

# Winning Hearts and Minds: the Legal Perspective

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I remember very vividly the occasion of awarding the Sakharov Prize to Mr. Oswaldo Paya. It was a turning point in the human rights world and in policy towards Cuba in the European Parliament. The suspense concerning the visa of Mr. Paya was very intense because until the very last minute we did not know if the authorities could restrict his movement, and if he would be able to attend the presentation. Mr. Paya was not my number one candidate for the Sakharov, but when I met him I was fully convinced. And on the morning of the ceremony I received a phone call from Prague. Václav Havel, our host, had written a speech for Mr. Paya and he wanted me to deliver it at the European Parliament. I did not tell him that the European Parliament is a big ship where you cannot simply go to the speaker and say "I want to give a speech". But somehow we managed. It was the fifth anniversary of the Sakharov Prize, so it held particular esteem, and there were many former prize winners present at that time.

So it was a highly visible moment in the history of the Sakharov prize and the European Parliament. Subsequently the situation has polarized. It has become worse in many ways, but the criticism of the EU has also become a little clearer than it used to be. It is not the Parliament that is the problem, but the Council of Ministers.

Now what do we learn from this event? First of all I think we must primarily highlight the struggle as a human rights issue, like the European Parliament has, and only secondly as a political issue. This is because if we want to broaden the support base for freedom in Cuba, I think we need to engage people who are concerned about the rule of law and human rights but who may feel hesitant about very outspoken political campaigning. We need to think of these people too, and consider ways of direct campaigning towards them.

As a human rights lawyer, this is the point where it is easiest to move forward, particularly after the clampdown and repression that has now happened in Cuba. We have very concrete, fresh examples of human rights violations. We can handle them as such, and then of course we can draw political conclusions and campaign. This reminds me of the days before Milosovic stepped down in Serbia. We used to meet in Montenegro and think about what to do about Milosovic, yet it seemed very far away in the future. But then, suddenly, everything happened very quickly, and this may also happen in Cuba. We must be prepared; we need to have a strategy. If you do not have a strategy, tactics will become strategy, and that can often lead to the necessity of dealing with the worse case scenario, rather than having a proactive role in promoting the rule of law, democracy and human rights.

We need to act both on a symbolic and an institutional level. The symbolic level is important because it will show our citizens in all of our home countries what this is all about, and why we are campaigning and taking such action. We still have to apply pressure on the institutions: the Cuban government of course, but also the EU, the US and many other institutions, particularly in the UN system, the human rights commission, and so forth. We must then be aware that this is an international responsibility and a duty for all of us to act.

I was also involved in the Truth and Reconciliation Commission of South Africa, and I found out how terribly important it is to have an alternative comprising of reconciliation in addition to and in contrast to attributing retributive justice. We need to mend fences, and it will be very difficult in Cuba given the very long duration of the present regime. Concerning human rights, I would prioritize the freedom of expression as this is key to the human rights situation in any country. Without a free press, rest assured that the rest of human rights are in a very sad condition, as we will never hear about violations if you don't have freedom of expression and media. It's the key to the overall situation. Amartya Sen, the Nobel Prize winning economist, said that he knows of no

country with a free press that has ever succumbed to famine or other social catastrophes. This is true and highly important as for civil society to emerge as strongly as possible you need an independent media and you need an independent judiciary. These are the two pillars of the civil society without which it cannot thrive. It is a pity that Cuba is not in the Cotonou Agreement because we cannot use our EU human rights and democracy clause vis-a-vis Cuba.

In conclusion, I will only remind you that we need to think about the substance of society after Castro. Havel once wrote about post-totalitarian societies, pointing out that they can also be very ambivalent. A post-totalitarian society can in some ways become even worse than a totalitarian society. Therefore, we need to have a clear idea of the kind of society that we wish to emerge once the power shift has become a reality.