which might disclose human rights issues. The commitments of the organisation are not legally binding. They are politically binding. The human rights norms in the Helsinki process have not been elaborated with the same degree of certainty as is normally the case in international human rights instruments. The highly important problem concerning the supervisory mechanism established in the Vienna Follow-up Meeting is the fact that no decision with regard to matters placed on the agenda can be made without the consent of the State concerned.²⁶ It is totally intergovernmental in character, and its four phases have the nature of inter-state consultations and peaceful settlement negotiations rather than that of international supervision. The procedures are rather formless and flexible. However, it is the unique human rights protection system at the regional level, which participates all European States some of which are

²⁴ < <http://www.osce.org/docs/english/1990-1999/summits/hels92e.htm>> Stuart Ford, "National Minority Rights in the United States: The limits of conflict prevention" in *Suffolk Transnational Law Review*, Winter 1999.

²⁵ Rachell Brett, "human Rights and OSCE" in *Human Rights Quarterly*, Volume 18 No.3 pp.668-693 at 690

²⁶ supra note 2, p.87

not yet members of the Council of Europe. The OSCE mechanism on human dimension has facilities for inter-state settlement of humanitarian matters, which may not be present in the formalised human rights procedures such as the European Convention on Human Rights.²⁷ The OSCE process is considered as “Europe’s premier post-Cold War political forum”.²⁸

Helgesen notes that “ If one truly advocates to establish a human rights regime covering the whole of Europe, with or without the North American States, but nothing more than Europe, the CSCE may be the only realistic alternative for a long time into the future. In this sense, the CSCE represents the broadest platform for agreement among thirty five nations”.²⁹

The OSCE process is built on the decades of experience derived from the universal Declaration of Human Rights, the European Convention on Human Rights and Fundamental Freedoms and the International Covenant on civil and Political Rights. One of the OSCE’s greatest contributions to the area of human rights may have been its role as a vehicle for raising publicly violations of agreed standards.³⁰

Conclusion

The Council of Europe and its mechanism over the decades by specific and focused activities in the area of human rights played precisely a unique role. However, in some areas it lacks of effectiveness. The main area in this regard is the gross violations situations. Experiment of the European Court of Human Rights and the Commission to respond to such practices is disappointing. The main mechanism of the European Convention, which is individual petition system, is not regarded as proper means to combat with gross and systematic violations.³¹ While

²⁷ supra note 2, p.98

²⁸ supra note 9, p.236

²⁹ supra note 11, pp.142-143

³⁰ supra note 9, p.237

³¹ Aisling Reidy, Francoise Hampson, Kevin Boyle, *Gross Violations of Human Rights: Invoking the European Convention on Human Rights in the case of Turkey*, in *Netherlands Quarterly of Human Rights*, Volume 15, June 1997 161-167 at 162

examining an individual complaint the Court considers only the individual case but not the systematic practice in the country as a whole. However, the consideration of only individual complaints will not generate a political impact, which is required to change human rights situation in whole country.³² In this respect as a political organisation OSCE mechanism can be used to address and create the politic will to change the systematic violations. The OSCE has more member states some of which are not member of council of Europe. This is its advantage. So, its mechanism can be used in the protection of human rights concerning those countries, which are not member states of Council of Europe.

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³² ibid pp.162-163

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