

Organization for Security and Co-operation in Europe
Office for Democratic Institutions and Human Rights

ODIHR Trial Monitoring

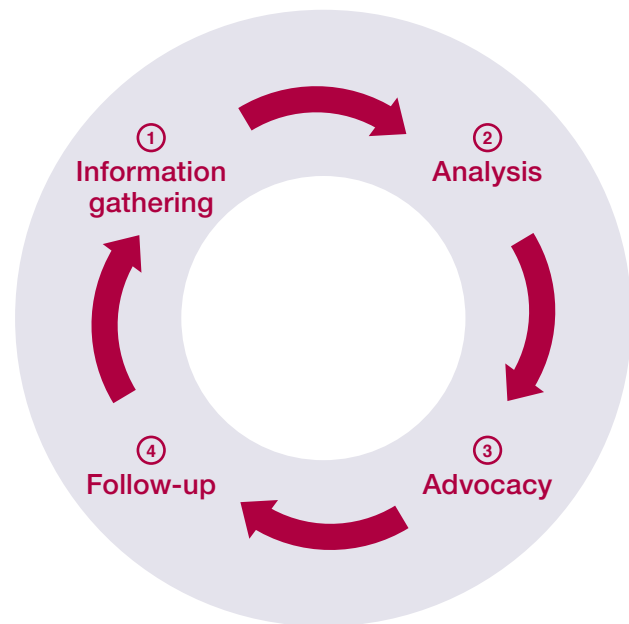
OSCE participating States “decide to accept as a confidence-building measure the presence of observers [...] at proceedings before courts.”
(Copenhagen Document, 1990).

What is trial monitoring?

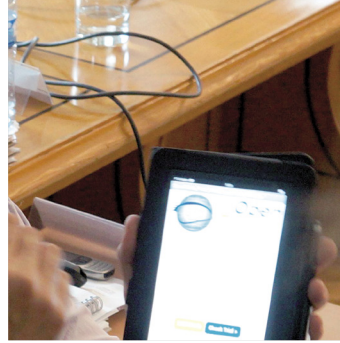
Trial monitoring is the practice of observing and gathering information on court hearings and procedures to assess their compliance with fair trial standards. Trial-monitoring projects follow a cycle that includes the publication of a report containing recommendations aimed at enhancing the functioning of a country’s justice system. Advocacy represents the next stage of the trial-monitoring cycle, and aims at ensuring follow-up to the recommendations included in the report.

What are the objectives of trial monitoring?

Trial monitoring represents a unique diagnostic tool to assess the functioning of key elements of justice systems. It is also widely regarded an effective mechanism to identify areas of governance in need of reform, in line with fair trial standards.



The OSCE/ODIHR
Trial-Monitoring Cycle



Why is the OSCE involved?

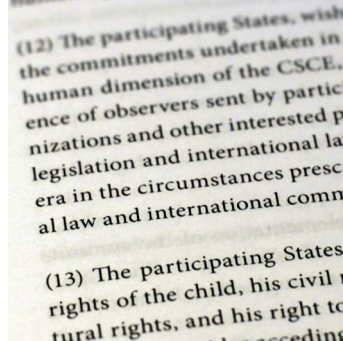
OSCE participating States have affirmed that pluralistic democracy and the rule of law are essential for ensuring respect for all human rights and fundamental freedoms. This includes the right to a fair trial. The OSCE human dimension commitments contain a comprehensive catalogue of fair trial rights. To ensure greater transparency in the implementation of human dimension commitments on the right to a fair trial, the Ministerial Council has encouraged “participating States, with the assistance, where appropriate, of relevant OSCE executive structures [...] to strengthen the rule of law [...] in the observation of rule of law standards and practices in the criminal justice system.” (Helsinki, 2008)

How is trial monitoring conducted in the OSCE?

ODIHR has developed its trial-monitoring methodology on the basis of trial-monitoring programmes conducted by field operations, as well as monitoring activities organized directly by the Office. Overall, the monitoring methodology focuses on the observance of procedural fair trial guarantees.

The three types of trial monitoring are as follows:

- **Systemic trial monitoring** is the term used for large-scale trial-monitoring programmes aimed at assessing the functioning of a justice system as a whole in order to support justice reform;
- **Thematic trial monitoring** describes programmes with an in-depth focus on one or several thematic areas, such as war crimes, administrative justice or pre-trial proceedings; and
- **Ad hoc trial monitoring** focuses on the observation of individual, usually high-profile, cases or groups of cases.



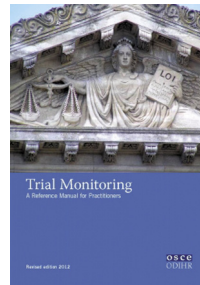
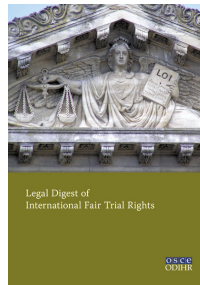
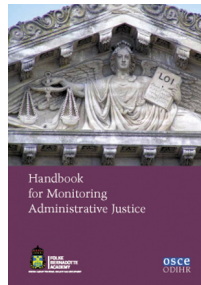
What are the principles of trial monitoring?

ODIHR and OSCE field operations conduct trial monitoring on the basis of the following principles:

- **Non-intervention in the judicial process** requires respect and enhancement of the independence of the courts, no engagement or interaction with the court regarding the merits of an individual case and no attempts to influence, even if only indirectly, the outcomes of monitored cases;
- **Objectivity** requires that trial-monitoring programmes accurately report on legal proceedings using clearly-defined and accepted standards, in order to minimize the perception of bias and encourage the acceptance of a programme's findings, conclusions and recommendations among the broadest possible group of stakeholders; and
- **Agreement with the host country** necessitates that trial-monitoring projects are always preceded by discussions with national authorities in order to agree on modalities. This may take the form of a memorandum of understanding, in which issues such as access to courts and court documents are specified in detail.

In addition to the general rules set forth in the OSCE's Code of Conduct, trial monitors are also bound by the following duties:

- **Impartiality** requires that monitors observe and examine equally the conduct of all actors involved, without showing any personal preference for one side over the other or towards a specific outcome in a case;
- **Professionalism** relates to the conduct of trial monitors. Since monitors are the most visible members of a programme, their conduct directly affects the perception of the programme on the part of justice system actors and the general public. They must always be held to a high standard of professionalism in carrying out their responsibilities; and
- **Confidentiality** serves two critical purposes. It helps prevent the release of classified information obtained by virtue of a programme's access to courts and documents. In addition, it protects against the release of information prior to appropriate review and analysis, even when such information is not classified. This guarantees that the programme speaks with one voice.



ODIHR resources

- **Legal Digest of International Fair Trial Rights** (2012) provides legal practitioners with a comprehensive description of fair trial rights, coupled with practical checklists based on the experience of OSCE and ODIHR trial-monitoring operations. It includes selected jurisprudence on fair trial rights from both the UN Human Rights Committee and the European Court of Human Rights.
- **Trial Monitoring: A Reference Manual for Practitioners** (revised edition, 2012) focuses on trial-monitoring principles and methodologies, including guidance on information gathering, analysis of findings, reporting, advocacy and follow-up.
- **Handbook for Monitoring Administrative Justice** (2013) combines a compilation of fair trial standards with practical guidance on monitoring administrative proceedings for compliance with these standards, and serves as a reference tool to support monitoring activities and awareness-raising initiatives on fair trial standards in administrative proceedings.
- **A repository of trial-monitoring documentation** is maintained by ODIHR and serves as the OSCE's institutional memory in this area. It includes checklists, reports, training material and project documentation.

More information

For detailed information about ODIHR's activities related to trial monitoring and to view its full range of resources and publications, please visit www.osce.org/odihr/rol

or contact ODIHR at:

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