



HUMAN DIMENSION  
S E M I N A R

**UPHOLDING THE RULE OF LAW AND DUE PROCESS  
IN CRIMINAL JUSTICE SYSTEMS**

CONSOLIDATED SUMMARY

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Warsaw, 10-12 May 2006

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## V. OVERVIEW

The Human Dimension Seminar on *Upholding the Rule of Law and Due Process in Criminal Justice Systems* (Warsaw, 10-12 May 2006) invited participants to discuss common challenges facing criminal justice systems of OSCE participating States and share the solutions and experience from their jurisdictions. Special effort was made to advance the discussions from the reiteration of well-known international principles and OSCE commitments to their practical implementation by the legal institutions involved in the administration of criminal justice.

Recognizing the importance of institutional relationships to ensuring human rights and fairness of criminal proceedings, the seminar also examined the interaction between the different parts of the criminal justice system. Discussions were structured in four working groups, corresponding to the four key criminal justice institutions: the police, prosecutors, defence lawyers, and the judiciary. Each working group considered issues pertinent to the functions of that particular institution, but did so in the context of the entire system.

Seminar discussions reinforced the need to keep criminal justice issues high on the OSCE agenda. Serious threats to security, such as organized crime, require adequate responses from law enforcement agencies. However, these responses must not come at the expense of due process and fair trial guarantees. Participants repeatedly stressed the importance of upholding the rule of law for all actors in the criminal justice system. The seminar clearly demonstrated that co-operation and exchange of best practices between the participating States are essential to prevent the erosion of fair trial standards and to promote appropriate institutional and legislative reforms.

The seminar was not mandated to produce a negotiated text. At the closing plenary session, the Chairman presented the main conclusions and recommendations (see below). A summary report prepared by the four rapporteurs was presented at the plenary session and is reflected in Section V below. The recommendations – put forward by delegations of OSCE participating States and Partners for Co-operation, international organizations, and NGOs – are wide-ranging and addressed to various actors. These recommendations have no official status and are not based on consensus; however, they serve as an important indicator for the OSCE in setting priorities and planning its programmes aimed at promoting the rule of law and strengthening criminal justice institutions.

## II. CHAIR'S CONCLUSIONS AND RECOMMENDATIONS

In his capacity as Chairman of the Human Dimension Seminar, ODIHR-Director Amb. Christian Strohal presented a summary of the conclusions and recommendations issued by the participants in the four working groups.

Specifically, the Chairman

- stressed the importance of inter-relationships between all parts of the criminal justice system. It is essential for any institutional reform efforts to consider the impact on the entire criminal justice system;
- emphasized the need, as expressed in the working session on the judiciary, to ensure that judicial proceedings are open to the public, including the value of civil society monitoring of court proceedings. Accurate trial records are seen to be greatly facilitating the work of all parties to criminal proceedings;
- highlighted the commitment, as reiterated by Participating States, to ensuring the independence of the judiciary. Participants stressed that this independence should not be endangered if necessary measures are taken to combat judicial corruption. Judicial appointments, promotion and dismissal should be defined by law and with open and transparent criteria;
- noted that police should be an instrument of democratic will and a gateway to justice, as discussed in the working session on policing. Police should be recognized as the institution that the common citizen is most likely to have contact with on a daily basis. Hence the provision of transparent and independent complaints systems and public monitoring of police detention facilities becomes even more vital. The seminar was useful in exchanging good practices on how internal regulations of law enforcement agencies can be designed to comply with international human rights standards and foster public confidence in the work of the police;
- recalled that the working session on prosecutors provided for a vibrant and focused discussion on a number of key issues involving this powerful institution within the criminal justice system. One issue that arose repeatedly was the concern about the assumption, by prosecutors, of powers that should belong to the judiciary. Concerns were raised that six countries in the OSCE region still allow prosecutors rather than judges to authorize arrest and detention. Very concrete suggestions were made on allowing the procuracy to focus on their main duty: prosecution of criminal cases. During this session there was detailed discussion about defence lawyers and how equality of arms between the prosecution and the defence can be better protected;
- expressed concern about instances in which defence lawyers are penalized for the lawful performance of their duties. This topic had been discussed in the final working session on defence lawyers which was a continuation of the discussion

started during the Supplementary Human Dimension Meeting in Tbilisi held in November 2005 on “*The Role of Defence Lawyers in Guaranteeing a Fair Trial.*” The working session also focused on procedures through which new lawyers are admitted to the bar and whether those are open and transparent.

In his closing remarks, the Chairman observed that the way how a criminal justice system functions impacts upon all layers of society. This attaches special importance to the follow-up by the participating States on the recommendations made during this seminar. The Chairman also expressed the hope that these discussions will lay the ground for preparing the Ministerial Council in Brussels in December 2006.

### **1. Recommendations to participating States**

#### **A.) Judiciary**

- **Ensure greater transparency:** States should introduce full trial records (verbatim court recording), publish court decisions and create open databases of court decisions.
- **Improve court administration:** the functions of court chairpersons should be circumscribed by introducing electronic systems for registration and distribution of cases.
- **Strengthen professional training of judges:** specialized training of newly appointed judges should be organized.
- **Examine statements concerning illegally obtained evidence** and allegations of ill-treatment.

#### **B.) Police**

- **Depoliticize police and immunize it from inappropriate political interference;** put in place strong safeguards to prevent police from abusing their power. Outside supervision of police activities, including by NGOs and Ombudsman institutions, is key.
- **Ensure broad recruitment of the police force** from all social and ethnic backgrounds and from both genders, to represent a cross-section of the population.
- **Recognize domestic violence as a serious crime:** police should be trained to respond appropriately to domestic violence.

#### **C.) Prosecution**

- **Ensure independence of the prosecution from political control; abolish supervisory/oversight powers of the prosecution over the judiciary.**

- **Transfer powers over arrest and detention from the prosecution to the judiciary**, and ensure that the judiciary is adequately trained in order to responsibly undertake such new competences.
- Strengthen **education for prosecutors** on gender issues and protection of women from domestic violence.
- Take legislative and administrative measures to ensure **equality of arms** between the prosecution and defence in practice.
- Ensure that **lawyers are not penalized** with criminal, administrative or civil sanctions due to the performance of their professional duties.

## 2. Recommendations to the OSCE, its institutions and field operations

- OSCE to continue to organize trainings, seminars, and meetings for defence lawyers to exchange experiences; make available expertise on **trial monitoring** and assist participating States in this regard, upon their request. To facilitate exchange of experiences, ODIHR should create a Focal Point for Trial Monitoring.
- Field Missions to assist the HCNM to distribute list of recommendations for **policing in multi-ethnic societies** to local/national authorities.
- ODIHR to strengthen its existing work on **prevention of domestic violence**. OSCE should follow-up on ODIHR's work pertaining to the training for police and prosecutors on protecting women victims of domestic violence.
- OSCE field presences to improve co-ordination and **joint planning between their respective rule of law- and law enforcement units**.

### III. ORGANIZATIONAL MODALITIES AND PARTICIPATION

The seminar on *Upholding the Rule of Law and Due Process in Criminal Justice Systems* (Warsaw, 10-12 May 2006) was organized by the ODIHR in co-operation with the Belgian Chairmanship of the OSCE. It constituted the 22nd event in a series of specialized Human Dimension Seminars organized by the ODIHR further to the decisions of the CSCE Follow-up Meetings in Helsinki (1992) and Budapest (1994).

Previous seminars were devoted to: Tolerance (November 1992); Migration, including Refugees and Displaced Persons (April 1993); Case Studies on National Minorities Issues: Positive Results (May 1993); Free Media (November 1993); Migrant Workers (March 1994); Local Democracy (May 1994); Roma in the CSCE Region (September 1994); Building Blocks for Civic Society: Freedom of Association and NGOs (April 1995); Drafting of Human Rights Legislation (September 1995); Rule of Law (November /December 1995); Constitutional, Legal and Administrative Aspects of the Freedom of Religion (April 1996); Administration and Observation of Elections (April 1997); the Promotion of Women's Participation in Society (October 1997); Ombudsman and National Human Rights Protection Institutions (May 1998); Human Rights: the Role of Field Missions (April 1999); Children and Armed Conflict (May 2000); Election Processes (May 2001); Judicial Systems and Human Rights (April 2002); Participation of Women in Public and Economic Life (May 2003); Democratic Institutions and Democratic Governance (May 2004); and Migration and Integration (May 2005).

- The seminar was opened on Wednesday, 10 May 2006, at 10:00 and closed on Friday, 12 May 2005, at 17:30; All plenary and working group sessions were open to all participants. The closing plenary session on the afternoon of 12 May focused on practical recommendations emerging from the four working group sessions. The plenary and working group meetings took place in accordance with the work programme. Amb. Strohal chaired the plenary sessions; standard OSCE rules of procedure and working methods were applied at the Seminar. Discussions were interpreted into all six OSCE working languages. Background materials and contributions can be accessed through the ODIHR website.
- The seminar was attended by 192 participants, among them 89 representatives of 33 OSCE participating States. Eight participants of four Mediterranean Partners for Co-operation (Algeria, Egypt, Morocco and Tunisia) and one Partner for Co-operation (Republic of Korea) were also present. In addition, nine representatives of seven international organizations took part: Council of Europe, European Commission for Democracy through Law - Venice Commission, International Committee of the Red Cross, International Criminal Tribunal for the former Yugoslavia, International Development Law Organization, UN Office on Drugs and Crime, UN High Commissioner for Human Rights.
- The seminar was attended by 37 representatives of OSCE institutions (OSCE Secretariat, OSCE HCNM and OSCE PA) and OSCE missions (Presence in Albania, Centre in Bishkek, Offices in Yerevan and Minsk, Missions to Bosnia and Herzegovina, to Croatia, to Georgia, in Kosovo, to Moldova, to Serbia and Montenegro, Spillover Monitor Mission to Skopje, Project Co-ordinator in Ukraine). 49 representatives of 45 NGOs were also present.

## IV. SUMMARY OF PROCEEDINGS

Ambassador Strohal opened the seminar. Welcoming remarks were made by Ambassador Frank Geerkens, Head of the OSCE Chairmanship Unit at the Ministry of Foreign Affairs of Belgium, on behalf of the Belgian OSCE Chairmanship, and Mr. Janusz Stanczyk, Undersecretary of State, Ministry of Foreign Affairs of Poland. The opening plenary session was addressed by *Judge Fausto Pocar*, President of the International Tribunal for the former Yugoslavia (ICTY), and *Leandro Despouy*, UN Special Rapporteur on the Independence of Lawyers and Judges. The opening plenary session was followed by four consecutive working groups.

### **WG I: An independent judiciary and due process in criminal justice systems**

Topics discussed included, *inter alia*:

- Ensuring independence of judges vis-à-vis other branches of government and institutions of the criminal justice system, specifically the executive power and the prosecution. Lack of institutional barriers to undue influence from these quarters threatens judicial independence and may lead to political pressure on the bench;
- Balancing judicial independence with measures to ensure judicial integrity. Corruption undermines the fairness of criminal proceedings and the quality of justice. Participants shared their views on the measures to combat this while preserving judicial independence;
- The role of judges in criminal proceedings and procedural safeguards to uphold human rights. This included judicial supervision and review of actions taken by the law enforcement in the course of investigation. The participants were specifically invited to consider the responsibilities of judges with regard to allegations of ill-treatment and torture and the appropriate scope of judicial enquiry into such allegations;
- Judges' responsibilities to ensure legality and fairness of the proceedings as well as effective remedy on appeal are greatly facilitated by an accurate trial record. In this regard, the participants were invited to discuss ways to ensure verifiable and accurate recordings of trial proceedings and share the experiences from their jurisdictions.

### **WG II: Accountable and responsive policing in upholding the rule of law**

Topics discussed included, *inter alia*:

- The role of policing in building and maintaining democratic institutions. When a State is unable to provide protection against the predatory activities of other citizens, the call for authoritarian alternatives grows. Thus the effectiveness of everyday policing and law enforcement matters greatly to the strength of popular support for democratic institutions and the rule of law;



- Elements of democratic policing. A police force is democratic when it responds to the needs of individuals and private groups as well as the needs of government. What problems the public brings to the police to resolve and how the police respond are a clear indication of the extent to which democratic policing practices have been adopted. Democratic policing includes police forces representative of the society as a whole with balanced ethnic and gender representation reflecting the community at large;
- Accountability to oversight institutions as an important underpinning of democratic policing. These institutions may include courts, legislatures, the media, and complaints review boards or independent ombudspersons. Democratic police can be distinguished, ultimately, by their submission to and acceptance of outside supervision and examination;
- Is the shortest path to a strong justice system in a fragile democracy the slow building of competence in the police and other law enforcement institutions, or does it require a forceful stand on issues of corruption, bias, political violence, and intimidation?

### **WG III: Role of public prosecutors in upholding the rule of law**

Topics discussed included, *inter alia*:

- The role of public prosecutors in ensuring due process and the protection of human rights;
- The relationship between public prosecutors and the executive branch of government. The prosecution must preserve its autonomy in operational matters in all justice systems. The participants were invited to share experience from their States and make recommendations to limit unjustified interference by the executive in the prosecutorial realm and vice versa;
- The functions of prosecutorial agencies and the scope of their duties. These issues are of particular importance to the participating States that are considering or implementing structural reform of their prosecution services. Should prosecutorial organs have any functions other than prosecution of criminal cases? How should the responsibilities for investigation of crimes be shared between the police and the prosecutors? How should gender equality be guaranteed in the prosecution service?
- The role of prosecutors in ensuring that law enforcement bodies do not take undue advantage of the situation of detained or imprisoned persons for the purpose of compelling them to confess, or otherwise incriminate themselves, or to force them to testify against any other person.

### **WG IV: Defence lawyers as a fundamental pillar of an effective criminal justice system**

Topics discussed included, *inter alia*:

- Follow-up to the OSCE Supplementary Human Dimension Meeting (SHDM) in November 2005 to the topic *The Role of Defence Lawyers in Guaranteeing a Fair Trial*;
- The role of other actors in the criminal justice system, most notably the police and prosecutors, in ensuring access to legal counsel at all stages of the criminal proceedings. Such access acquires special significance for the countries where ill-treatment and torture in custody are frequent. Timely access to a lawyer is seen as one of the effective safeguards against abuses;
- Ensuring non-discriminatory, transparent admission to the legal practice based on objective and fair criteria;
- Ensuring equality of parties as a working principle of criminal procedure. This is dependent not only on appropriate legislative guarantees, but also on the institutional practices of the police, prosecutors, judges, and defence lawyers. The participants were invited to discuss the implementation of existing national legislation and suggest improvements that may further equality of arms in practice;

The relationship between procedural adversaries – prosecutors and defence lawyers. Ensuring their co-operation is vital to the protection of procedural rights of all persons involved in the criminal process. At the same time collusion between lawyers and prosecutors that is commonplace in some participating States often results in procedural violations and deterioration of fair trial standards.

## V. RAPPORTEURS' REPORTS

Following the opening of the seminar, discussions took place in four working groups. The first working group focused on the independence of the judiciary and due process. The second group was devoted to accountable and responsive policing, whereas the third group concentrated on the role of prosecutors in upholding the rule of law. Finally, the fourth group focused on the role of defence lawyers as a pillar of an effective justice system.

This summary does not attempt to reproduce the entire discussion but concentrates on recommendations formulated in the working groups. These recommendations were not formally adopted by Seminar participants and do not necessarily reflect the views of any participating State.

### **WG I: AN INDEPENDENT JUDICIARY AND DUE PROCESS IN CRIMINAL JUSTICE SYSTEMS**

*Moderator:* **Dr. Vladimir Shkolnikov**, Head of Democratization Department, OSCE/ODIHR.

*Introducer:* **Dr. Tamara Morshchakova**, Advisor to the Constitutional Court of the Russian Federation.

*Rapporteur:* **Ms. Maria Kostyanaya**, 3rd Secretary, Permanent Mission of the Russian Federation to the OSCE.

Participants focused on the independence of the judiciary and due process in criminal justice systems. Dr. Morshchakova stressed the urgency of this topic as a fair trial is one of the most important mechanisms of ensuring human rights protection.

Participants discussed the results of ongoing justice reforms in the participating States. The practical implementation of the principle of an independent judiciary was regarded as the main issue. Problems of management in courts, professional ethics, the appointment of judges, and their professional training were discussed. Participants provided examples of administrative and economic pressure exerted on judges by the state authorities in order to have them dismissed.

Problems exist in some participating States with ensuring due process. Participants mentioned the imperfection of appeal mechanisms, delays in court trial, and insufficient equality of arms between the prosecution and defence. In some participating States there are difficulties with translation during the trial. Others mentioned a general lack of transparency in the judicial system. All these factors adversely affect the quality of legal defence and justice.

Representatives of some NGOs raised the issue of the role of judges in the prevention and fight against torture. Judges should pay more attention to the conditions in custody, as prolonged detention detrimentally affects people and their ability to protect themselves.

Some delegates spoke about rights of victims, including the right to legal and psychological help. Such assistance is required especially in the early stages of the criminal proceedings.

## *1. Recommendations to participating States*

- The principle of the independence of the judiciary should be made constitutionally binding and be strengthened through legislative measures.
- Public control over the judiciary should be strengthened. To ensure greater transparency, States should introduce full trial records (verbatim court recording), publish court decisions create open databases of court decisions. Public access to open court proceedings should not be restricted.
- Public confidence in the judiciary should be strengthened by carrying out broader human rights education programmes.
- Court administration should be improved. Functions of court chairpersons should be circumscribed by introducing electronic systems for registration and distribution of cases.
- Special attention should be paid to mechanisms of appointment and replacement of judges. Participating States should use an inclusive, multi-stage approach, with input from different bodies (such as the judicial community and councils of retired judges). The law should contain clear reasons for dismissing a judge.
- Professional training of judges should be strengthened. Specialized training of newly appointed judges to prepare them for their positions should be organized.
- Rights of defence lawyers, especially at the pre-trial stage, including participation in custody hearing by a judge, should be ensured.
- Courts should examine any statements concerning illegally obtained evidence including allegations of ill-treatment; in that connection also consider unlawful detention.
- Participating States should consider lay participation in criminal trials, such as trial by jury.
- Strengthen the role of Ombudsman institutions in the monitoring of fair trial guarantees. Consider giving Ombudsman institutions the right of appeal to the courts of higher instance.
- Public monitoring over penal institutions should be ensured.
- While implementing justice reforms the participating States should co-operate with international organizations, which conduct monitoring in this field, in order to receive recommendations and exchange experience and best practices.

## **2. Recommendations to international organizations and NGOs**

- Create electronic legislation databases to facilitate law-making.
- While elaborating legal standards, international organizations should also recommend to governments appropriate mechanisms for their implementation.
- International organizations should develop a code of professional ethics for judges that would include minimal standards of conduct.

## **3. Recommendations to the OSCE, its institutions and field operations**

- Taking into account available experience of justice reforms, devise common recommendations for use by OSCE field missions in post-conflict situations.
- Field missions should compile reports on the results of monitoring activities that they carry out in the justice sector and regularly share them with host country's government.

### **WG II: ACCOUNTABLE AND RESPONSIVE POLICING IN UPHOLDING THE RULE OF LAW**

*Moderators:* **Mr. Kevin Carty**, OSCE Senior Police Adviser, SPMU

**Mr. Tim Del Vecchio**, OSCE Police Affairs Officer, SPMU

*Introducers:* **Dr. Fatih Karaosmanoglu**, Deputy Director of the Institute for Security Sciences, Turkish Police Academy

**Mr. Paal Christian Balchen**, Assistant Chief of Police, Section for Analysis and Crime Prevention, National Police Directorate of Norway

*Rapporteurs:* **Dr. Robin Brooks** and **Mr. Stephen F. Steger**, Political Officers, United States Mission to the OSCE

The working group on accountable and responsible policing in upholding the rule of law made it clear that any long-term criminal justice work should include a policing element. Some speakers discussed the need to find an appropriate balance between security and freedom, while most asserted that security and freedom in fact go hand in hand. Moderator Kevin Carty noted that citizens can only fully enjoy a safe environment and its associated social and economic development in a context of political democracy, in which there are political constraints on the state's monopoly on the use of force. One such constraint is the requirement that police both adhere to the rule of law and protect democracy and the human rights of citizens. Many speakers also highlighted the importance of a police force that reflects the diversity of society.

Keynote speakers made several suggestions for operationalizing this responsibility. Fatih Karaosmanoglu stressed the need for police accountability, not only to the judiciary, parliament, and executive, but also to the people. Officers must be prepared to demonstrate that any decisions or actions they take are truly necessary and proportionate.

Since the function of a democratic police service is to protect the human rights and fundamental freedoms of individual citizens, Paal Christian Balchen said police should co-operate closely with the public, and in particular minority groups, in order to identify and protect victims, as well as those at risk. He advocated knowledge-based policing, since police who know the needs, threats, and challenges in their community, and who are sensitive to cultural differences, are best able to serve the public.

Ambassador John de Fontblanque referred to the police as the “gateways to justice”. As such, they must behave impartially and even-handedly, upholding democratic principles and helping to reduce inter-ethnic or inter-religious tensions.

A representative of UNODC outlined a project to create an assessment toolkit for use by governments and NGOs working on criminal justice reform. The toolkit will include assessment tools in the areas of policing, judicial systems, prisons, and legal aspects of criminal justice. It will be released later this year, and UNODC is seeking OSCE input for the project.

Throughout the session, a number of **recommendations** emerged.

### **1. To participating States**

- Participating States should put in place strong safeguards and mechanisms to prevent police from abusing power. Outside supervision of police activities, including by NGOs and Ombudsman institutions, and transparency are key.
- Participating States should depoliticize the police and separate it from inappropriate political interference.
- States must ensure protection of free expression. Only a civil society capable of casting light on abuses and raising public awareness can hold government accountable.
- Police should focus on the needs of individuals, including the needs of women and minorities.
- Police and other authorities should recognize domestic violence as a serious crime and police should be trained to respond appropriately to domestic violence.
- There must be broad recruitment to police from all social and ethnic backgrounds and from both genders, to represent a cross-section of the population.
- States should consider the issues surrounding private security services as well. These include accountability, training, recruitment, and oversight.
- Recommendations for police or criminal justice standards should take into account national differences in legal and institutional systems.

## 2. To the OSCE, its institutions and field operations

- Field operations should assist in the distribution of the HCNM's list of recommendations for policing in multi-ethnic societies to local/national authorities who can use them to train officers.
- ODIHR should strengthen its already excellent work on prevention of domestic violence. OSCE should follow-up on ODIHR's work on training police and prosecutors on protecting women victims of domestic violence.
- OSCE field presences should improve co-ordination and joint planning between their respective rule of law- and law enforcement units.
- States should take the opportunity to benefit from the ODIHR Tolerance Programme's project on law enforcement hate crimes training.

**WG III: ROLE OF PUBLIC PROSECUTORS IN UPHOLDING THE RULE OF LAW**  
*Moderator:* **Mr. Robert Adams**, Deputy Head of Democratization Department, OSCE/ODIHR  
*Introducers:* **Mr. David Evans**, Office of the Director of Public Prosecutions, UK  
**Mr. Christopher Lehmann**, Regional Director for Eurasia Programs, Office of Overseas Prosecutorial Development, Assistance and Training, U.S. Department of Justice  
*Rapporteur:* **Ms. Frida Jangsten**, Second Secretary, Permanent Delegation of Sweden to the OSCE

Working Group III provided an open and a very substantive debate on the role of the public prosecutor in upholding the rule of law. The discussions focused on the interaction and relationship between the prosecution and other parts of the criminal justice system, as well as with the state. Exercise of responsible control over the prosecution was also discussed.

Throughout the session, it was stressed that since the role of the prosecutor in the criminal justice system was to make an independent judgment on whether or not to prosecute in criminal cases while safeguarding the rights of the accused, it was important to preserve the independence of the prosecutor in interaction with other parts of the criminal justice system and against political and popular pressure.

The **relationship between the state and the prosecutor** was discussed in depth. Speakers pointed out that interference by the government in specific criminal cases would impede the administration of justice. The need for prosecutorial independence in deciding whether to press charges or not was underlined by several participants. This was paramount in upholding due process. Several speakers emphasized that the government must not be able to give instructions to the prosecutor in individual cases.

The fears of some countries with an authoritarian legacy of having the prosecution out of reach of the executive was understandable. The relationship between the prosecution and the executive could, however, give rise to doubts about the prosecution's independent judgment. On the other hand, this did not mean that the

executive did not have the right to know about the general performance of the prosecution, including its efficiency. It was emphasized that such scrutiny should be made in an open and transparent way according to criteria agreed upon in advance. In no way should this be allowed to jeopardize the independence of the prosecution's judgment in specific cases.

Favourable conditions should be created to ensure the independence of the prosecutor from pressure from the government and the public, including powerful corporate or individual interests. The State should give only general instructions and policy guidelines on how to combat crime, but it also needs to ensure the freedom of the prosecutors from political pressure. The use of an independent body in the selection process for prosecutors together with an ensured continuity of employment and a good career path constituted a certain protection against corruption in the prosecution service. Furthermore, the State needs to ensure adequate protection of the prosecution from threats.

The discussion on the **relationship between the judiciary and the prosecution** revealed that two areas were of particular concern to the participants. The relationship itself was discussed with an emphasis on the need for mutual respect. The division of powers between the prosecution and the judiciary was also a matter of discussion.

When deliberating the division of power, it was stressed that judiciary or quasi-judiciary functions on the part of the prosecution should be limited. The prosecution should thus not have the power to sanction the arrest or continued detention of a person; this should be done by the judiciary. Here national laws should be brought into compliance with the International Covenant on Civil and Political Rights (ICCPR). Reform of the prosecution and the judiciary to this end constituted a positive trend among the participating States and was encouraged. To help the judiciary properly carry out its new duties, States were recommended to provide additional training and assistance to judges.

The notion of prosecutors performing a "supervisory review" function involved a review of the work of the judiciary which contradicted the notion of judicial independence. In general, the trend was to limit such functions of the prosecution and the efforts some countries had undertaken in this regard were commendable.

When discussing the **relationship between the police and the prosecution**, there was an agreement that the interaction between the prosecutor and the investigation must allow the prosecutor to make an independent judgment on whether to press charges. However, opinions were divided about the extent of involvement by the prosecution in the ongoing investigation.

It was stressed that it was the prosecution's obligation to ensure that no violations of the rights of the accused occurred during the process of investigation; many participants underlined that the prosecution should not make use of evidence obtained illegally (including through cruel and inhuman treatment or torture). Furthermore, there was a call for recommendations on what to do with investigative services that circumvent the laws and international standards for investigation.

It was pointed out how both the investigation and prosecution could fail to press charges in cases of domestic violence. Cultural, societal or family pressure could



hinder the prosecution from making proper use of the evidence and to charge the offender. The need of additional training on domestic violence for the prosecution was identified.

There was general agreement that the **prosecutor must co-operate with the defence**. The principle of equality of arms should be ensured by the state. Insofar as the prosecution has the obligation to share its evidence with the defence, it is also the responsibility of prosecutors to ensure equality of arms.

The principle of equality of arms should be incorporated into national legislation if this had not already been done. Throughout the discussion, participants underlined the importance of mutual respect between the defence and the prosecutor to ensure the rule of law. A well-prepared defence would force the prosecution to maintain higher standards. In turn, this helps the judge to make a correct decision. One participant pointed out how some States had taken measures to restrict equality of arms in the fight against terrorism and national security. The question of how to deal with this issue was therefore raised.

The **monitoring of the prosecution** by independent monitoring bodies was held to be of vital importance. If such independent monitoring revealed irregularities in the work of the prosecution, then the system must allow for the review, and possible changes, of prosecutorial decisions.

The prosecutor needed to be subject to the same laws as the public, hence a system of “checks and balances” was called for in monitoring activities. The prosecution should not monitor itself. A possible option was a criminal justice inspectorate. Another idea involved the use of social organizations, which in some countries already monitor other parts of the criminal justice system. Furthermore, there must be possibilities to examine and challenge prosecutorial decisions.

Generally, the discussion highlighted the complexity of different inter-relationships in the criminal justice system. It can be concluded that the right balance must be struck within the different relationships. The need for “checks and balances” was often reiterated. The prosecution's independence from the state and the courts, the balance between the defence and the prosecutor, and a healthy distance between the police and the prosecutor would help ensure due process and the rule of law.

### **Recommendations to the participating States**

- To bring national laws into compliance with the provisions of the ICCPR, in particular, Articles 9 and 14.
- To ensure the independence of the prosecution from political control.
- To ensure that the prosecution does not have the power of supervisory review over the judiciary, as this works to the detriment of the establishment and maintenance of an independent judiciary.
- To ensure that prosecutors are not permitted to use evidence which has been adduced or obtained illegally, in particular, by way of ill-treatment or torture.

- To undertake continued efforts to strike an appropriate procedural balance between the prosecutor and the defence lawyer, creating competitive and fair grounds for each, within the remit of their legal system.
- To ensure adequate independent supervision over the work of the prosecution.
- Strengthen education for prosecutors on gender issues and protection of women from domestic violence.
- States which have not yet done so, should transfer powers over arrest and detention from the prosecution to the judiciary, and in this regard ensure that the judiciary is adequately trained in order to responsibly undertake such new competences.

**WG IV: DEFENCE LAWYERS AS A FUNDAMENTAL PILLAR OF AN EFFECTIVE CRIMINAL JUSTICE SYSTEM**

*Moderator:* **Dr. Vladimir Shkolnikov**, Head of Democratization Department, OSCE/ODIHR.

*Introducers:* **Dr. Margarete von Galen**, President of Berlin Chamber of Lawyers  
**Mr. Gennady Sharov**, First Vice-President of the Federal Union of Lawyers, Russian Federation.

*Rapporteur:* **Mr. Mustafa Osman Turan**, First Secretary, Permanent Mission of Turkey to the OSCE.

Working Group IV focused on the role of defence lawyers not only as a fundamental pillar of an effective criminal justice system and due process but also as actors in civil society defending human rights and fundamental freedoms. The Group followed up on the discussions that took place during the OSCE Supplementary Human Dimension Meeting in November 2005 on “The Role of Defence Lawyers in Guaranteeing a Fair Trial” and placed them in the broader context of the seminar.

The introducers highlighted Constitutional Court decisions which safeguard the independent role of defence lawyers in Germany and the Russian Federation and gave an overview of legislation and practices in these countries.

Participants discussed their national experiences with a critical eye and shared good practices, particularly in ensuring access to legal counsel at all stages of the criminal proceedings as well as equality of parties – prosecutors and defence lawyers – and the relationship between them. Frequent calls were made from the floor that the practical and financial problems should be addressed and obstacles be removed, to facilitate the application of existing laws, and that both the judiciary and executive should assume responsibility for this.

The main issues raised can be grouped under three broad headings:

**Access to legal counsel**

Participants underlined the fundamental importance of immediate access to independent defence counsel to ensure due process and fair trial. A defendant should be represented by a defence lawyer of his or her choice. Police should assist the

person in custody in this regard. In case of need, free-of-charge defence counsel of adequate qualification should be provided by the state. It was repeatedly underlined that the rights of the defence lawyer are vital for the defendant and should not be restricted arbitrarily, by the prosecutor or through any administrative actions. There should be a ban on seizure of materials from the defence. Unrestricted access and confidential communication between the defence lawyer and his or her client was also underscored as an important principle. Unrestricted participation of the defence counsel at the pre-trial stage helps to ensure that instances of ill-treatment and torture do not take place.

### **Equality of parties in criminal proceedings**

Several speakers acknowledged that even in democratic justice systems full equality of parties in criminal proceedings is yet to be put in place. Concrete measures such as removing the restraints on lawyers during the pre-trial stage and providing defence lawyers with access to court and prosecution files are mentioned as effective measures to address this problem.

### **Admission to and regulation of the Bar**

The participants' views also converged on the significance of independent bar associations and professional legal associations to fulfil essential tasks such as defending individual lawyers from pressure and persecution, developing professional standards and codes of ethics, improving the image of defence lawyers in the society, providing constant legal education, and taking disciplinary action when necessary. A problem area identified by several speakers was the absence of an objective, transparent, non-discriminatory, and fair procedure for admission to legal practice in some participating States.

Many **recommendations** were made during the session. Some of them reiterate those that were made in the Tbilisi SHDM last year. Here only several new and fundamental recommendations will be mentioned.

#### **1. Recommendations to participating States**

- Independence of defence lawyers should be recognized as a fundamental component of criminal systems.
- Participating States should ensure that lawyers are not penalized with criminal, administrative or civil sanctions due to the conduct of their professional duties.
- Defence lawyers should not be stigmatized and identified with their clients, particularly during unpopular or controversial cases.
- Participating States should promote professional associations of lawyers. Access to these associations should be free, fair and transparent.
- A fund with sufficient resources could be created to pay the lawyers' fees for the cases where their clients are not able. An institution of public defender may also prove useful.

#### **2. Recommendations to the OSCE, its institutions and field operations**

- OSCE should encourage trainings, seminars, and meetings for defence lawyers to exchange experience.
- OSCE should also make its expertise on trial monitoring available and assist participating States in this regard, upon their request.

## ANNEX I: ANNOTATED AGENDA



HUMAN DIMENSION  
S E M I N A R

### THE HUMAN DIMENSION SEMINAR

**Upholding the Rule of Law and Due Process in Criminal Justice Systems  
Warsaw, 10-12 May 2006**

#### ANNOTATED AGENDA

##### **I. Introduction**

Human Dimension Seminars are organized by the OSCE/ODIHR pursuant to the CSCE Summit decisions in Helsinki (1992) and Budapest (1994). The 2006 Human Dimension Seminar will be devoted to *Upholding the Rule of Law and Due Process in Criminal Justice Systems* in accordance with PC Decisions No. 716 of 19 January 2006 (PC.DEC/716) and No. 723 of 30 March 2006 (PC.DEC/723).

Justice is rightfully recognized as a cornerstone of the rule of law, good governance and democratic order. The OSCE participating States have committed themselves to “*support and advance those principles of justice which form the basis of the rule of law*” and explicitly acknowledged that rule of law does not mean merely a formal legality but “*justice based on the recognition and full acceptance of the supreme value of the human personality and guaranteed by institutions providing a framework for its fullest expression.*”<sup>1</sup> In the light of this understanding, a criminal justice system is seen as a part of the institutional framework that translates rule of law from an abstract principle into reality.

All OSCE participating States have undertaken international obligations and committed themselves to certain fundamental principles related to the administration of criminal justice. These obligations and principles are designed to ensure that criminal proceedings uphold the rule of law, guarantee the fairness of proceedings and create safeguards to protect human rights.

##### **II. Aims**

This Human Dimension Seminar follows up on the Ljubljana Ministerial Council Decisions No. 3 and No. 12 that tasked the participating States to focus on criminal justice systems. In addition, the focus on the rule of law and due process in criminal justice systems is an important part of the Chairmanship's priority on the fight against

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<sup>1</sup> Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (Copenhagen 1990), paragraph 2.

organized crime: an effective and efficient fight against organized crime requires that the basics of the criminal justice system function properly, while respect for the rule of law and due process is crucial in ensuring respect for human rights.

The 2006 Human Dimension Seminar will take a comprehensive look at criminal justice systems of the participating States and invite them to examine their adherence to OSCE human dimension commitments, most notably the 1990 Copenhagen Document and the 1991 Moscow Document.

The discussions will be structured in four Working Groups, corresponding to the four core institutions of a criminal justice system: the police, prosecutors, defence lawyers, and the judiciary. This approach will be conducive to a comprehensive review of the effectiveness of criminal justice systems and allow a focus on the fact that the system is a chain and can only be as strong as its weakest link. The seminar builds on earlier human dimension events that focused on particular institutions, including the 2002 Human Dimension Seminar on *Judicial Systems and Human Rights* and the 2005 Supplementary Human Dimension Meeting on the *Role of Defence Lawyers in Guaranteeing a Fair Trial*.

Seminar participants are invited to discuss interaction between these core criminal justice institutions, share the experiences and best practices from their States, and make recommendations to improve their operation and co-operation. The Seminar Agenda also invites discussion of specific procedural safeguards that ensure upholding human rights and fairness of criminal proceedings.

The ODIHR is preparing to distribute to the Seminar participants a set of reference materials with selected international standards relevant to the Seminar discussions. All documents related to the Seminar will be available at the OSCE/ODIHR website ([www.osce.org/odihr](http://www.osce.org/odihr)) under *Meetings*.

### **III. Participation**

Representatives of the OSCE participating States, OSCE institutions and field missions, inter-governmental and non-governmental organizations will take part in the Seminar.

Participation of experts on criminal justice systems and reform will be particularly encouraged. In this regard, participating States are requested to publicize the Seminar within their professional legal community and in academic circles and to include in their delegations, wherever possible, representatives of the core criminal justice institutions and experts on related issues.

The Mediterranean Partners for Co-operation and the Partners for Co-operation are warmly invited to attend and share their views and ideas on upholding the rule of law and due process in criminal justice systems.

All participants are encouraged to submit in advance written interventions describing their activities and outlining proposals regarding the subject of the Seminar, which will be distributed to the delegates. Participants are also encouraged to make brief oral interventions during the Seminar. While prepared interventions are welcomed during

the Plenary Sessions, free-flowing discussions and exchanges are encouraged during the Working Group sessions.

#### **IV. Organization**

The Seminar venue is the “Sofitel Victoria” Hotel, 11 Królewska Street, Warsaw.

The Seminar will open on Wednesday, 10 May 2006, at 10:00. It will close on Friday, 12 May 2006, at 18:00.

All Plenary sessions and Working Group sessions will be open to all participants. The Plenary and Working Group sessions will take place according to the Work Programme below.

Four Working Group sessions will be held consecutively. They will focus on the following topics:

1. An independent judiciary and due process in criminal justice systems;
2. Accountable and responsive policing in upholding the rule of law;
3. Role of public prosecutors in upholding the rule of law;
4. Defence lawyers as a fundamental pillar of an effective criminal justice system.

The closing Plenary session, scheduled for the afternoon of 12 May, will focus on practical suggestions and recommendations for addressing the issues discussed during the Working Group sessions.

An OSCE/ODIHR representative will chair the Plenary sessions.

Standard OSCE rules of procedure and working methods will apply to the Seminar.

Discussions during the Plenary and Working Group sessions will be interpreted from and into the six working languages of the OSCE.

Registration will be possible during the Seminar days from 8:00 until 18:00.

By prior arrangement with the OSCE/ODIHR, facilities may be made available for participants to hold side events at the Seminar venue. A table for display/distribution of publications by participating organizations and institutions will also be available.

#### **WORK PROGRAMME**

Working hours: 10:00 – 13:00  
15:00 – 18:00

Wednesday  
10 May 2006

Thursday  
11 May 2006

Friday  
12 May 2006

Morning	Opening Plenary session	WG II	WG IV
Afternoon	WG I	WG III	Closing Plenary session

## V. WORKPLAN

*10 May 2006, Wednesday*

**10:00 – 13:00 Opening Plenary Session**

**Welcome and introduction from the Seminar Chair**

**Amb. Christian Strohal**

Director of the OSCE/ODIHR

**Welcoming Remarks**

**Amb. Frank Geerkens**

Head of the OSCE Chairmanship Unit, Ministry of Foreign Affairs of Belgium

**Mr. Janusz Stanczyk**

Undersecretary of State, Ministry of Foreign Affairs of Poland

**Keynote Speakers**

**Judge Fausto Pocar**

President of the International Criminal Tribunal for the former Yugoslavia (ICTY)

**Mr. Leandro Despouy**

UN Special Rapporteur on the Independence of Lawyers and Judges

**15:00 – 18:00 Working Group I:**

**An independent judiciary and due process in criminal justice systems**

*Moderator:*

**Dr. Vladimir Shkolnikov**

Head of Democratization Department, OSCE/ODIHR

*Introducer:*

**Dr. Tamara Morshchakova**

Professor, Advisor to the Constitutional Court of the Russian Federation

*Rapporteur:*

**Mrs. Maria Kostyanaya**

Third Secretary, Permanent Mission of the Russian Federation to the OSCE

An independent judiciary has long been recognized by the OSCE participating States as an essential element of justice.<sup>2</sup> Independence of the judiciary is an established

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<sup>2</sup> 1990 Copenhagen, paragraph 5.12.



constitutional principle, not an abstract value. It has far-reaching implications for the protection of individual rights and ensuring due process of law.

The participants of this Working Group will be invited to discuss the importance of judicial independence in the context of criminal justice, also giving consideration to issues of organization and management. Several clusters of issues are proposed for consideration.

The first deals with ensuring independence of judges vis-à-vis other branches of government and institutions of the criminal justice system. The relationships with the executive power and with the prosecution are of particular significance. Lack of institutional barriers to undue influence from these quarters threatens judicial independence and may lead to political and other pressure on the bench. Participants are invited to discuss the safeguards against such influence.

Experts often point out the need to balance judicial independence with measures to ensure judicial integrity. Indeed, the judiciary is rarely immune from corruption when it is prevalent in other areas of public life. Corruption undermines the fairness of criminal proceedings and the quality of justice. Participants are welcome to share their views on the measures to combat this while preserving judicial independence.

A separate cluster of issues is devoted to the role of judges in criminal proceedings and procedural safeguards to uphold human rights. This includes judicial supervision and a review of actions taken by law enforcement in the course of investigation. The participants are specifically invited to consider the responsibilities of judges with regard to allegations of ill-treatment and torture and the appropriate scope of judicial enquiry into such allegations.

Judges' responsibilities to ensure the legality and fairness of the proceedings as well as effective remedy on appeal are greatly facilitated by an accurate trial record. In this regard, the participants are invited to discuss ways to ensure verifiable and accurate recordings of trial proceedings and share experiences from their jurisdictions.

*11 May 2006, Thursday*

**10:00 – 13:00 Working Group II:  
Accountable and responsive policing in upholding the rule of law**

*Moderators:*           **Mr. Kevin Carty**  
OSCE Senior Police Adviser, SPMU  
**Mr. Tim Del Vecchio**  
OSCE Police Affairs Officer, SPMU

*Introducers:*           **Dr. Fatih Karaosmanoglu**  
Deputy Director of the Institute for Security Sciences, Turkish  
Police Academy  
**Mr. Paal Christian Balchen**  
Assistant Chief of Police, Section for Analysis and Crime  
Prevention, National Police Directorate of Norway

*Rapporteur:*           **Dr. Robin Brooks and Mr. Stephen F. Steger**

## Political Officers, United States Mission to the OSCE

Policing and, more broadly, the criminal justice system have a crucial role in building and maintaining the sense of effectiveness and fairness on which loyalty to democratic institutions depends. As a start, physical security is of paramount importance to the citizens of any country. When a State is unable to provide protection against the predatory activities of other citizens, the call for authoritarian alternatives grows. So the effectiveness of everyday policing and law enforcement matters greatly to the strength of popular support for democratic institutions and the rule of law.

Law enforcement also matters to democracy in terms of the sense of equality on which loyalty to democratic institutions also depends. A willingness to pursue corruption and to examine, without undue deference, the activities of the powerful and the well connected is an attribute of a strong criminal justice system that creates faith in democracy.

A police force is democratic when it responds to the needs of individuals and private groups as well as the needs of government. Democratic models of policing orient their activities primarily to the needs of the disaggregated public. What problems the public brings to the police to resolve and how the police respond are a clear indication of the extent to which democratic policing practices have been adopted. Democratic policing includes police forces that represent society as a whole with balanced ethnic and gender representation reflecting the community at large.

Similarly, accountability to oversight institutions, independent of ruling regimes, is an important underpinning of democratic policing. These institutions may include courts, legislatures, the media, and complaints review boards or independent ombudspersons. Democratic police can be distinguished, ultimately, by their submission to and acceptance of outside supervision and examination.

Is the shortest path to a strong justice system in a fragile democracy the slow building of competence in the police and other law enforcement institutions, or does it require a forceful stand on issues of corruption, bias, political violence, and intimidation? That question is of fundamental importance for those trying to build democratic institutions and strong justice systems.

The Working Group participants are welcome to share their experiences and best practices from their countries on these issues.

### **15:00 – 18:00 Working Group III: Role of public prosecutors in upholding the rule of law**

*Moderator:* **Mr. Robert Adams**  
Deputy Head of Democratization Department, OSCE/ODIHR

*Introducers:* **Mr. David Evans**  
Office of the Director of Public Prosecutions, UK

**Mr. Christopher Lehmann**

Regional Director for Eurasia Programs, Office of Overseas  
Prosecutorial Development, Assistance and Training, U.S.  
Department of Justice

*Rapporteur:* **Ms. Frida Jangsten**  
Second Secretary, Permanent Delegation of Sweden to the  
OSCE

Powers and the role that public prosecutors play in criminal proceedings vary significantly in the legal systems of the participating States. At the same time, prosecutors in all criminal justice systems play a major role in ensuring due process and protection of human rights. This Working Group will discuss how prosecutors fulfil that role.

The participants are invited to discuss the relationship between public prosecutors and the executive branch of government. The prosecution must preserve its autonomy in operational matters in all justice systems. The participants are invited to share experience from their States and make recommendations to limit unjustified interference by the executive in the prosecutorial realm and vice versa.

The functions of prosecutorial agencies and the scope of their duties are of particular importance to the participating States that are considering or implementing structural reform of their prosecution services. Should prosecutorial organs have any functions other than prosecution of criminal cases? How should the responsibilities for investigation of crimes be shared between the police and the prosecutors? How should gender equality be ensured in the prosecution service? How should prosecutors deal with gender-based violence? The participants are invited to share their views on these and related issues.

In this discussion, the participants specifically are invited to comment on the role of prosecutors in implementing paragraph 23.1(vii) of the 1991 Moscow Document, whereby the OSCE States committed themselves to ensuring that law enforcement bodies do not take undue advantage of the situation of detained or imprisoned persons for the purposes of compelling them to confess, or otherwise incriminate themselves, or to force them to testify against any other person.

*12 May 2006, Friday*

**10:00 – 13:00 Working Group IV:  
Defence lawyers as a fundamental pillar of an effective criminal justice system**

*Moderator:* **Dr. Vladimir Shkolnikov**  
Head of Democratization Department, OSCE/ODIHR

*Introducers:* **Dr. Margarete von Galen**  
President of the Berlin Chamber of Lawyers  
**Mr. Gennady Sharov**  
First Vice-President of the Federal Union of Lawyers, Russian  
Federation

*Rapporteur:* **Mr. Mustafa Osman Turan**

## First Secretary, Permanent Mission of Turkey to the OSCE

In recognition of the essential role that defence lawyers play in the administration of criminal justice, the OSCE devoted its Supplementary Human Dimension Meeting (SHDM) in November 2005 to the topic “*The Role of Defence Lawyers in Guaranteeing a Fair Trial.*” This session will follow up on the SHDM discussions and place them in the broader context of the Seminar.

In particular, the participants are invited to discuss the role of other actors in the criminal justice system, most notably the police and prosecutors, in ensuring access to legal counsel at all stages of the criminal proceedings. Access to legal assistance for defendants in custody continues to be a problem in some OSCE States. This problem acquires special significance for the countries where ill-treatment and torture in custody are frequent. Timely access to a lawyer is seen as one of the effective safeguards against such abuses.

One of the SHDM recommendations to the participating States was to ensure non-discriminatory, transparent admission to the legal practice based on objective and fair criteria. The Working Group participants are welcome to share their experiences and best practices from their countries on this issue.

Ensuring equality of parties as a working principle of criminal procedure is dependent not only on appropriate legislative guarantees, but also on the institutional practices of the police, prosecutors, judges, and defence lawyers. The Working Group is invited to discuss the implementation of existing national legislation and suggest improvements that may further equality of arms in practice.

The relationship between procedural adversaries – prosecutors and defence lawyers – deserves special consideration. Ensuring their co-operation is vital to the protection of procedural rights of all persons involved in the criminal process. At the same time the collusion between lawyers and prosecutors that is commonplace in some participating States often results in procedural violations and a deterioration of fair trial standards.

### **15:00 – 18:00 Closing Plenary Session**

Rapporteurs’ summaries from the Working Groups

Statements from Delegations

### **Closing Remarks**

**Amb. Christian Strohal**

Director of the OSCE/ODIHR

Closure of the Seminar

### **ANNEX II: SIDE EVENT SCHEDULE AND OVERVIEW**

*The Helsinki Document of 1992 (Chapter IV) called for increasing the openness of OSCE activities and expanding the role of NGOs. In particular, in paragraph (15) of Chapter IV the participating States decided to facilitate during CSCE meetings informal discussion meetings between representatives of participating States and of NGOs, and to provide encouragement to NGOs organizing seminars on CSCE-related issues. In line with this decision, NGOs, governments, and other participants are*

encouraged to organize side meetings on relevant issues of their choice.

**The opinions and information shared during the side events convened by participants do not necessarily reflect the policy of the OSCE/ ODIHR.**

<b>Wednesday, 10 May</b>	<b>Wednesday, 10 May</b>
<p><i>Title: Criminal Justice and the Trafficking Victim</i></p> <p><i>Convenor: ODIHR Anti-Trafficking Programme</i></p> <p><i>Time: 13.00-15.00</i></p> <p><i>Venue: Meeting Room 2</i></p> <p><i>Languages: English, Romanian</i></p>	
<b>Thursday, 11 May</b>	<b>Thursday, 11 May</b>
<p><i>Title: The OSCE Approach to Criminal Justice Reform: Good practices from the ODIHR and OSCE Field Missions</i></p> <p><i>Convenor: ODIHR Rule of Law Unit</i></p> <p><i>Time 13.00-15.00</i></p> <p><i>Venue: Meeting Room 1</i></p> <p><i>Language: English</i></p>	<p><i>Title: POLIS – the OSCE Policing OnLine Information System</i></p> <p><i>Convenor: OSCE Strategic Police Matters Unit</i></p> <p><i>Time: 13.45-14.45</i></p> <p><i>Venue: Plenary Hall</i></p> <p><i>Languages: English, Russian</i></p>
<b>Friday, 12 May</b>	<b>Friday, 12 May</b>
<p><i>Title: OSCE guidelines in criminal justice: discussion on different options; introduced by Judge Guy Van Craen</i></p> <p><i>Convenor: Belgian Ministry of Foreign Affairs - OSCE Chairmanship Unit</i></p> <p><i>Time: 13.00-14-30</i></p> <p><i>Venue: Meeting Room 3</i></p> <p><i>Language: English</i></p>	

## **OVERVIEW OF SIDE EVENTS**

### **As submitted by the organizers**

HDS 10 - 12 May 2006

Warsaw

*The side events below have been organized and scheduled at the request of participants of the Human Dimension Seminar.*

### **Wednesday, 10 May**

Time: 13.00-15.00

Venue: Meeting Room 2

Title: Criminal Justice and the Trafficking Victim

Convener: ODIHR Anti-Trafficking Programme

Languages: English, Romanian

#### Summary:

This meeting will provide a forum for debating how the victims of trafficking in human beings experience the criminal justice systems and provide an opportunity for the exchange of practices. It will discuss whether through numerous anti-trafficking efforts States have developed a good model of access to criminal justice for trafficked persons. The meeting will bring together a panel of practitioners from Moldova, Romania, Albania and Germany to highlight issues from their experience and present ways forward.

### **Thursday, 11 May**

Time: 13.00-15.00

Venue: Meeting Room 1

Title: The OSCE Approach to Criminal Justice Reform: Good practices from the ODIHR and OSCE Field Missions

Convener: ODIHR Rule of Law Unit

Language: English

#### Summary:

This side event will be a panel discussion with representatives from OSCE Field Missions in South Eastern Europe and from the ODIHR. The focus will be on specific examples of ongoing work to assist in criminal justice reform by the OSCE. The panellists will discuss what are the OSCE's comparative advantages in providing criminal justice reform assistance; how this work is done in the context of the OSCE as a political organization; and how the OSCE makes the best use of limited resources in the field.

### **Thursday, 11 May**

Time: 13.15-14.45

Venue: Plenary Hall

Title: Polis - the OSCE Policing OnLine Information System

Convener: OSCE Strategic Police Matters Unit

Languages: English, Russian (simultaneous translation)

#### Summary:

The OSCE Policing OnLine Information System (POLIS) will consist of a Digital Library, a Policing Experts Database, and a Co-ordination Mechanism for Police Assistance Programmes, as well as a number of additional services. The Digital Library will be a comprehensive collection of documents created and supported by a community of policing practitioners. It will be a central repository of knowledge for the storage and retrieval of information relating to all aspects of international police-related assistance. The Policing

Experts Database will form a pool of skilled professionals that OSCE institutions and Field Operations can draw on to provide consultancy-like expertise for short-term periods (1 week up to 6 months). The Co-ordination Mechanism for Police Assistance Programmes will aim at co-ordinating and optimizing the funding of policing activities implemented by the OSCE and other organizations. In addition, it will have the capacity to gather information on bilateral or multi-lateral ongoing projects in the field of policing too. It will help distribute resources efficiently and ensure optimum results for every investment in policing projects. Currently, it is possible to consult POLIS in both English and Russian, but it has the capability to operate in all six OSCE working languages, subject only to the necessary resources being made available.

### **Friday, 12 March**

Time: 13.00-14.30

Venue: Meeting Room 3

Title: OSCE guidelines in criminal justice: discussion on different options, introduced by Judge Guy Van Craen

Convener: Belgian Ministry of Foreign Affairs - OSCE Chairmanship Unit

Language: English

#### Summary:

The focus on the rule of law and due process in criminal justice systems is an important part of the Chairmanship's priority on the fight against organized crime.

Respect for the rule of law and due process is instrumental both in ensuring respect for human rights and as a prerequisite for a well-functioning criminal justice system. Tackling organized crime requires such a well-functioning system, in which efficiency and effectiveness are also important parameters.

Mr Guy Van Craen is a Belgian magistrate who has served as an international judge on several occasions. He will discuss some of the core principles embodied in international texts and offer options on elaborating guidelines on the basis of these norms and standards.

## **ANNEX III: INFORMATION ON SPEAKERS AND INTRODUCERS**

### **Key Note Speakers:**

#### ***Fausto Pocar, President of the International Criminal Tribunal for the former Yugoslavia (ICTY)***

Judge Fausto Pocar was appointed President of the ICTY in November 2005. He is a Professor of International Law at the Law Faculty of the University of Milan, where he has also served as the Dean of the Faculty of Political Sciences and as the Vice-Rector.

In February 2000, he began working as a judge of the ICTY in The Hague. Since his appointment, he served first as a judge in a Trial Chamber, and later in the Appeals Chamber of the Tribunal, where he is still sitting. As a Judge of the Appeals Chamber, he is also a Judge of the Appeals Chamber of the International Criminal Tribunal for Rwanda (ICTR). On appeal, he has participated in the adoption of the final judgments in several ICTY and ICTR cases, heard both at The Hague and in Arusha, Tanzania. From March 2003 until November 2005, he served as Vice-President of the ICTY.

Judge Pocar also has long-standing experience in United Nations activities, in particular in the field of human rights and humanitarian law. He served in many capacities internationally, including with the Human Rights Committee, as a special Representative of the UN High Commissioner for Human Rights for visits to Chechnya and the Russian Federation and as the Italian delegate to the Committee on the Peaceful Uses of Outer Space and its Legal Subcommittee.

Judge Pocar is the author of numerous publications on International Law, including Human Rights and Humanitarian Law, Private International Law and European Law. He has lectured at the Hague Academy of International Law and is a member and treasurer of the *Institut de Droit International*, as well as a member of several other international law associations.

#### ***Leandro Despouy, UN Special Rapporteur on the Independence of Lawyers and Judges (Argentina)***

In September 2003 Mr. Leandro Despouy (Argentina) was appointed United Nations Commission on Human Rights Special Rapporteur on the Independence of Judges and Lawyers. He is also currently the President of the Auditoria General de la Nación, an entity which exercises external control over the national public sector spending under the National Congress.

In 2001 Mr. Despouy was the Special Representative of Human Rights at the International Level of the Ministry of Foreign Affairs of Argentina and the Chairperson of the 57<sup>th</sup> session of the United Nations Commission on Human Rights. In 1996 he served as the Special Rapporteur on Extreme Poverty and Human Rights of the United Nations Sub-Commission on the Promotion and Protection of Human Rights.

#### ***Tamara Morshchakova, Advisor to the Constitutional Court, Professor, Merited Lawyer of the Russian Federation***

Tamara Morshchakova is one of Russia's leading lawyers and experts in criminal justice reform. A graduate of Moscow State University, Dr. Morshchakova was a researcher at the Academy of Sciences' State and Law Institute and then the Institute of Soviet Law and Comparative Legal Studies from 1958 to 1991. She was one of the authors of the Concept of Judicial Reform in the Russian Federation approved by the



Parliament in 1991. She was a member of the Constitutional Council and a working group to draft the 1993 Constitution and the Law on the Constitutional Court.

Dr. Morschakova was appointed a Justice of the Constitutional Court in 1991. She served as a Deputy Chair of the Court from 1995 to 2002. She retired from the Constitutional Court in 2002 but continues to participate in its work as an Advisor. She is also a member of the Academic-Advisory Council of the Supreme Court and a member of the Council for Improvement of Justice and the Council for Civil Society Promotion and Human Rights created by the President of the Russian Federation.

Dr. Morshchakova is a law professor at the Graduate School of Economics in Moscow. She has authored over 130 publications on the judiciary and judicial reform, criminal procedure, constitutional review, and related issues.

***Fatih Karaosmanoglu, Deputy Director of the Institute for the Security Sciences, Police Academy, Turkey***

Fatih Karaosmanoglu graduated from Ankara University (1987), completed his Masters in International Law (LLM) at Nottingham University (1992) and Doctorate (PhD) in the International Studies Department at Surrey University (1997), and was appointed Associate Professor in International Relations in 2005. He is still a member of the Faculty of Security Sciences, and a Deputy Director of the Institute for the Security Sciences, Police Academy in Ankara. He is also a member of the Publishing Board of the Police Academy Journal of the Judgements of the European Court of Human Rights. He has many international and national publications including books and articles in the area of human rights, security, terrorism, policing and home security.

***Paal Christian Balchen, Assistant Chief of Police, Section for Analysis and Crime Prevention, National Police Directorate, Norway***

Paal Christian Balchen has an extensive operational background in the areas of community-based, problem-oriented policing and crime prevention. As a recognized expert, he has taught these subjects at the Norwegian Police University College, authored a monograph on the subjects, and was the Crime Prevention Adviser to the Mayor of Bærum. Mr Balchen has also worked on police assistance projects in Serbia and Montenegro.

***David Evans, Office of the Director of Public Prosecutions, England and Wales***

Mr. Evans currently holds the post of Assistant Director in the Policy Directorate, with responsibility for law enforcement of the Crown Prosecution Service - England and Wales. He has extensive and lengthy experience of prosecuting high-profile and serious criminal matters.

Mr. Evans entered the legal profession with a degree in law after a period as an infantry army officer and as a local government officer. He prosecuted for a police authority for a short period before working as a partner in a criminal practice in Southern England for 12 years. Mr. Evans developed an interest in representing the criminally insane and those seeking an exit from mental institutions through the mental health tribunals.

Mr. Evans returned to prosecuting in 1991 and moved to the Headquarters of the Crown Prosecution Service in London to the Policy Directorate where he has led many significant national change projects and worked with the Home Office in the development of new criminal procedural law. One example is that Mr. Evans led the project that introduced the change whereby the prosecutor, not the police, decides the

initial charge. Mr. Evans has travelled with the Service extensively and has been particularly active in working with the prosecuting authorities in China and Canada.

***Christopher Lehmann, Regional Director for Eurasia Programs, Office of Overseas Prosecutorial Development, Assistance and Training, U.S. Department of Justice***

Mr. Lehmann is currently the Regional Director for Eurasia Programs at the US Department of Justice's Office of Overseas Prosecutorial Development, Assistance and Training (DOJ/OPDAT). In that capacity he manages all of DOJ's development and justice sector assistance programmes in the former Soviet Union.

Prior to joining the OPDAT in 2003, Mr. Lehmann served for three and a half years as the Department's Resident Legal Advisor at the US Embassy in Moscow. Prior to serving in Moscow, he took a year's leave of absence from DOJ to work as the first Criminal Law Liaison for the American Bar Association's Central and East European Law Initiative (ABA/CEELI) in Ukraine, in 1998-1999. Mr. Lehmann wrote extensively about CEELI's work in Ukraine, with articles appearing in the ABA's *Criminal Justice Magazine* and in the *Harvard Human Rights Journal*.

Mr. Lehmann spent ten years as an Assistant US Attorney in the Eastern District of New York, where he focused particularly on prosecuting organized crime cases involving the La Cosa Nostra crime families and the Teamster's Union.

***Margarete von Galen, Chair of the Berlin Chamber of Lawyers, Germany***

Dr. von Galen began practicing law in 1983. Her focus is on criminal, labour and anti-discrimination cases. Her work in these fields is well known and has been covered in various publications. Dr. von Galen is a member of the German *Republican Lawyers Association (RAV)* and chaired the German *Organizational Office of the Criminal Lawyers Association* in 2000-2004. Since 2004 she has been the Chair of Berlin's Chamber of Lawyers.

Dr. von Galen has in-depth experience representing defendants facing terrorist charges. Among other important trials, Dr. von Galen participated in the "La Belle" trial in the early 1990s. More recently she acted as the defence lawyer in a well publicized trial in Berlin with terrorist charges. These charges were later dropped by the court.

***Gennady Sharov, First Vice-President of the Federal Union of Lawyers, RF***

Mr. Sharov has been a practising lawyer since 1977. He is currently the First Vice-President of the Federal Union of Lawyers, a Presiding Board member of the Moscow Collegium of Lawyers and a Board member of the Federal Chamber of Lawyers of the Russian Federation.

Mr. Sharov has defended hundreds of criminal cases in trial and appeals courts. He has been awarded various medals and honorary titles by the Russian Bar and the Ministry of Justice. He has published in law review journals on current legal developments and topical issues for the legal profession.

## ANNEX IV: OPENING REMARKS

### **Ambassador Christian Strohal, Director of the OSCE/ODIHR**

Excellencies,

Ladies and Gentlemen,

Let me welcome you all very warmly to this year's Human Dimension Seminar. Our topic is "Upholding the Rule of Law and Due Process in Criminal Justice Systems". It reflects an area of ongoing importance and concern throughout the OSCE region, and an area in which my office has focused considerable resources, time and energy. I know that the issue is very close to the heart of the Chairman-in-Office, who has declared the Rule of Law as one of his priorities for this year. I am therefore particularly glad to welcome Ambassador Frank Geerkens, Head of the Chairmanship Taskforce, who will be enlarging on this priority in a minute. I also thank our Polish hosts, represented here today by Deputy Minister Janusz Stanczyk, not only for addressing us, but also for the support they have been giving my Institution all year round as ODIHR's host country.

At the outset, I wish to thank the participating States and the Chairmanship for selecting this topic for the Seminar. I hope we all see it as a key opportunity to not only discuss the most important issues in this area, but also for the sharing of good practices and lessons learned. The Seminar should not only provide a forum for reflection, but also for concrete recommendations.

Some may question why this topic matters at all: in every country it is, or should be, only a small percentage of the population that are ever involved in the criminal justice system. However, even though relatively few people will ever be arrested in their lifetimes, and only a somewhat larger number will experience the pain of being a victim of a crime, we all recognize that the way a criminal justice system functions plays a key role in how every society views and organizes their legal system and, ultimately, their government. If people do not trust the system then it is more likely that they will not report crimes or that individuals will resort to "self help" methods when they are victims of crimes. Moreover, how people view the criminal justice system plays no small part in how safe they feel in their homes and in the country as a whole. In the end how crime is dealt with in a society does impact everyone in some way, even if only in terms of their attitudes towards the rule of law. Thus, it impacts not only on security in the narrow sense, but also in the sense of the OSCE comprehensive concept of human security.

In order to truly uphold the rule of law and due process in criminal justice systems, it is paramount that all parts of the system work together towards that end. We are therefore devoting each working session to one of the four pillars of every criminal justice system: judges, police officers, prosecutors and defence lawyers. In doing so we recognize that there is no one system, one approach, one model or one set of laws that everyone must adopt. Differences between the legal systems in the OSCE region are considerable and the legal institutions involved in criminal justice vary to a considerable degree in their structure and functions from one country to another. Yet there are some things that these systems do have, or should have, in common in order to achieve due process of law and protection of human rights.

**Judicial independence** is an essential element of due process and rule of law. Judicial

independence can be threatened at many levels. Participating States must ensure that judges are independent from other branches of government, including the executive. Judges should have the procedural powers to protect and preserve human rights, such as the power to supervise and review actions taken by law enforcement. One of the most serious impediments to judicial independence in many countries is corruption. Judges are not alone in facing challenges due to corruption, but there are obvious unique aspects to combating and protecting against judicial corruption. Having a system in place such as electronic court recording to ensure accurate records of court proceedings can provide protection for judicial independence and help in the fight against judicial corruption.

Working Group Two is devoted to **policing**. First I would like to thank the Strategic Police Matters Unit of the OSCE Secretariat for their strong co-operation in organizing this part of the seminar. It is clear to us all that in the absence of physical security there can be no rule of law. Police play a key role in maintaining peace in a society, but also in setting the standards for human rights and, through their actions, how the general public perceive their governments. Clearly, effective policing requires that the police act in a way that fully complies with the law, that values each individual and that reflects democratic principles. Every country faces problems of crime. Every country must deal with the reality of crime and violence, both within the home and often committed against strangers. Working Group II will discuss how to deal with crime through developing qualified police forces and confronting issues of corruption and bias.

Public **Prosecutors**, like judges and police, have a major role in ensuring due process and human rights protection. The scope of duties, responsibilities and powers that prosecutors have under the law has a significant impact on how they are able to do their jobs. In six countries of the OSCE region the power to sanction arrest has still not been transferred from prosecutors to the judiciary. The ODIHR has consistently encouraged such a transfer to help bring those nations into compliance with their international obligations. However, merely changing laws is not enough if the prosecutorial branch still sees itself as a law unto itself. Working Group Three will discuss some of the challenges that prosecutorial offices face to preserve their autonomy while working under the letter and the spirit of the law to ensure that justice is done.

The final Working Group is devoted to the topic of **defence lawyers**. This is an all-too-often forgotten pillar of the criminal justice system. I want to thank again last year's Slovenian Chairmanship for their support and assistance in recognizing the importance of this topic last year when a SHDM was held on "The Role of Defence Lawyers in Guaranteeing a Fair Trial" in Tbilisi. This meeting was a success in that it brought together a large number of practising defence lawyers from around the OSCE region to discuss their common challenges. Among these challenges are overly restrictive bar admission practices that limit the number of new lawyers admitted to criminal practice; limited access to clients or to information regarding clients' cases; and difficulties in achieving equality of arms, including often the non-functioning of legal aid systems. A strong and active defence bar is a key element of any criminal justice system that is achieving due process and adhering to rule of law standards. This fact was recognized by the participating States with last year's MC Decision on Upholding Human Rights and the Rule of Law in Criminal Justice Systems.

You may have noticed that there are two topics that have not been singled out for discussion during one session. That is because I would hope and expect that these topics would be discussed in all sessions. These topics are the prevention of torture and improved gender equality in criminal justice systems.

Every part of the criminal justice system plays an important role in preventing **torture**. The ODIHR recognizes that instances of torture often occur within criminal justice systems that have larger problems; they in fact reflect these larger problems. If, for example, police are pressured to solve cases, and if their promotions and bonuses are dependent on the numbers of cases they solve or fail to solve, it encourages the use of torture and ill-treatment to extract confessions and thereby “solve” the case. Prosecutors who fail to act on complaints of torture or ill-treatment or who are happy to use confessions without questioning how they were obtained, are as much part of the problem. Judges who fail to hear complaints of torture and allow confession evidence to be admitted under questionable circumstances are also failing to do their jobs. Finally, defence lawyers who do not have the skills, knowledge, or courage to move to exclude confessions obtained through torture or ill-treatment are also part of what is an often unbroken chain of violation of a fundamental principle of every legal system.

Ensuring **gender equality** in criminal justice systems is another cross-cutting issue. Gender equality means that women as well as men have an equal opportunity to join the various institutions of the criminal justice system and become judges, lawyers, prosecutors and defence lawyers. Gender equality also speaks to the way in which the system deals with crimes and with victims. Laws should be written so that no crime or crime victim is limited by gender. Police and prosecutors should take seriously any allegations of crimes, including those that occur in the home. Domestic violence is clearly not a “family matter” but is a crime and should be handled as such. Improving professionalism in all parts of the criminal justice system is part of how this can be achieved.

Let me briefly refer to a third cross-cutting issue which I hope will be reflected in all discussions: **juvenile justice**. It is in this area where every society is not only confronted with specific needs and concerns, but where it can shape the future of how criminal justice systems are perceived, as well as address issues such as crime prevention and rehabilitation.

Ladies and Gentlemen,

I am, of course, only briefly touching on the issues that we will be discussing in more detail in the next three days. I am very pleased with the high quality of experts that we have for this meeting. They are truly leaders in the legal communities in their countries and it is an honour that so many have agreed to join us here for this meeting. We are fortunate to have a group of experts to lead us in these discussions and help inform our thinking and ultimately the recommendations of this seminar. I look forward to the interesting discussions that we will have with our Keynote Speakers and our introducers. We are particularly grateful that Judge Pocar and Prof Despouy will remain with us for the seminar.

Before closing, allow me briefly to touch on the work that the ODIHR is doing in this field. It is work that we can be quite proud of and reflects what can be done with limited resources when combined with strong expertise. You will find a brochure

explaining the ODIHR approach to criminal justice reform work on the tables outside. I take this occasion to express my sincere thanks to Cynthia Alkon and her team at the Rule of Law Unit for their dedicated work, and their preparations for this Seminar. In addition, we are organizing a side event tomorrow over the lunch time to discuss the ODIHR's work in this area; several OSCE field missions have agreed to join in to discuss their ongoing work and approaches to providing assistance.

Ultimately, how a criminal justice system works is the responsibility of each participating State. The ODIHR stands ready to provide assistance, but the initiative must come from each of you.

Thank you.

**Ambassador Frank Geerkens, Head of the OSCE Chairmanship Unit, Ministry of Foreign Affairs of Belgium**

Excellencies, Ladies and Gentlemen,

On behalf of the OSCE Chairman-in-Office, Minister Karel De Gucht, I would like to welcome you to the Human Dimension Seminar on 'Upholding the Rule of Law and Due Process in Criminal Justice Systems'.

I trust this seminar will be rewarding. We are in the good hands of our Polish hosts and Ambassador Strohal and his team, as well as the OSCE's Strategic Police Matters Unit. I warmly thank them all for the hospitality and their hard work in organizing and preparing this seminar.

Let us not forget that a Human Dimension Seminar of this kind reveals only the tip of the iceberg of the momentous day-by-day work on rule of law issues within the OSCE institutions and missions. The intellectual input required for this event relies on the long-standing expertise of dozens of individuals throughout the OSCE region. Our appreciation goes out to all of them. I hope this seminar can be "cherry on the cake" of their undoubtedly busy agenda in 2006.

We are not only in good hands, we are also in good company. It is an honour to welcome our two distinguished keynote speakers: Judge Fausto Pocar, President of the International Criminal Tribunal for the former Yugoslavia, and Mr. Leandro Despouy, UN Special Rapporteur on the Independence of Lawyers and Judges. I am also delighted by the presence today of such a broad and expert audience.

The importance of the theme 'Upholding the Rule of Law in Criminal Justice Systems' is hard to overestimate. The proper functioning of a criminal justice system is one of the foundations of democratic societies. First, the legitimacy of state institutions stands with the presence of rule of law, which begins with public safety and accountability. The foremost manifestation of public safety and accountability is a fair and effective response to crime. Second, a criminal justice system is part of the institutional framework that transforms the rule of law from an abstract principle into reality. An effective criminal justice system is the vehicle through which citizens' rights and obligations are materialized. In this regard, spreading the rule of law - while enhancing respect for human rights in criminal justice systems - is not only the right thing to do, it is also central to a stable and peaceful national and international environment.

In his report to the Security Council on the rule of law and transitional justice, UN Secretary General Kofi Annan in 2004 said wisely and rightly that “justice, peace and democracy are not mutually exclusive objectives, but rather mutually reinforcing imperatives.”

‘Upholding the Rule of Law in Criminal Justice Systems’ is a broad theme, which can be tackled from many different angles. As a starting point, the organizers of this seminar opted for an institutional approach, in which different key institutions of the criminal justice chain are examined: police, prosecutors, defence lawyers, and the judiciary. From a practical and problem-solving perspective, rule of law is indeed best defined on the basis of institutional criteria. But we should also keep in mind that an institutional approach is only a means to an end. The effective functioning of justice institutions is essential to guaranteeing the rule of law. But it is of vital importance that a judicial system is also rooted in society. A complete definition of rule of law should therefore refer to the achievement of certain objectives, such as equality before the law and respect for human rights.

By bringing different actors together, the seminar organizers also opted for a comprehensive approach, in which all the links of the criminal justice chain are analyzed. While every justice institution has a critical and autonomous role to play to ensure a fair and effective process, they should also work interdependently. If one institution or actor fails, the whole system will be damaged.

Last year’s Supplementary Human Dimension Meeting on the Role of Defence Lawyers in Guaranteeing a Fair Trial has already set the right course for this seminar by looking at one part of the justice chain.

Starting from an institutional and comprehensive approach, our seminar will discuss the functioning of criminal justice systems in our respective countries. The goal is to compare the reality on the ground to the existing body of OSCE and other international commitments. Discussing human rights concerns and systemic problems within the justice system, as well as positive practices, will hopefully generate guidance for targeting reform and resources as well as the political will to do so.

Ladies and Gentlemen,

We are here for the annual OSCE human dimension seminar. Not surprisingly, the agenda of this meeting reflects the dedication of the OSCE community to upholding human rights. The Belgian OSCE Chairmanship is a strong supporter of far-reaching human rights commitments in the field of rule of law and criminal justice systems. Hence our impetus for this seminar and our support for appropriate follow-up, possibly through a bolstered Ministerial Council decision on human rights standards in criminal justice systems.

At the same time, we invite you to consider the need for criminal justice systems that function in an effective manner, beyond the traditional ‘human rights’ approach. This call is inspired by one of the priorities of our Chairmanship: the fight against organized crime. Our rationale is twofold: the rule of law is the best remedy against organized crime, while organized crime undermines the rule of law and respect for human rights. In consequence, the human rights and ‘effectiveness’ approach are interdependent and mutually reinforcing.

This double concern might lead us to consider reinforcing the work of ODIHR, SPMU and the OSCE missions on rule of law issues. For instance, we could consider elaborating the existing commitments on rule of law, and provide benchmarks for assessing criminal justice systems and implementing reforms on the basis of a common reference document. The side event that the Chairmanship organizes on Friday will provide some inspiration and suggest options and avenues to this end.

Ladies and Gentlemen,

On behalf of the Belgian Chairmanship, it is my honour to open this seminar and it is my pleasure to wish all participants a meeting that will be successful both in substance and in spirit.

Thank you very much.

**Janusz Stanczyk, Undersecretary of State, Ministry of Foreign Affairs of Poland**

Ladies and Gentlemen,

On behalf of the Polish Government I wish to welcome you to the annual OSCE human dimension seminar devoted to “Upholding the Rule of Law and Due Process in Criminal Justice Systems”, organized in Warsaw by the OSCE Office for Democratic Institutions and Human Rights. For three days, experts from the participating States and international organizations as well as representatives of the civil society will be debating on the rule of law – which, alongside democracy and the observance of human rights and fundamental freedoms, constitutes the very foundation of the OSCE.

Over the years, issues pertaining to the rule of law have been repeatedly considered at OSCE meetings and seminars. In 2002 we debated in Warsaw on the system of justice in the context of the protection of human rights. A meeting in Vienna in 2005 was devoted to the struggle against terrorism and its legal aspects, which must not contradict human rights. Also that year a meeting in Tbilisi focused on the role of defence lawyers in guaranteeing a fair trial. The sessions of the Human Dimension Implementation Meetings on the rule of law also attract numerous participants, whose animated discussions and confrontation of different viewpoints produce concrete recommendations for the participating States and the ODIHR.

Thus, we can rightfully ascertain that these issues remain very much at the centre of attention of States, organizations, the civil society and individual citizens. I believe there are two main reasons for this.

First of all, most participating States are either striving to build democratic political systems, or to consolidate those that already exist. It was the CSCE/OSCE that in the 1980s and 1990s stimulated the development of civil societies and nurtured democratic transformations amid the collapse of the totalitarian system. The OSCE institutions established to monitor human rights commitments have operated commendably. Their activity and dedication have brought about positive changes on the political map of Europe and Asia. A case in point are the democratic changes in Ukraine: between the election in 2004 and the March poll in 2006, the Ukrainian leadership and the country’s robust civil society demonstrated a commitment to building a pluralistic system. In the Balkans, the OSCE and the entire international community have proved their determination to preserve stability, which is a



precondition for the emergence of democratic societies and States. Poland has emphatically underlined the crucial role of OSCE support for the efforts of the participating States to build a stable democracy, since the rule of law can only exist in democratic States. The interest of the participating States in this subject matter and their appreciation of its importance can only enhance democracy.

Another reason why the rule of law is so prominent among the human dimension issues is the growing awareness among citizens of their rights and duties. There is a universal conviction in democratic societies that the law should protect citizens from any infringement of their rights and freedoms by the authorities, and that no one – especially members of the authorities – is above the law. Citizens, or – more broadly – the civil society, want a clear separation of powers, including a fair, transparent and accessible judicial system, with independent judges, highly competent prosecutors and skilled attorneys.

Ladies and Gentlemen,

Today's seminar is focused on the organization and efficiency of criminal justice systems in the participating States. That efficiency is determined by all the components of the system: the police, prosecutors, attorneys and judges whose work ensures the citizens' security. However, in pursuing that objective no part of the criminal justice system should abuse its power and violate or restrict human rights, which we are committed to uphold.

As I look through the agenda of today's meeting and the list of the invited introducers and moderators, I am confident that it will yield impressive results. The exchange of views and experiences among specialists and other interested persons will be supplemented by the elaboration of recommendations for the participating States, who will be supported in this by the ODHIR.

As an executive branch representative of one of the participating States, I realize that we are not likely to avoid criticism on the part of the NGOs and individuals whose rights may have been violated in any way by the criminal justice system. Occasionally, the rights of citizens are infringed or restricted due to errors, inaction or misconceived decisions taken by the authorities. Furthermore, we are aware of instances of interference by the executive branch in the work of the judiciary, of attempts to violate the independence of judges and undermine their competencies. Criticism by the NGOs and the civil society can only help us understand the problem better, enhancing the citizens' confidence in their State and consolidating the State itself. That, in my opinion, is the primary role of the human dimension meetings and seminars.

Ladies and Gentlemen,

May your debates be fruitful. Your critical analysis of the problems at issue will benefit us in the future, helping us fulfil the commitments we made as we commenced the Helsinki process. I am convinced that the professionalism of ODIHR Director Christian Strohal and the dedication of his staff in preparing this meeting will ensure its unqualified success.

Let me take this opportunity to invite the seminar participants to a reception given today by the Ministry of Foreign Affairs at 6 Foksal Street.

Thank you for your attention.

## ANNEX V: INDEX OF DISTRIBUTED DOCUMENTS

A selection of distributed documents and contributions by speakers can be accessed through the ODIHR website at:

[http://www.osce.org/conferences/hds\\_2006.html?page=documents](http://www.osce.org/conferences/hds_2006.html?page=documents)

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### General

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<b>Conference Administration</b>	<b>OSCE ODIHR</b> 18. List of Participants. [English, 24 pages]
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### Wednesday, 10 May 2006

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<b>Opening Plenary Session</b>	<b>Austria</b> 1. Opening Statement. [English, 4 pages] <b>Belgium</b> 2. Opening remarks by Frank Geerkens, Head of the OSCE Chairmanship Task Force. [English, 4 pages] <b>Poland</b> 7. Welcoming address by Dr Janusz Stanczyk, Under-Secretary of State at the Ministry of Foreign Affairs. [English, 3 pages] <b>OSCE ODIHR</b> 10. Opening remarks by Ambassador Christian Strohal, Director. [English, 5 pages] <b>International Criminal Tribunal for the former Yugoslavia (ICTY)</b> 16. Keynote address by Judge Fausto Pocar, President. [English, 6 pages]
<b>Side Event on "Criminal justice and the Trafficking Victim"</b>	<b>Centre for the Prevention of Trafficking in Women</b> 17. Presentation on Preventing and Combating Human Trafficking in Moldova. [English, 19 pages]
<b>Working Group I - An independent judiciary and due process in criminal justice systems</b>	<b>Austria</b> 11. Written contribution. [German, 3 pages] <b>Belarus</b> 40. Statement by Mr. Fedortsov. [Russian, 3 pages] <b>Association of Judges of Georgia</b> 12. Statement by Ms. Nino Gvenetadze. [English, 3 pages] <b>International Association of Independent Democrats Against Authoritarian Regimes</b> 13. Statement on independent judiciary and authoritarian regimes. [Russian, 3 pages]

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### Thursday, 11 May 2006

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<b>Working Group II - Accountable and responsive policing in upholding the rule of law</b>	<b>Austria</b> 20. Menschenrechtsbildung - Strukturkonzept. [German, 13 pages] 21. Strukturkonzept Menschenrechtsbildung - summary. [German, 4 pages] 22. Menschenrechtliche Aus - und Fortbildung im Bundesministerium für Inneres. [German, 3 pages] <b>OSCE ODIHR</b> 23. Introductory presentation by Mr. Paal Christian Balchen on "Why responsiveness to the public is an essential benchmark of good policing practice". [English, 18 pages] 24. Introductory speech by Dr. Fatih Karaosmanoglu, Assoc. professor of
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	International Relations and Policing. [English, 7 pages]
<b>Side Event: POLIS - the OSCE Policing OnLine Information System</b>	<b>OSCE Strategic Police Matters Unit</b> 42. Presentation on the Policing OnLine Information System (POLISE). [English, 25 pages]
<b>Working Group III - Role of public prosecutors in upholding the rule of law</b>	<b>Austria</b> 30. Responsibilities of public prosecutors in ensuring due process and protection of human rights in the criminal justice systems of the participating States. [German, 2 pages] <b>Kazakhstan</b> 29. Overview information. [Russian, 5 pages] <b>OSCE ODIHR</b> 26. Introductory speech by Mr. David Evans, Office of the Director of Public Prosecutions, UK. [English, 7 pages] 27. Introductory speech by Mr. Christopher Lehmann, Regional Director for Eurasia Programs, Office of Overseas Prosecutorial Development, Assistance and Training, U.S. Department of Justice. [English, 5 pages] <b>European Commission for Democracy through Law (Venice Commission)</b> 28. Statement by Mr. James Hamilton, Director of Public Prosecutions. [English, 13 pages]

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## Friday, 12 May 2006

<b>Working Group IV: Defence lawyers as a fundamental pillar of an effective criminal justice system</b>	<b>Berlin Chamber of Lawyers</b> 32. Introductory statement by Dr. Margarete Graefin von Galen. [German, 9 pages] <b>Federal Union of Lawyers, Russian Federation</b> 31. Introductory statement by Mr. Gennadiy K. Sharov. [English, 4 pages; Russian, 5 pages]
<b>Closing Plenary Session</b>	<b>United States of America</b> 39. Closing statement as delivered by Mr. Frank Gaffney. [English, 2 pages] <b>Austria</b> 33. Closing Statement. [English, 2 pages] <b>Belarus</b> 41. Closing statement by Mr. Fedortsov. [Russian, 2 pages] <b>Greece</b> 36. Closing Statement. [English, 2 pages] 37. Written Recommendations. [English, 1 page] <b>Slovenia</b> 34. Closing Statement. [English, 2 pages] <b>OSCE ODIHR</b> 35. Closing Remarks by Ambassador Christian Strohal, Director. [English, 3 pages] <b>Tashkent City Collegium of Advocates</b> 38. Written Recommendations. [Russian, 1 page]

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<b>Written contributions</b>	<b>Austria</b> 3. Trainer Manual Human Rights and Police. [German, 179 pages] 4. The Criminal Proceedings in Austria at a glance. [English, 15 pages] 5. The liability of judges in Austria. [English, 6 pages]
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6. The training of judges in Austria. [English, 3 pages]  
**Russian Federation**
9. Model law on Ombudsman. [Russian, 13 pages]
25. Information on provisions of the Rule of Law and Criminal Justice System in the Russian Federation. [Russian, 15 pages]  
**Ukraine**
8. Written contribution on "Access to Legal Aid in Ukraine" by Ms. Olena Semorkina of the Ministry of Justice. [English, 6 pages; Russian, 6 pages]  
**Council of Europe**
15. The work of the Council of Europe in upholding the rule of law and due process in the criminal justice system. [English, 24 pages]  
**Church of Scientology International**
19. Violations of the Right to Equal Protection and Non-Discrimination in Matters Relating to Religion in France and Belgium. [English, 13 pages]  
**Roma National Congress**
14. Politics of EU Countries towards Roma. [English, 8 pages]