

Working Session 13: Rule of law II, including:

- **Right to a fair trial**
- **Independence of the judiciary**
- **Democratic law-making**

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No of statements: 42

Delegations: 7

NHRI: 0

Civil Society: 33

OSCE Institutions: 0

International Organizations: 0

Media: 2

Rights of reply: 11

Working Session 13 on the rule of law addressed the issues of democratic lawmaking, independence of the judiciary and the right to a fair trial.

The session's moderator, Ms. Christine Hirst, Deputy Head of the ODIHR Democratization Department, drew attention to the existing OSCE commitments on the abovementioned subjects. She encouraged participating States to discuss during the session issues listed in the Annotated Agenda, including: challenges they face with regard to carrying out judicial training, selection and appointment in an objective and transparent manner; challenges related to ensuring the independence of prosecutors and lawyers; question of public trust; methods of inclusive and transparent law-making especially on draft legislation relating to judicial reform.

Introducer of the session, Mr. Nils Engstad, President of the Consultative Council of European Judges stressed that the main elements of rule of law is the independence and impartiality. There are different definitions with regard to rule of law but there are two essential components: legality and access to an independent court. The legality also means that during the law-making process the legislator bears in mind the basic principle of rule of law and the protections of human rights. Mr. Engstad stressed the importance of the role of the public in general, and especially of the interested stakeholders. This particularly means the judicial profession while conducting a reform or drafting a law in the field of judiciary. In this context he mentioned his own country, Norway as a positive example but also cited other participating State in a negative context. It is inevitable to have tension between the judiciary and the Government. This calls for safeguards to ensure the independence of the judiciary. Unfortunately the guarantees and safeguards are under attack in several participating States. Mr. Engstad emphasized that it is key to have independent prosecutors free from politicization and political pressure. This is also essential to secure public trust, which may be endangered by the allegation of corruption and overly long procedures. Politicization can lead to self-censorship and can have a chilling effect on the judicial system. Mr. Engstad noted that in a wider context political pressure on the judiciary can have a negative effect on other fundamental freedoms, such as the freedom of expression or freedom of the media.

A group of participating States stressed the importance of the rule of law in democratic societies, highlighted that an independent and impartial judiciary is crucial for ensuring the rule of law and guaranteeing the right to a fair trial. Some stressed the close link between human rights, rule of law and democracy. Participating States also highlighted the importance of the principle of separation of powers.

Many civil society representatives as well as some delegations referred to negative developments in the OSCE area, including with regard to torture, ill-treatment and impunity; arbitrary arrest and detention; political prisoners and their disappearance; government response following a coup; measures against lawyers defending human rights defenders; challenges to the principle of non-refoulment; shortcomings in ongoing reforms in the field of judiciary and lack of transparent and democratic procedures for appointing officials. Delegations and NGOs referred to many individual cases.

Many speakers underlined the importance of civil society's effective participation in the lawmaking process.

Several participating States outlined their judicial reform processes and other steps being taken in their countries to further the rule of law and the independence of the judiciary.

Recommendations made by participants during this session include (non-exhaustive list):

Recommendations to the OSCE participating States:

- Respect the separation of powers, in particular, although not limited to, the separation between judicial power and executive power;
- Make lawmaking processes as inclusive as possible. Make legislation accessible to all citizens. Improve civil society's involvement in legislative processes;
- Guarantee the right to a fair trial;
- Support lawyers and human rights defenders in their trial monitoring activities and reporting;
- Strengthen professional guarantees to lawyers working in the field of human rights protection;
- Ensure that any personal liability of judges is regulated by precise and consistent laws and is compatible with the independence of the judiciary;
- Ensure that all those who have been imprisoned solely to punish them for peacefully exercising their rights to freedom of expression, association, assembly, religion or belief are released immediately and unconditionally;
- Ensure that all other political prisoners are retried in proceedings which meet international standards on fairness;
- Ensure that all reports of intimidation, harassment, arbitrary detention, torture or other ill-treatment, and fabrication of charges against human rights defenders and other civil society activists, dissidents and opposition politicians, lawyers, journalists and bloggers are investigated promptly, impartially and thoroughly and that the perpetrators are brought to justice;
- Ensure that human rights defenders, other civil society actors, opposition politicians, lawyers, journalists and bloggers, and religious activists are able to carry out their peaceful legitimate activities without fear or threat of reprisal, unlawful restrictions and arbitrary prosecutions;
- Ensure full compliance with the rule of law in responding to a coup.

Recommendations to the OSCE institutions, executive structures and field operations:

- Monitor the situation in the field of judiciary in participating States;
- Carry out a comparative study of independence of the judicial system and present it at next year HDIM.