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INTERVENTO DELLA SANTA SEDE AL SEMINARIO DELL'O.S.C.E. SUI SISTEMI GIUDIZIARI E SUI DIRITTI UMANI

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Dal 23 al 25 aprile si è tenuto a Varsavia il Seminario su: "I sistemi giudiziari ed i diritti umani", promosso dall'Ufficio per le Istituzioni Democratiche e i Diritti Umani dell'Organizzazione per la Sicurezza e la Cooperazione in Europa. Durante la seduta plenaria del 23 aprile, il Rappresentante della Santa Sede, Mons. Ettore Balestrero, ha pronunciato l'intervento che riportiamo di seguito.

• INTERVENTO DI MONS. ETTORE BALESTRERO

Mr. Chairman,

At the opening of this Seminar on "Judicial systems and human rights" – which is taking place in the framework of the "human dimension" of the OSCE - the Delegation of the Holy See would like to present the following considerations.

1. Judicial systems constitute a progressive conquest of civilization and of respect for human dignity. Therefore, they contribute to the cultural heritage of humanity and they have always been a part of the cultural heritage of the Church. Deprived of judicial protection, rights run the risk of losing their nature as "goods that are due" and are subordinated to the subjective decision of others. Judicial instruments guarantee the enforcement of substantive rights. Since Classical times the Roman juridical civilization has stressed that it is through the legal process that those rights are effectively recognized. Therefore the success of the rule of law rests also on the organization of the administration of justice.

2. The success of the rule of law cannot be separated from the recognition of and from respect for human rights and fundamental freedoms, which no human institution can alter or eliminate. The defense and promotion of democracy therefore requires respect for human rights. Even more so, respect for them is the limit of democracy.

No single human right is safe if we do not commit ourselves to respect all human rights. When we violate one of

them – or we endanger it – claiming that in doing so we protect the others, we are in fact endangering all of them. In this sense a "global approach" to human rights is indispensable. They are in fact inter-connected, being the expression of different dimensions of a single subject. The integral promotion of every category of human rights is the true guarantee of full respect for each individual right.

In the OSCE area there are different juridical systems. What matters is the awareness that beyond the "systems" themselves, what counts is "justice", and beyond that the "human being".

In this light we may add that respect for the universality and indivisibility of human rights in the exercise of judicial authority gives decisive support to the construction of peace and – rightly so – is part of the comprehensive approach to security that characterizes the work of the OSCE, since its beginning.

3. Nowadays our Organization deals with phenomena, which in the past years have evolved and spread dramatically, as is evident to all of us. Let us think, for instance, of terrorism, organized crime and trafficking in human beings.

In dealing with these crimes, the administration of justice can benefit from the new opportunities provided by recent technological developments. A difficulty may arise in trying to combine recourse to those useful tools with the systems of evidence and proof that are today required by the codes of procedure. The possible evolution of these systems ought to be aimed at ensuring the most efficacious protection of those involved in legal proceedings.

4. In these days we shall also consider ways to improve the performance of the judiciary in protecting human rights.

Human rights literacy of those who administer justice is certainly important in this respect, and therefore it is essential educating and training them in this field.

It is also important to establish a legal culture that considers the judicial system as an effective way to protect human rights.

5. As far as access to justice is concerned, the Holy See underlines the need to avoid:

- abuses fuelled by the desire to create scandals instead of seeking restoration of a denied right or compensation for a harm inflicted;

- high costs that make it more difficult for the poor to have access to justice.

A sound administration of justice must also avoid the occurrence of long delays in proceedings that can amount to a "de facto" denial of justice.

6. Finally, an essential concern of this Seminar is to safeguard the independence of the judiciary.

At the Copenhagen meeting of 1990 the Participating States declared that the independence of judges and the impartial operation of the public judicial service is "among those elements of justice which are essential to the full expression of the inherent dignity and of the equal and inalienable rights of all human beings".

The Holy See shares this observation and therefore is convinced that the independence of the judiciary is essentially ordered to the protection of the parties involved in the legal process. Therefore in every judicial system a sound balance between the independence and the arbitrariness of the exercise of the judicial function is to be guaranteed.

The independence and the moral integrity of judges contribute to avoiding decisions that pursue what is politically correct rather than what is true, and safeguard the constitutive values of society, among which human rights and fundamental freedoms are primary.

Thank you, Mr. Chairman.

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