

Expert Workshop on Evidentiary Rules and Evidentiary Defence Rights 19 March 2013, Yerevan, Armenia

Main Conclusions

On 19 March 2013, the Office for Democratic Institutions and Human Rights (ODIHR) in co-operation with the OSCE Office in Yerevan (OiY) organized an Expert Workshop on Evidentiary Rules and Evidentiary Defence Rights in the Hotel Marriott in Yerevan, Armenia. The Expert Workshop was attended by members of the Working Group in charge of drafting the new Criminal Procedure Code, ODIHR experts, US Law Professor Stephen Thaman and French Prosecutor Jean-Christophe Muller, and the OSCE OiY. Topics related to the recommendations presented in the ODIHR 2010 Final Report of the Trial Monitoring Project in Armenia (April 2008-July 2009) were addressed during the discussions.

Participants highlighted the following points during the discussions:

Session 1. Deposition procedure and testimony of absent witnesses

1. The introduction in the draft Criminal Procedure Code of a deposition procedure for absent witnesses who will not be able to attend the trial for legitimate reasons is a positive step. The introduction of a deposition procedure for defendants constitutes an additional instrument to record their testimony prior to trial. However, considering that defendants will always be examined at the main hearing, some participants questioned the usefulness of extending the deposition procedure to them.
2. Although the testimony of an absent witness can be read in court under certain conditions, a safeguard has been introduced to ensure that no conviction can be based exclusively on the testimony of a witness who has not been cross-examined (article 22§7 of the draft CPC¹). This constitutes a compromise solution which should be strictly enforced to safeguard the right to confront witnesses.
3. Under the draft CPC, evidence collected by the authorities, including police reports, can be examined at trial like any other type of evidence as authors of police reports can be asked to testify in court. The possibility to call police officers to testify is seen as an important novelty and should be used by the defence.

Session 2. Defence powers to subpoena witnesses and adduce evidence

4. Participants praised a number of provisions of the draft CPC acknowledging that they offer procedural guarantees which go beyond international standards in terms of protection of the rights of the defence such as article 47-2 of the draft CPC, which reads that the defendant can waive his right to a defender only in the presence of the latter.

¹ Any reference to the draft CPC of the Republic of Armenia is to be understood as the version of 1 March 2013 of the draft CPC.

5. The possibility for both the prosecution and the defence to cross-examine witnesses at trial is a step forward and further bolsters equality of arms.
6. Given the uncertainties/concerns expressed by some participants regarding the disclosure and admissibility of prior statements at trial, as provided in article 336 of the draft CPC, it was suggested that alternative solutions or wordings to the above-mentioned provision be presented to the Working Group for further consideration.

Session 3. Evidentiary standards

7. It was widely acknowledged and welcomed that the rules related to evidence admissibility in the draft CPC contain at times legal solutions which go beyond international standards.
8. It was emphasized that evidence obtained in violation of rights protected under the law and the Constitution should be excluded from the procedure, in line with standards on evidence admissibility and exclusion.
9. Importantly, the exclusion of tainted evidence or the so-called theory of the fruit of the poisonous tree was included in article 97-2 of the draft CPC which reads that data obtained in material violation of the law, as well as data obtained as a result of actions of proceedings performed on the basis of such data, shall not be admissible and may not be used as evidence. Existing standards recognized internationally or developed by other countries will provide further guidance for the application of this exclusionary rule.

To further support Armenia's criminal justice reform, ODIHR/LSU committed to provide, upon the Armenian Ministry of Justice's request, detailed comments on the text of the draft criminal procedure code through an upcoming legal opinion on the draft code.