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OSCE Human Dimension Implementation Meeting Warsaw, 11-22 September 2017

Working session 13: Rule of law II, including right to a fair trial' Independence of the judiciary, democratic law-making

Mr / Mme Moderator,

I am honoured to speak on behalf of the European Union.

The EU reaffirms that the human rights, rule of law and democracy are interlinked and mutually reinforcing, and belong to the universal core values and principles. Independence of the judiciary and the right to a fair trial constitute inseparable part thereof.

In this regard, the EU highly appreciates and fully supports the work undertaken by the OSCE/ODIHR and the Venice Commission in promoting and strengthening judicial independence and integrity in the OSCE region.

An efficient, impartial and independent judiciary is of paramount importance for ensuring the rule of law and guaranteeing the right to a fair trial. Selective exercise of judicial powers does not comply with these core principles. Measures to improve the functioning of the judiciary, such as evaluation of judges, should not be used as a leverage to threaten the independence of judges.

Well-established, efficient and well-functioning justice system is an important precondition for a sustainable growth and well-being of every society. Yet, it is not possible to attain without the necessary degree of transparency and free flow of information. The EU attaches high priority to the involvement of the civil society in the democratic processes as a means to improve transparency and accountability.

Gender equality is the high priority to the EU. Equal and meaningful participation of women in political and public life, including in the judiciary, contributes to the well-balanced



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functioning of a democratic society and works as an effective mean for mainstreaming of the equal rights of men and women.

The OSCE participating States agreed to enhance their efforts to strengthen the rule of law by undertaking a commitment to guarantee an effective administration of justice, right to a fair trial, access to court, accountability of state institutions and officials, respect for rule of law in public administration, the right to legal assistance, etc.

Following numerous reports by human rights organisations, as well as an annual report by the Secretary General of the Council of Europe, the EU notes with concern that principle of the rule of law appears to be at risk within the OSCE region, and calls upon all OSCE participating States to meet their international commitments in this regard. The years 2016 and 2017 saw unprecedented actions of some governments in undermining the judiciary and openly challenging the principle of separation of powers.

The EU remains concerned with ongoing politicized trials in the Russian Federation, which call into question the independence of the judicial system. The political character of trials and sentences are best illustrated by the criminal cases brought against the Ukrainian citizens, such as O. Sentsov, A. Kolchenko, I. Umerov, Deputy Chair of the Crimean Tatar Mejlis A. Chyigoz and many others, who opposed the illegal annexation of Crimea, as well as recent cases against the Russian citizens who have exercised their fundamental rights to peaceful assembly and freedom of expression. Another source of concern is a decision by the Constitutional Court of the Russian Federation to undermine the supremacy of the judgements by the European Court of Human Rights, which clearly infringes upon Russia's obligations under the European Convention on Human Rights. In light of the above, we once again call on the Russian Federation to guarantee the independence of the judiciary and ensure full compliance with the international standards and Russia's international commitments.

The EU notes that respect for human rights, fundamental freedoms and the rule of law are essential principles of the European Union, and in this context views with concern the growing number of arrested journalists, human rights activists and members of the opposition



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in Turkey, not least because strong and independent NGOs and a free press constitutes an indispensable pillar of any democracy. Turkey has the right to bring the individual perpetrators of the coup attempt to justice, however, all those detained and dismissed in the aftermath of the July 2016 coup attempt should be entitled to a fair trial and a swift and effective judicial remedy, in compliance with the rule of law and independence of the judiciary. Measures and decrees taken under the state of emergency should be subject to judicial control. The EU also closely follows the constitutional reform in Turkey. While fully acknowledging Turkey's sovereign right to decide over its system of democratic governance, the EU notes that checks and balances and the separation of powers, particularly with regard to the independence of the judiciary, are fundamental constitutional principles that have to be preserved. The EU reiterates that it is ready and willing to continue to work with a stable, economically vibrant and democratic Turkey.

All OSCE countries have room for improvement in carrying out their human rights obligations. States must have at least minimal safeguards in place and ensure that their deficiencies are not being ignored or tacitly accepted. In this context, strong and credible national institutions, such as judiciary, parliaments, free media, national human rights institutions, civil society groups and others, have a key role to play in preventing, investigating and addressing human rights violations, and therefore should be allowed to operate unhindered and free of political interference.

Let me conclude with the following recommendations on this subject:

1. The OSCE participating States should ensure full respect for the principles of separation of powers and the independence of judiciary, in compliance with international standards and their international commitments;
2. Evaluation and accountability procedures for judges should not be used as a means to influence the independence of their decisions;



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3. Access to justice and equal representation should be ensured to persons belonging to all groups of the society.

The Candidate Countries the FORMER YUGOSLAV REPUBLIC OF MACEDONIA*, MONTENEGRO* and ALBANIA*, the Country of the Stabilisation and Association Process and Potential Candidate BOSNIA and HERZEGOVINA, and the EFTA country NORWAY, member of the European Economic Area, align themselves with this statement.

* The Former Yugoslav Republic of Macedonia, Montenegro and Albania continue to be part of the Stabilisation and Association Process.