

HDIM 2013

Working Session 14: Rule of law I, including:

- Democratic lawmaking;
- Independence of the Judiciary;
- Right to a Fair Trial

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The Working Session 14 on rule of law was devoted to democratic lawmaking, independence of the judiciary and right to a fair trial. In his introduction Mr. Yves Doutriaux, a State Counsellor of France reminded the participants of the interdependency between those three topics. He recalled the 1990 Copenhagen and 1991 Moscow commitments on public process and open and transparent means of lawmaking. He explained the process by using the example of an impact study from France and suggested some principles for consultations with regard to new legislative initiatives, but also other major projects: 1) all info held by administration preparing the draft law should be accessible to public; 2) all participants on consultations should be able to comment on the draft and the comments should be made available to all; 3) consultations have to be impartial, if possible run by a neutral moderator outside the administration; 4) timeframes for giving opinions have to be reasonable, and 5) the consultations should have a follow-up process where the administration has to provide feedback and explain why they chose not to take some proposal into account.

He then reminded that independent execution of laws requires first the separation of powers, but also effective practice of judicial independence: systems for election of judges, their evaluation, management and financing of courts and salaries of judges to prevent corruption. He concluded by reiterating the importance of public hearings and monitoring trials by external experts. He also encouraged the dialogue between judges of international and national courts as a means of exchanging best practices, especially when applying the European Convention on Human Rights and Fundamental Freedoms.

In ensuing discussion 32 interventions were made, 23 of those by NGOs. In addition, 8 participating States used their right of reply.

The speakers drew attention to problems such as lack of access to courts due to administrative or legal restrictions; lack of qualified legal personnel in courts and for defence purposes; selective administration of justice; political influence over judges; corruption of public authorities; misusing courts and law enforcement structures to defend the interests of the ruling class and to suppress political opposition; and length and cost of legal proceedings.

It was emphasised that transparency of court proceedings is one of the cornerstones of fair trial. Some noted that to implement the rule of law, the attitude of judges and law enforcement personnel is as important as political will, and legislation in compliance with international law. Some speakers discussed the influence of constitutional system of a country to appointing judges and adopting legislation. A speaker recalled the initiative launched through the Moscow Mechanism some years ago. Possible political motives behind international arrest warrants were seen as a problem by some. The role of media covering judicial proceedings, and the role of parliamentary mechanisms to protect human rights was pointed out.

Several specific cases involving human rights defenders, media figures, politicians and their businesses associates were mentioned. The proportionality of some concrete sanctions and other coercive measures was called into question.

Several participating States took the opportunity to introduce their reforms in the field of criminal justice and the impact of legislative initiatives.

The importance of the OSCE commitments and international sharing of expertise was emphasized, as well as ODIHR's role in monitoring trials.

Recommendations to the participating States:

- Reconfirm their commitments and speak up to those not willing to do so;
- Co-operate with ODIHR to strengthen judicial independence, trial monitoring, seek help in facilitating consultations on legislation;
- Continue reforms to meet commitments on right to a fair trial and related guarantees. Implement the legislation adopted for that purpose;
- Ensure respect for the separation of powers;
- Formulate and adopt laws by means of open process and public procedure, in accordance with OSCE commitments;
- Improve access to the legislative procedures and make all legislation accessible to citizens;
- Adopt legislation to grant the non-governmental organizations the right to participate in legal proceedings in public interests;
- Implement the international law through courts;
- Make public the statutes of courts and administrative regulations;
- Ensure thorough investigation of cases of abuse of power by authorities;
- Avoid harassment of judges and defence lawyers;
- Release prisoners of conscience;
- Enable specialisation of courts/judges in certain cases;
- Ensure independence of courts from political authorities;
- Ensure open and fair trial in ongoing proceedings;
- Close "secret prisons";
- Ensure implementation of judgements, including compensation for damages;
- Ensure availability of qualified and empowered legal representation in judicial process;
- Support the efforts for transitional justice.

Recommendations to the OSCE, its institutions and field operations:

- Carry out training and education of law enforcement authorities to ensure impartial administration of justice;
- Carry out analysis of legislation regarding non-governmental organisations;
- Continue trial monitoring with particular attention to specific cases of human rights defenders;
- Look into reasons for lengthy proceedings;
- ODIHR to provide indicators on media coverage with regard to trial monitoring.