

REPORT TO THE CSCE COUNCIL
FROM THE CSCE SEMINAR OF EXPERTS
ON DEMOCRATIC INSTITUTIONS

Representatives and experts of the participating States, Albania, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech and Slovak Federal Republic, Denmark, Estonia, Finland, France, Germany, Greece, Holy See, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, Netherlands-European Community, Norway, Poland, Portugal, Romania, San Marino, Spain, Sweden, Switzerland, Turkey, Union of Soviet Socialist Republics, United Kingdom, United States of America and Yugoslavia, met in Oslo from 4 to 15 November 1991, in accordance with the provisions relating to the CSCE Seminar of Experts on Democratic Institutions contained in the Charter of Paris for a New Europe.

An opening address to the Seminar was delivered by H.E. Gro Harlem Brundtland, Prime Minister of Norway, on behalf of the host country.

Opening statements were made by representatives of the participating States. Contributions to the Seminar were made by the Secretary General of the Council of Europe and the President of the European Commission for Democracy through Law. The Foreign Minister of the host country, Mr. Thorvald Stoltenberg, delivered a closing address to the Seminar.

The participating States recalled their commitment to implement fully the provisions relating to human rights, democracy and the rule of law in the Final Act of the Conference on Security and Co-operation in Europe, the Charter of Paris for a New Europe and other CSCE documents, including, in particular, the Documents of the Copenhagen and Moscow Meetings of the Conference on the Human Dimension.

Proceeding from the commitments contained in these documents, experts had a thorough discussion of ways and means of consolidating and strengthening viable democratic institutions in participating States, including comparative studies of legislation on human rights and fundamental freedoms.

The representatives of the participating States expressed their profound gratitude to the people and Government of Norway for the excellent organization of the Seminar and the warm hospitality extended to the delegations which participated in the Seminar.

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Representatives recalled that the mandate of the Oslo Seminar, as set out in Annex II of the Charter of Paris, required the Seminar to provide a summing up of its discussions for transmittal to the Council. They took account of the participation in the Seminar of experts not representing governments, and of the fact that the contributions of these experts were of particular value to all participants. In order to provide an adequate record of discussions, and to ensure that all views were adequately reflected, this Report, which does not purport to express any new commitments on the part of participating States, sets out the following Summary of Discussions as a record of its work:

I

In the discussions of experts, suggestions for practical measures to strengthen democratic institutions and the rule of law were set out. Experts also formulated their assessments of the political, economic, social and legal factors which influence the operation and effectiveness of democratic government and its institutions.

In this context, it was recalled that the participating States have already accepted high standards of human rights, fundamental freedoms, pluralistic democracy based on periodic and free elections by universal and equal suffrage, and the rule of law. It was broadly recognized that democratic government depended on the ability of democratic institutions to function effectively. In order to do so, the structure and authority of institutions needed to be backed by informed and active public support and broadly based acceptance in the society which they serve. A democratic culture was a necessary element for the functioning of all democratic governments, and required permanent encouragement. Where a democratic tradition of long duration has not had the chance to develop, or had been interrupted, it would be necessary to develop a democratic culture, on the local, regional and national level, in order to sustain new democratic institutions. It was noted that the reciprocal relationship between international human rights norms and national practices was important in this regard. The growth of a democratic culture can be fostered by society at many levels: in basic civic education, in the media, within religious and civic movements and organizations, in political parties, in the professions, notably the legal profession, in the judiciary, in public administration, within the armed forces and the police by securing the absolute allegiance to the civil power and democratic government.

It was also broadly recognized that the independence and authority of the judiciary was a crucial element in safeguarding the rule of law and securing effective implementation of human rights and fundamental freedoms. An independent judiciary serves to uphold the integrity of other democratic institutions, reinforce their effectiveness, and prevent abuse of power.

It was also broadly recognized that, along with the development of democratic institutions and political procedures, the reform of private law was essential in States where radical democratic reforms are being introduced. A legal foundation had to be provided for a functioning economy, securing the rights of the individual to engage in constructive economic activity, including the right to own property and to dispose of it under the law, alone or in association with others.

It was likewise broadly recognized that the ability of a society to satisfy the basic material needs of its population was important for the development of the democratic political process, and of a democratic culture based on shared values and goals.

II

In discussing the question of constitutional reforms, experts drew on national experiences. They noted that States choose different means for the implementation of democratic government, in response to their particular characteristics and traditions and to the circumstances of their constitutional history. As long as the core values of democratic government were assured, no single overall approach to the institutions and procedures of democratic government could be considered as having universal validity.

The issue of constitutional reforms was discussed from a variety of points of view, covering the technical aspects of the reform process as well as questions of substance. On matters of substance, exchanges concentrated on the separation of powers, and on constitutional or statutory guarantees for human rights and fundamental freedoms.

Particularly emphasis was given in the discussions of the meeting to the ongoing efforts of the new democracies to create a political and legal infrastructure assuring the realization of pluralist democracy, human rights and the rule of law. In that context, a number of requirements, often conflicting, were identified.

It was a central theme that the new democracies are faced contemporaneously with an urgent need to mark the break with the former non-democratic system in an appropriate legal form, to assure stability in institutions, and effective implementation of policies as well as sound and fair administrative practices.

It was recognized that sweeping constitutional reforms touch the very foundations of a nation, and therefore warrant thorough analysis and discussion. On the other hand, fundamental political changes called for a swift follow-up in terms of constitutional reform. A decision on a definitive new constitution, adopted before a society has fully clarified and developed its vision of democratic government, might have to be reconsidered before long. Experts considered that in such a situation, a balance might be found, by providing for constitutional amendment procedures that allow for modifications, while entrenching certain basic provisions such as those relating to human rights, fundamental freedoms and the rule of law.

Experts discussed the composition and nature of the body empowered to draft a new constitution and the modalities for its adoption. A general view emerged to the effect that the drafting body must reflect the views of the political forces in order to bring about a national consensus. A new constitution should be adopted in a manner to ensure legitimacy.

The utility or admissibility of granting exceptional powers to the executive branch during a period of transition, in order to carry out unpopular but necessary economic reforms, was also considered. While some experts felt that such exceptional powers might be justified in order to create the long-term conditions for a stable, viable democracy, others were of the opinion that such measures would weaken the development of a democratic culture. In any event, conditions for granting exceptional powers should be defined, and their exercise subject to control as appropriate.

Direct participation of the people in important political decisions through plebiscites or referenda was highlighted as a means of enhancing the interest and involvement of the electorate in public affairs. As with any democratic process, popular consultation should be carried out with appropriate safeguards.

The extent to which institutions of the old totalitarian regime could be adapted to

serve in a new democratic framework gave rise to diverging views. While the need for some continuity was recognized it was underlined that the identification of institutions with totalitarian rule might undermine their legitimacy even after a restructuring of such bodies had taken place.

In the discussion of the division of power between the legislative, executive and judicial authorities, it was noted that, although the classical doctrine of the separation of powers in its pure form was implemented mainly in presidential systems, its essence was also reflected in the practices of many other political systems.

It was also emphasized that separation of functions between the trial judge and the prosecuting authority was essential and required adequate guarantees. The strengthening of the role of the judiciary, and the creation of a well-trained and independent body of judges, was particularly important in those participating States emerging from a totalitarian past. Appointment procedures, remuneration and security of office were characterized as important factors.

In the context of constitutional reform, reference was made to the utility of vertical decentralization and division of the functions of government on a federal, regional and local basis for a wide range of purposes. Numerous forms were available to take account of historical, regional, linguistic or ethnic distinctions. Administrative decentralization, development of governmental functions on a regional basis, and reinforcement and reform of local government institutions might in varying ways respond to the needs of groups, including national minorities.

Attention was drawn to the difficulties that arise when coalition governments change frequently, due to a fragmented parliament. One way of avoiding instability was to admit no-confidence votes only when the parties behind such a vote are in a position to offer an alternative government.

Experts discussed the relationship between the organization of elections and of political parties, and the functioning of democratic institutions. They saw a dilemma between an ideal of representation of parties in Parliament directly on the basis of voting figures, and the need for stable and effective government.

Proportional election systems were well suited to ensure mathematically correct

representation of the electorate. At the same time such systems entailed the possibility of a proliferation of political parties and ensuing difficulties in establishing parliamentary majorities. This in turn might lead to weak and unstable governments. The introduction of thresholds and the adjustment of mathematical methods applied in determining representation could help alleviate this problem. Electoral systems based on single-seat constituencies were seen as more likely to produce stable parliamentary majorities, but at the risk of leaving segments of the population unrepresented.

It was pointed out that rules relating to the organization of elections are also important for the resolution of electoral disputes and drawing or redrawing of electoral constituencies. Participating States apply different systems in this respect, some recognizing the authority of their legislature while others accept the competence of the judiciary. A third system referred to was the establishment of a special judicial body with sufficient expertise in electoral matters and completely immune from the influence of the legislative and executive branches.

It was underlined that representative government now confronted a situation where the media, interest groups, spontaneous social movements and single-issue pressure groups have taken over some of the functions previously performed by political parties. At the same time, the level of electoral participation in many established democracies had diminished. There were differing views on the implications of such changes for the environment in which democratic institutions operated. It was noted that non-governmental organizations and new approaches by the media to the political process might play a constructive role, by activating voters and by making the political parties aware of the concerns of voters.

Reference was made to the necessity for democracies to deal with the anti-democratic forces in society without doing violence to democratic procedures and the ideology on which democratic culture depended.

Extensive reference was made to the leading role played in many emerging democracies by broad, heterogeneous mass movements, united and inspired by their experience in confronting totalitarian regimes. The point was made that such movements may have to adjust in order to continue to play an active political role in post-revolutionary

transition to democracy.

It was suggested that the process towards pluralism in former one-party States might require a codification of the role of political parties. Legislation was required to determine the conditions under which political parties were to operate, seek financial support and meet certain requirements, e.g. the readiness to contest elections. It was noted that members of political parties should not be barred from serving as judges or in public administration.

It was noted that while voluntary organizations present themselves under a variety of forms, they have many features in common. They are set up by groups of individuals pursuing common interests of a professional, economic or non-profit nature. Distinctions between them could be on the basis of criteria such as the degree of organization, size, complexity and the functions performed.

Although voluntary organizations might not primarily aim at exercising political responsibilities, they could help articulate citizens' demands on specific issues. They could serve to encourage diversity and the growth of different opinions and facilitate the integration of groups. It was underlined that voluntary organizations provided democratic societies with early-warning systems against government interference and anti-democratic activities. Many voluntary organizations played a prominent role in economic life, providing in some cases a complement to market forces. Many experts pointed out that public authorities should refrain from bureaucratic control.

Some pitfalls for voluntary organizations were pointed out: centralization of decision-making and co-optation by State authorities. Reference was also made to the fact that narrow, well-defined interests are more likely to form the basis for voluntary organizations than more general ones.

Experts identified some trends in modern society which influence the working conditions for voluntary organizations and trade unions. In some countries, one could observe a certain tendency of voluntary organizations to withdraw from participation in consultative State organs, and the loosening of ties between trade unions and political parties. The effects thereof on civil society were not yet clear.

While noting the vital role of voluntary organizations for the functioning of democratic institutions, experts also referred to the question of their democratic legitimacy. Only direct, secret and universal suffrage could guarantee a democratic process. But openness and democratic control could not always be taken for granted in voluntary organizations. As the role of political parties had diminished in many countries, the relationship between parliaments and voluntary organizations had become more important.

It was emphasized that a democratic form of government requires freedom of expression, without which its citizens cannot obtain the information necessary for participation in political and public life. A diverse and independent press and broadcasting system has a vital role to play in any democracy. The question of imposing certain regulations on the media was discussed. It was pointed out that some protection was required against excesses of the press. At the same time, it was underlined that freedom of expression should only be subject to such restrictions as are prescribed by law and are necessary in a democratic society. Some participants pointed to the need for high ethical standards in the media and related this to the system of recruitment and training of journalists. It was, however, underlined that both elitist and popular newspapers had the right to exist.

Ideally, economic conditions should guarantee complete editorial independence. It was, however, pointed out that State intervention could sometimes become necessary in order to protect the diversity of the press. In this context, it was mentioned that one should also take into account that the press and broadcasting systems are parts of the cultural identity of a country.

In considering comparative studies of legislation in the area of human rights and fundamental freedoms, attention was drawn to the interrelationship between the protection of those rights, and the effective functioning of democratic political and judicial institutions.

Particular attention was given to the question of national implementation of international human rights instruments. Direct incorporation of such instruments as national legislation was mentioned as one form of national implementation. Another option would be to transform the provisions of international instruments into national legislation. It was

pointed out that in some participating States this was already being realized by the jurisprudence of the national judiciary. In this connection, it was emphasized that it was the responsibility of each State to give full domestic effect to its international human rights obligations, irrespective of the means of implementation chosen.

The view was expressed that the national implementation of international human rights obligations requires the existence of effective domestic legal remedies and instruments for controlling public administration.

There was a discussion of the role of national institutions for the promotion and protection of human rights. It was pointed out that, in addition to the ordinary court system, including administrative courts, such institutions could comprise constitutional courts, national human rights commissions, complaints commissions, Ombudsmen or mediators.

In the experience of many experts, the institution of Ombudsman has proved useful in dealing with administrative abuse. By examining the legality of administrative acts, it has a complementary function to the courts. In this way, confidence in the rule of law is strengthened. The supervisory functions of the Ombudsman institution promote fair administrative practices and encourage confidence in government.

Reference was made to the importance of openness in public administration including access to information and documents, and adequate complaints procedures. Recourse to international human rights bodies was mentioned as complementing national complaints and review procedures. Provisions for legal assistance at all levels would be an important element in securing the successful operation of such complaints and review procedures.

The importance of an adequate code of criminal procedure was emphasized as a means of implementing human rights. In particular, attention was drawn to international standards for treatment during detention. It was considered that practical forms of international co-operation in this field could be of direct utility in the reorganization of prison services and penal institutions. Particular attention should be given to national implementation of international instruments against torture or inhuman and degrading treatment. The importance of training those responsible for dealing with detained persons, in particular police, prison officials and personnel, was also pointed out in this connection.

Economic and social rights were discussed. The point was made that there is a need to make a distinction between those rights which are enforceable before the courts, and provisions which should be regarded as expressing policy goals. It was also pointed out that the effective functioning of a market economy would not be incompatible with regulation of the economy or State provision for basic material needs for its citizens, and environmental safeguards.

It was pointed out that modern society would in some way have to deal with problems arising out of changes in technology, particularly in the fields of data processing and bio-technology. This was an area where international exchanges of information, policy studies, and proposed and adopted legislation for regulation to prevent misuse would be useful.

Reference was also made to the need to ensure adequate opportunity for participation of both men and women in all aspects of political and public life, through appropriate legislation and supervisory agencies.

III

The experts recognized that there is a need to strengthen CSCE co-operation in the fields of human rights, democratic institutions and the rule of law.

A widely held view among the experts was that one of the most important functions of CSCE co-operation in these fields would be to establish contacts between governments, institutions and organizations seeking expertise or assistance and counterparts that are in a position to provide such resources. The need to assure co-ordination of activities with a view to strengthening democratic institutions was underlined.

Participants noted in this context the support that has been expressed for the proposal of transforming the CSCE Office for Free Elections into a broadly focused office of democratic institutions. Paragraph 30 of the Document of the Moscow Meeting of the Conference on the Human Dimension was referred to in this connection.

Participants, while noting that any revision of the mandate of the Office for Free Elections would have to be decided by the appropriate body, expressed views to indicate possible additional functions a CSCE office of democratic institutions could serve. At this stage, certain experts made the following points:

- an office of democratic institutions could serve as the institutional framework for sharing and exchanging information on available technical assistance, expertise and national and international programmes aimed at assisting the new democracies in their institution-building;
- it could facilitate contacts between those offering such resources and those wishing to make use of them, thereby serving as a clearing-house and contact point and a facilitator for co-operative projects;
- it could establish and maintain a data-base of such resources and services;
- it could establish contacts with non-governmental organizations active in the field of democratic institution-building, with a view to enabling interested participating States to make use of their extensive resources and expertise;

- it could facilitate co-operation in training and education in disciplines relevant to democratic institutions;
- it could organize meetings and seminars on subjects related to the building and revitalization of democratic institutions, at the request of participating States.

The point was made by many participants that an office of democratic institutions should work closely with other institutions active in the field of democratic institution-building in order to avoid duplication of work. In this connection, certain experts underlined the relevant character of the role of the Council of Europe in the areas of the rule of law and the defence of human rights and the importance of taking account of its work, experience and extensive resources, particularly in the provision of expertise on democratic institutions, in the arrangement of seminars and programmes on democratic practice, and as a source of information about activities, resources and needs in participating States, as well as that of the European Commission for Democracy through Law. Effective liaison between a CSCE office of democratic institutions and these institutions should be ensured.

It was suggested that the establishment of national centres for democratic institutions could facilitate the further strengthening of such democracy, especially in countries carrying out radical democratic reforms. Such national centres might maintain links to a CSCE office of democratic institutions.

IV

In the course of the Seminar a number of practical proposals for future co-operation with a view to strengthening democratic institutions were made. The hope was expressed that these could become the object of follow-up action in a bilateral or multilateral context, as appropriate. In this connection, reference was also made to programmes within the framework of the Council of Europe.

The following specific possibilities were mentioned, bearing in mind the need to develop them further:

- Training programmes and exchanges of personnel
- Co-operation on education for democracy and human rights
- Resource list of experts on democratic institutions
- Seminars, informal workshops and round tables on democratic institutions
- Scholarship programmes for students and instructors
- Funding of higher education
- Ombudsmen's meetings and seminars
- Co-operation between local and regional authorities
- Involving NGOs in practical co-operation
- Co-operation in the training of personnel dealing with detained individuals
- Exchanges on modalities for free legal aid.

Oslo, 15 November 1991