

**STATEMENT ON THE RIGHT TO A FAIR TRIAL
(OSCE HDIM, Working session 13, Rule of Law: Right to A Fair Trial)**

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Warsaw, 2 October 2007

Ms. Moderator,

The right to a fair trial is among the most fundamental Human Rights, guaranteed by Art. 14 of the International Covenant on Civil and Political Rights and Art. 6 of the European Convention on defense of human rights and fundamental liberties (ECHR). My statement will be dealing with the overall situation with the right to a fair trial in the Russian Federation, in light of the decisions of the European Court of Human Rights (EctHR).

According to the interpretation of the European Court of Human Rights, Art 6 of the ECHR guarantees fair and just trial which applies not only to criminal persecutions but to persecution of administrative violations. It is extremely important to stress that Art. 6 applies to persecution of administrative violations, which, though being criminal in nature, are not regarded as such in many states. Misdemeanor charges and administrative procedures are increasingly being used by governments to persecute activists. Russia is an example of one of these countries, where there has been a significant increase in the last year in applying administrative arrests as a reprimand to participants of peaceful assemblies. While being sentenced to up to 15 days in prison under “administrative procedures”, the accused are denied the basic rights to defense that they are entitled to. In practice, in such cases, the courts play the function of the prosecution and they simply legitimize repressive actions of the police, whereas the one of the central notions of OSCE commitments in this area specifically is the equality of arms between the prosecution and the defense.

Besides that, more and more of those cases are taking place behind closed doors with no public access to the court hearings, which leads to even more violations, left unrecognized, and constitutes a worrisome trend. All that constitutes a serious infringement of OSCE commitments to a fair and public hearing by a competent, independent and impartial tribunal established by law. This also underlines the failure to provide effective means of redress against administrative decisions as provided by commitments taken by OSCE participating state in Moscow in 1991.

Any guarantees of a fair trial would be void of any significance if the court decisions are not executed properly in a reasonable time. A significant number of applications, sent to the ECtHR, deal with the non-execution of court decisions, which demonstrates that it is a significant problem in many countries. In Russia, there has been no systematic approach by the government to enforce the verdicts of the EctHR. For example, in Voronezh region of the Russian Federation a high volume of court rulings granting access to legally entitled social benefits are denied by the administration despite a number of EctHR decisions reinforcing the domestic court action. So, instead of an institutional solution that would ultimately guarantee that the typical problems the EctHR decisions point to, these rulings are treated on a case by case by the Russian government.

The undergoing reform of the European Court to address such problems at the level of the Court in Strasbourg is at the moment being blocked, because the Russian Federation has failed to ratify Protocol 14 to the European Convention on Human Rights, which would allow the Court to decide

on repetitive cases faster and in much greater numbers and would raise pressure on the governments to undertake systematic reforms. This failure to follow its international obligations by the Russian Federation only further hinders the effectiveness of the judicial system, both in regards to the Strasbourg Court, and to the national judicial systems. Furthermore, it undermines the control mechanism for the implementation of court decisions.

Dear Moderator, all the problems raised in my statement lead to the constant violation of the right to a fair trial. Consequently, citizens of Russia will undoubtedly lose faith in the judicial system. It is up to the coordinated efforts of OSCE participating states and national and international civil society actors to correct this worrisome tendency.

In order to guarantee the right to a fair trial:

- We urge the delegates at the upcoming Madrid Ministerial Council to insist upon that the Russian Federation ratifies protocol 14 to the European Convention on Human Rights
- We call upon the OSCE participating states to provide effective means of redress against human rights violations at the national level and pay specific attention to repetitive cases.
- We call upon ODIHR to work closely with Committee of Ministers of Council of Europe on monitoring the execution of the decisions of the European Court of Human Rights, and to issue recommendations to participating states on applying ECtHR decisions on systematic and institutional level to reform or develop existing practice in the countries.
- We request the ODIHR to actively engage in monitoring and collecting information on procedural violations during court processes in participating states paying special attention not only to guarantees of fair trial in criminal persecutions but also in cases of misdemeanor charges. We demand that particular attention is also given to the possibility to physically access the court and be present during the public court hearings.
- We recommend to the ODIHR to work towards comprehensive guidelines for member states on the right to a fair and public trial, including trials on administrative charges.
- We demand from the ODIHR to develop guidelines for legislation, which, while not infringing the independence of the judiciary, would provide for the accountability of judges for procedural violations that have been committed and ensure proper compensation for victims of such violations.