



Food for thought paper

Protecting Fundamental Freedoms Under the Hybrid Aggression Conditions: the Case of Ukraine

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Terrorist attacks of the fanatic groups at the backdrop of the refugee crisis resulted in speculations in several OSCE participating States on the alleged necessity to limit or restrict some fundamental freedoms, including the freedom of religion or belief, for the sake of national security. Actually, it may result in restricting freedoms of millions of the innocent people, thus facilitating the recruitment of the new frustrated members to the fanatic groups, but not making societies even a little bit secure.

Ukraine faces even more complicated dilemmas, being forced to withstand the sophisticated hybrid warfare that includes many hidden threats masked as fake quasi-civil initiatives, which speculate on the fundamental freedoms applying them as a shield to camouflage aggressive intentions. It is a very complicated, but simultaneously a very important task for Ukraine to avoid the limitation of the fundamental freedoms while effectively protecting nation from the external aggression. It is necessary to find balance between countering aggressive propaganda and protecting freedom of speech and media, between preventing provocations and safeguarding fundamental freedoms, including freedom of thought, conscience, religion, right to peaceful meetings and etc.

Despite the scale of the challenges and certain omissions mostly resulting from the shortcomings of the post-Soviet legacy in the law enforcement system, so far Ukraine manages to preserve fundamental freedoms and even demonstrates progress that becomes possible due to cooperation between the public authorities, civil society actors and international organisations. In this regard, the assistance of the OSCE is significant.

To mention the most recent achievements, it should be noted that on 13 September 2016, following the consultative opinion provided by the OSCE Project Co-ordinator in Ukraine (PCU) and taking into account the "Guidelines on Freedom of Peaceful Assembly" produced by the OSCE Office for Democratic Institutions and Human Rights (ODIHR), Ukrainian Constitutional Court abolished regulations limiting the religious assemblies. The Court decided that legal provisions requiring prior permission from authorities for religious gatherings, including Article 21(5) of the Law on Freedom of Conscience and Religious Associations, as well as the USSR Supreme Council's Presidium decree of 1988 on the procedure for organizing and holding meetings, are not compliant with the Constitution of Ukraine. So, the citizens wishing to organize a religious gathering do not need to seek permission from the authorities anymore, but just to notify them following the regular procedure applying to the civic peaceful assembly.

With this judgment, the Constitutional Court confirmed the principle of "friendly treatment of international law", taking into account the European Court of Human Rights case-law when interpreting constitutional rights and freedoms that is important for the constitutional complaint mechanism being introduced in Ukraine by recently-adopted constitutional amendments to enter into effect as of 30 September 2016. The mechanism of constitutional complaint was worked out within the working group on judicial reform, organized by the Council for Judicial Reform, the OSCE Project Co-ordinator in Ukraine, and the Kyiv-Mohyla Academy. This mechanism makes it possible for the citizens and legal entities to appeal directly to the Constitutional Court of Ukraine, if they consider that the court's judgment applies the law inconsistent with the Constitution.

Another important recent achievement to be mentioned is the elaboration of the new concept for legal education reform in Ukraine. In September 2016, this concept, developed by the Ministry of Education and Science and the Ministry of Justice with support of the OSCE PCU, was presented to the members of the Parliament, legal professionals, representatives of lawyers associations and law students. It is planned that after the public discussions, the necessary legal framework to implement the concept will be developed aiming at improving the quality of legal education in Ukraine. Such reform is of vital importance, because the issue of human rights protection is strongly interrelated with the professional level of the judges, prosecutors and lawyers. In this respect, the first distance course in Ukraine for judges on the application of the case-law of the European Court of Human Rights, launched by the OSCE PCU in July 2016 is no less important, as

well as the PCU-supported training on human rights protection for the judges relocated from the non-government-controlled areas held in December 2015. The PCU also supported the government-civil society working group that drafted the National Strategy of Facilitating Civil Society Development for 2016-2020, approved by the President of Ukraine in February 2016 and reflecting the key OSCE principles and commitments.

With respect to the protection of freedom of religion or belief, an important ODIHR's project "Promoting Security for Religious Communities and Others in the Regions of Ukraine" should be also mentioned.

The above mentioned activities and improvements are applied to the government-controlled regions of Ukraine, but unfortunately they cannot influence the emergency situation with fundamental freedoms, including freedom of thought, conscience, religion and belief, in the illegally annexed Autonomous Republic of Crimea and de-facto Russian-occupied territories in the Donetsk and Luhansk regions of Ukraine. In these territories, the thoughts different from the official are being bluntly suppressed; civil activists suffer from mental and physical violence; politically undesirable religion organisations, NGOs and mass media are actually banned through the procedure of the so-called re-registration or the court decisions. In this regard, it should be stressed that in 1991, in Moscow, the OSCE participating States declared that the human dimension commitments are matters of direct and legitimate concern to all. So, it is high time to remind Russia of its international commitments and responsibility for the human rights observance in the de-facto controlled territories.

Taking into account both the current achievements and the existing problems, the EESRI Foundation proposes the following **recommendations**:

To the participating States of the OSCE:

Refraining from the politically motivated speculations, as if the national security protection can benefit from the restriction of fundamental freedoms, including freedom of thought, conscience, religion or belief;

Facilitating the human rights education in accordance with the OSCE commitments, ensuring that it is mainstreamed in educational curricula at all levels;

Paying proper attention to the Russia's responsibility for the fundamental freedoms violations in the illegally annexed Crimea and de-facto occupied territories in the Donetsk and Luhansk regions.

To the ODIHR:

Establishing a special international commission on human rights monitoring in the annexed Crimea and occupied territories in the Donetsk and Luhansk regions;

Providing assistance to further improve the legislation on fundamental freedoms in Ukraine with paying special attention to the proper recording of violations in this sphere and bringing abusers to responsibility;

Supporting regional, subregional and national initiatives on monitoring and protecting the fundamental freedoms.

To the PCU:

Further supporting of the interaction between public authorities and civil society on the issues of fundamental freedoms monitoring and protection;

Continuing assistance to improve the legal education in Ukraine, including the implementation of the concept of legal education reform, organizing special training courses for the personnel of the law-enforcement authorities, elaborating together with the Ministry of Education and Science of the program to include the human rights education into the educational curricula at all levels;

Organizing an information campaign for the wide audience on the essence of the fundamental freedoms and importance of their protecting and promoting.

To the SMM:

Recording all detected violations of the fundamental freedoms in the territory of its monitoring with subsequent transmitting of such records to the Ukrainian law-enforcement authorities and the OSCE ODIHR for the further response.