



Human Dimension Implementation Meeting ODIHR activities

Thursday & Friday, 5-6 October 2006

Working sessions 6-9: Access to Justice, Rule of Law I & II

Including: Prevention of torture, independence of the judiciary, Legislative transparency, follow-up to HD Seminar May 2006 and SHDM November 2005

OSCE participating States share commitments to develop and strengthen the rule of law. This long-term process requires political will to ensure the necessary democratic institutions and processes and often involves cultural and attitudinal changes. Thus, the ODIHR's work in the field of the rule of law is concentrated on long-term programmes that ensure customized assistance specific to each country's history and current developments.

In order to improve the implementation and effectiveness of laws, and to address shortcomings in legislation, the ODIHR assists participating States in the development of effective, open, and transparent legislative processes (that is, managed in their entirety, operate on the basis of a set of comprehensive, uniform and coherent rules, and allow for consultations with those to be affected by the legislation or responsible for its proper enforcement). Particular attention is given to the concept of "legislative transparency."

ODIHR activities relating to the Rule of Law

In its rule of law activities the ODIHR uses expertise from a variety of sources, stressing good practices developed in various OSCE participating States, relying on experts from states that have had comparable experiences.

I. Criminal-justice reform

In many states of the former Soviet Union and South-Eastern Europe, criminal-justice systems are being reformed in order to meet relevant international standards and OSCE commitments. The ODIHR assists in that process by facilitating exchange of expertise and best practices between the participating States. The **Human Dimension Seminar on Upholding the Rule of Law and Due Process in Criminal Justice Systems** held in May 2006 substantially contributed to this exchange.

The ODIHR has been facilitating discussions in Kazakhstan and Kyrgyzstan on **reintroducing lay participation** in criminal trials. These discussions have included the sharing of experiences from those OSCE states that have jury trials, including expertise from Russia.

Most ill-treatment and torture takes place while the victim is in custody. International human rights standards and OSCE commitments require that the decision on whether someone is to be held in custody be made by an independent judge. The ODIHR continues to advocate the **transfer of power to authorize**

arrest from prosecutors to the judiciary in countries who have not yet done so.

The ODIHR supports the development of **independent monitoring boards for places of detention**. In 2005/06, this assistance included activities in Armenia and Kazakhstan. The ODIHR supported the Armenian Monitoring Board in the development of regular and institutionalized monitoring of places of detention by civil society. The ODIHR translated the manual *Monitoring Places of Detention: A Practical Guide for NGOs* into Armenian to support the training and capacity-building activities of the Armenian Monitoring Board. In Kazakhstan, the ODIHR followed up on the adoption of the law that allowed public monitoring of places of detention in 2004 by working with other partners, such as Penal Reform International, to assist Kazakh authorities with official regulations on the creation and functioning of monitoring boards. The ODIHR is also closely following ongoing discussions on the establishment of monitoring boards in Kyrgyzstan.

The ODIHR encourages participating States to sign and ratify the Optional Protocol to the Convention against Torture (**OPCAT**).

II. Fair trials

The right to a fair trial involves a range of minimum standards that touch on nearly every aspect of the criminal-justice system: the independence of the judiciary; access to competent legal counsel; and certain procedural safeguards, such as granting the accused the right to a public trial within a reasonable period of time, granting the right to appeal, and informing the accused of any decisions taken.

Where the defence bar is not an institution that regularly admits new members based on transparent procedures, there will inevitably not be enough lawyers to counsel those in need of legal assistance. The ODIHR has been an advocate for **bar reform** in order to improve **access to legal advice**. Its assistance takes the form of expert recommendations, legislative review, or simply initiating much-needed discussion among all interested parties, including the non-governmental sector. In 2005, the ODIHR was active on bar reform issues in Azerbaijan, Kazakhstan, and Kyrgyzstan. The Supplementary Human Dimension Meeting on the *Role of Defence Lawyers in Guaranteeing a Fair Trial*, held in Tbilisi in November 2005, resulted in many useful recommendations with respect to bar reform and strengthening the role of lawyers.

The ODIHR also encourages the creation of **continuing legal education programmes** that allow legal professionals to regularly update their knowledge and improve their skills. In 2005, the ODIHR worked with defence lawyers in Kazakhstan on improving the professionalism of bar members. A group of Kazakh trainers who completed an ODIHR training programme the year before conducted more than 90 hours of seminars to improve the professional legal skills of their colleagues in Almaty. In Kyrgyzstan, the ODIHR provided support to the Youth Human Rights Group, a national NGO that implements an advanced training course for lawyers on the International Covenant on Civil and Political Rights.

Trial-observation programmes are instrumental to promoting the right to a fair trial. The information gathered by observers often points to the most pressing

reform needs and may provide a basis for reform discussions. In individual cases, the presence of observers in the courtroom may encourage the court and the parties to fully adhere to the procedural rules. The ODIHR organized two meetings in 2005 to provide OSCE trial observers with opportunities to exchange experiences and lessons learned. The fourth Inter-Mission Trial Observation Meeting was held in Sarajevo in the fall 2005, with staff from 12 OSCE field missions attending. A follow-up meeting in Zagreb was dedicated to observation of war-crimes cases.

III. Legislative Reform Assistance (Working Session 9)

In co-ordination with the relevant OSCE field operations, the ODIHR conducts assessments of the legislative process looking not only at how it is regulated, but also at how it works in practice. These assessments are aimed at establishing a working platform on which basis a reform process may be instigated, and assistance work in support of this process designed and implemented. They do not specifically focus on parliaments or any other institution, but rather look at the entirety of the process by which legislation is prepared, drafted, discussed, adopted, published and monitored.

As a follow up to these assessments and depending on the willingness of local decision-makers to address the problems identified, the following further steps may be considered alternatively or cumulatively:

- convening of a series of thematic workshops for the working level staff in ministries and the parliament; the thematic content of the workshops is to reflect the shortcomings identified in the assessment report; the purpose of these workshops would be to develop technical recommendations aimed at addressing the problems identified in the assessment report; these recommendations would be addressed to the relevant authorities (e.g. Minister of Justice, Prime Minister, Speaker of the Parliament); the workshops would be piloted, prepared and linked up through a working group (to which an international expert may be attached);
- setting up of a training scheme for personnel in the parliamentary administration or ministries (which would include preparation of a curriculum);
- drafting of a manual or guidelines for law drafters.

Other options directly tailored to the specific needs in the country may be considered.

At this point in time, the ODIHR has completed an assessment of the Georgian legislative system, which is to be shared with the requesting party (Ministry of Justice and Parliamentary Committee on Legal Affairs).

At the request and with the support of OSCE field operations, initial on-site visits have taken place in several other OSCE countries, including Ukraine, Moldova, Kyrgyzstan, Armenia and Kazakhstan. In Kyrgyzstan, key legal acts regulating the legislative process are being currently analyzed by two experts. The analysis is to contain recommendations aimed at improving the regulatory, procedural and legal framework governing the legislative process. In Ukraine, the conduct of an assessment visit is pending amendments to the procedural framework legislation in respect of which the ODIHR advice has been officially sought.