

The Fight Against Corruption Needs Democracy and Human Rights²⁹

Strong arguments exist for greatly increasing attention of the human rights movement to financial impulses that drive human rights abuse. We should “follow the money” in our analysis of what leads to suppressing rights and freedoms, and in our campaigning against this oppression. This is the thinking underlying the Tirana Declaration on Human Rights, Democracy and the Fight against Corruption³⁰ issued last year by the Civic Solidary Platform. OSCE bodies, the Special Representative of the OSCE Chairperson-in-Office on Combating Corruption³¹ and civil society in the region can and should all play a role in enhanced attention for undoing corrupt political and institutional practices across the region.

Corruption and day-to-day human rights abuse

To begin with, corruption often is a human rights violation in itself, in particular of a range of social-economic rights. In many cases, corruption means that public resources are being diverted and less public funding is available to support proper health care, education and housing.

People in official institutions often have direct power over others. This means they are in a position to extract money or other favours – think of sexual favours – from people they are supposed to serve. People that often already are in a vulnerable position. Think of people wanting to cross borders. Think of undocumented migrants, eager to avoid expulsion. Think of detained persons kept in sub-standard conditions. Think of people whose future depends on a favourable outcome of a court case. Think of students having to pass their exams.

The OSCE carries out capacity building activities directed at many of these institutions. Limiting and erasing corruption as an engine of unprofessional behaviour should be an important aspect of these activities. A corruption influence assessment should become a standard requirement when designing capacity building projects. This goes much further than accounting for corruption risks in a project’s ‘risk assessment’. For example, identified corruption-related influences should be accounted for in prison monitoring, and the analysis underlying the design of prison reform projects should take this assessment on board. Capacity building for professional skills in an environment in which corruption is a major determinant of the behaviour of officials will not work. Leadership should be unequivocally opposed to corruption and also show this in practice.

Political corruption

This leads to the wider context that facilitates corruption, namely the attitude of the leadership of these institutions and ultimately of the top political leaders. They set the tone in government institutions. Too often we see that ‘political society’ is engaged in self-enrichment by inappropriately siphoning off public funds or by handing out favours to commercial interests they have a close relationship with.

Many political leaders in this situation will be tempted to take steps that shield their corrupt behaviour from scrutiny or correction by developing an authoritarian attitude towards forces that can seek transparency and accountability:

- they suppress political opposition by twisting electoral systems,
- they offer parliamentarians that align with government policies the benefit of ‘insider’ relations,

²⁹ This is an expanded version of a presentation by Harry Hummel (Netherlands Helsinki Committee, CSP Secretariat) at the OSCE Economic and Environmental Implementation Meeting of 18-19 October 2021.

³⁰ https://www.civicsolidarity.org/sites/default/files/tirana_declaration_csp_02.12.2020_0.pdf

³¹ <https://www.osce.org/node/372156>

- they limit media pluralism and marginalize outlets that pay attention to independent investigative journalism,
- they create obstructions for and stigmatize the work of critical groups in civil society,
- they bring the appointment and promotion process of judges under their control.

Politicians are all often seen by citizens as serving particular limited interests, and above all their own interests. But it does not have to be this way. We need parliamentarians who actively stand up for professional and ethical standards. An ODIHR document³² on this subject was issued back in 2013. It needs renewed attention and a possible expansion to look also at the process of becoming a parliamentarian.

The OSCE Parliamentary Assembly, which in 2019 created the position of Special Representative on Fighting Corruption³³, can play a role here – for example, by reporting on the follow-up of the OSCE PA’s 2019 resolution on the subject³⁴, as well as by working with parliamentarians to bring it home, to national parliaments. The subject needs further development: the 2019 resolution places a lot of emphasis on transparency; however, also transparent, and legally allowed, relations between politicians and financially powerful actors may still greatly affect democracy and are known to erode trust.

Protection of anti-corruption activists, investigative journalists, and whistle-blowers

Anti-corruption activists and investigative journalists who research illegitimate or questionable actions by politicians often come under fire. In some cases, they are subject of actual physical assaults. We need to honour those who have paid the ultimate price, Kataryna Handziuk³⁵, Jan Kuciak (and his partner Martina Kusnirova)³⁶, Daphne Caruana Galizia³⁷, Elmar Huseynov³⁸, Sergei Magnitsky³⁹, Dmitry Popkov⁴⁰, Dmitry Gribov⁴¹. We are proud of who at this moment are risking their lives. And we should care for those whistle-blowers and investigative journalists who are being prosecuted, convicted or sued for disclosing wrongdoing by the state or by political leaders,⁴² such as Julian Assange⁴³, Khadija Ismayilova⁴⁴, and Can Dundar⁴⁵.

OSCE second dimension bodies and procedures could play a much more prominent role in engaging and encouraging people who expose corruption, by providing space where their information and the situation they are in can be presented and highlighted. The human dimension tradition could serve as an example.

The efforts of all these people are crucial to prevent governments turning into ever more extensive grand corruption machines. And the other way around: grand corruption schemes should be countered in order to protect democratic and civic space.

³² <https://www.osce.org/odihr/98924>

³³ <https://www.oscepa.org/en/activities/special-representatives/fighting-corruption>

³⁴ <https://www.oscepa.org/en/documents/special-representatives/fighting-corruption/3892-resolution-on-the-role-of-national-parliaments-in-preventing-and-combating-corruption-in-the-osce-area/file>

³⁵ <https://www.ukrinform.net/rubric-polytics/3344656-ukrainian-mps-honor-activist-handziuk.html>

³⁶ <https://balkaninsight.com/2020/08/05/jan-kuciak-a-murder-that-changed-slovakia/>

³⁷ <https://www.theguardian.com/world/2021/aug/18/daphne-caruana-galizia-life-term-sought-alleged-mastermind-yorgen-fenech>

³⁸ <https://rsf.org/en/news/call-reinvestigate-azerbaijani-editors-murder-after-16-years>

³⁹ <https://www.dw.com/en/european-rights-court-rules-against-russia-on-magnitsky-death/a-50178539>

⁴⁰ <https://www.themoscowtimes.com/2017/05/25/anti-corruption-journalist-murdered-in-russia-a58082>

⁴¹ <https://www.rferl.org/a/russian-anticorruption-activist-beaten-to-death-outside-moscow/29767494.html>

⁴² See this report on EU member states, <https://eeb.org/whistleblowers-still-risk-jail-time-in-europe-study-reveals/>

⁴³ <https://www.amnesty.org/en/latest/news/2021/10/us-uk-drop-the-charges-stop-the-extradition-and-free-julian-assange-says-amnesty-head/>

⁴⁴ <https://www.occrp.org/en/blog/6063-khadija-featuiew-untitled>

⁴⁵ <https://www.dw.com/en/can-dundar-turkey-sentences-journalist-to-27-years-in-jail/a-56037899>

International enabling environment

This is where the wider community of states comes in. We know from multiple sources that the millions and billions resulting from grand corruption are usually channelled through foreign banks and often invested in assets in foreign countries. A range of countries are involved that should take much more determined steps to end their enabling role in these grand corruption schemes.

Property that cannot be demonstrated to result from legitimate activity should in principle be subject to confiscation, also if the activity was abroad. The United Kingdom's Unexplained Wealth Order is a prime example of such a procedure, and has indeed in recent years started to be used to expropriate assets financed with money presumably corruptly obtained in Azerbaijan. Confiscation of assets funded with Kazakhstani money has been struck down in court but remains subject of a legal battle. Almost all states have very limited legislation on such non-conviction-based procedures and even more limited practice.⁴⁶

In addition, schemes should be set up to return recovered funds to the victims and to have them spent on social projects in the countries of origin, a practice that until now has been applied in very few cases. This is the aim of sustained campaigning by Uzbekistani NGOs who want to recover funds that were paid as bribes by telecommunications company Vimpelcom/ TeliaSonera to the former president's daughter⁴⁷. Countries where funds were impounded include the USA, the Netherlands, Sweden, France and Switzerland; they all can and should contribute to a responsible and socially relevant spending of the funds.⁴⁸ The BOTA foundation that was set up in Kazakhstan back in 2008 to deal with spending of recovered funds could serve as an example⁴⁹.

Financial service providers that gain income through facilitating the flow or investment of corruptly obtained funds should be required, as part of the 'coming clean' arrangements with law enforcers, to hand over the sums gained to such social schemes. This demand is being pursued by Azerbaijani activists towards Dankse Bank, that was instrumental in the 'Azerbaijani laundromat', which reportedly laundered around USD 3 billion of suspect money from their country.⁵⁰

Also, international financial institutions should become much stricter in guaranteeing, underwriting or otherwise facilitating trade with and loans to governments that are not transparent about and do not allow independent scrutiny by media or civil society of their financial record. In 2021, the London Stock Exchange was criticized for giving the Belarusian regime access to finance⁵¹. The IMF provided special drawing rights to Belarus.⁵²

To conclude: combining the struggle for human rights and democracy with the fight against corruption is logical and it harbours a lot of underutilised potential. So we should commit to continuing efforts on the intersection of these two fields.

⁴⁶ https://www.nhc.nl/assets/uploads/2021/03/20210329_TBCA-Report.pdf, page 40 - 45

⁴⁷ <https://corruptionandhumanrights.org/publications/press-release-uzbek-asset-return-network-special-issue-series/>, <https://www.uzbekforum.org/uzbek-civil-society-calls-on-the-uk-government-to-recover-tainted-assets-from-prominent-tory-donor/>

⁴⁸ <https://transparency.eu/gulnara-karimova-the-princess-fallen-from-grace/>

⁴⁹ <https://globalanticorruptionblog.com/2020/07/06/world-bank-monitoring-of-repatriated-assets-should-be-part-of-major-settlements/#more-16046>; <https://foreignpolicy.com/2015/06/22/send-the-bill-to-the-dictator-banks-corruption-stolen-asset-recovery/>

⁵⁰ https://en.wikipedia.org/wiki/Azerbaijani_laundromat

⁵¹ <https://www.opendemocracy.net/en/dark-money-investigations/london-stock-exchange-under-fire-financing-belarusian-dictator/>

⁵² <https://www.bloomberg.com/opinion/articles/2021-08-30/the-imf-needs-to-sync-its-belarus-policy-with-its-major-donors?sref=fCrVhgAM>

Recommendations

1. The position of Special Representative of the OSCE Chairperson-in-Office on Combating Corruption should be continued.
2. OSCE cooperation and reform projects in the security, law enforcement and crime fighting sectors should be based on a corruption influence assessment, and be designed to remove corruption as an underlying factor of malfunctioning of institutions.
3. ODIHR's work on professional and ethical standards for parliamentarians should be developed further and be extended to political parties and to those who aspire to become an elected representative; a system of monitoring of compliance with the standards should be put in place.
4. ODIHR's work on 'political corruption' should be revived.
5. The OSCE Parliamentary Assembly and its Special Representative on Fighting Corruption should expand the efforts to stimulate implementation of professional and ethical standards in the parliaments and political sectors of OSCE participating States.
6. OSCE second dimension procedures should start playing a protective role towards civil society activists, journalists and whistle-blowers who play a crucial role in fighting corruption, including by commenting on legislation pertaining to their activities, issuing statements on cases of threats, attacks and persecution, and making visits to persons under threat.
7. OSCE participating states that are on the receiving end of streams of non-transparently and likely corruptly obtained funds should place greater priority on disrupting these streams and recovering the funds; policies on non-conviction-based confiscation and asset recovery should be put in place and applied to funds suspected to emanate from trans-border corruption, with guarantees attached for the socially responsible employment of the recovered sums in cooperation with civil society in the country of origin.
8. OSCE participating States should link their international financial policies with their efforts for the protection of human rights and democracy; states that do not operate in a transparent and accountable way, that suppress national civil society and political opponents and that do not have an independent judiciary should not be eligible for international financial support and should be barred from international financial markets.