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# OSCE Human Dimension Implementation Meeting Warsaw, 21 September – 2 October 2015

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## EU Statement – Working Session 6

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Mr / Madame Moderator,

The EU attaches great importance to the integrity and accountability of the prosecution service and the judiciary. Our main recommendations to participating States relating to this subject are:

1. Ensure that the criteria of selection of judges and prosecutors are based on objective qualifications and professional capabilities.
2. Remove the possibility of dismissal as an outcome from any evaluation of judges.
3. Introduce and strengthen the principle of proportionality in disciplinary measures against judges and ensure that decisions on the disciplinary measures against judges are taken by an independent body.
4. Ensure that dismissal of a judge is only possible as a consequence of a disciplinary procedure which is in conformity with international standards of fair procedure that safeguard the independence of the judiciary.
5. Recall the UN Basic Principles on the Independence of the Judiciary, under which judges should have guaranteed tenure until a mandatory retirement age or the expiry of their term of office (Principle 12) and should be subject to suspension or removal only following fair procedures (Principle 17 and 19) and



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only for reasons of incapacity or behaviour that renders them unfit to discharge their duties (Principle 18).

6. Encourage OSCE participating States who are considering institutional and legal reforms to seek the expert advice and technical assistance of ODIHR.

Mr / Madame Moderator,

An effective and impartial judiciary, that is an efficient, high quality and independent one, is essential to the establishment of the Rule of Law. In its recently adopted Action Plan on Human Rights and Democracy 2015-2019 the EU commits itself to strengthen the independence of the judiciary.

The EU wants to draw attention to the Council of Europe Recommendation on The role of public prosecution in the criminal justice system as well as to the Venice Commission's European Standards as Regards the Independence of the Judicial System: Part II: The Prosecution Service.

The EU wishes to recall the recent decisions on the fight against corruption adopted in the OSCE framework, including MC Decision 5/2014 on the Prevention of Corruption which calls on all participating States to support measures to strengthen the integrity of the judiciary.

In this regard, the EU fully supports the work done by ODIHR, including its development of the Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia.

The EU welcomes the work of ODIHR and the Venice Commission in commenting on legislation in the area of judicial and prosecutorial independence and integrity. It also



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acknowledges the work on standard-setting in the framework of the Council of Europe, such as the Budapest Guidelines on Ethics and Conduct of Prosecutors.

The EU welcomes recent efforts to modernize the justice systems in participating States, in particular efforts to bring them in line with international standards by making prosecutorial services more autonomous and less likely to be influenced by other state bodies and private actors.

The EU attaches high priority to the involvement of civil society and other independent actors in oversight over judicial and prosecutorial services as a means to improve accountability.

The EU welcomes the strengthening of evaluation and accountability procedures for judges as a useful measure of quality control, promotion of impartiality, and continuous improvement of judicial services. However, measures to improve the functioning of the judiciary - such as evaluation of judges - should never threaten the independence of judges.

In this regard, the irremovability of judges is highly essential. Judges should be removed only through independent disciplinary procedures with adequate safeguards.

The fight against corruption in the judiciary and prosecutorial service is of great importance. The EU emphasizes the need to abide by the UN Convention Against Corruption and other international standards, in particular by ensuring that independent mechanisms are in place to hold judges and prosecutors to account for corruption-related crimes.

The EU notes with concern that the principle of independence of judges appears to be at risk within the OSCE region.



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The EU remains concerned about several court cases in the Russian Federation which call into question the independence of the judicial system. The political character of trials and sentences is illustrated, for example, in the criminal cases brought against O. Sentsov, A. Kolchenko, N. Savchenko. We call on Russia to respect its international commitments, including to guarantee the due process of law and the independence of the judiciary.

With regard to Ukraine, the EU wishes to recall that judicial reforms must be carried out in line with the relevant European and international standards. In this respect, the EU encourages the Ukrainian authorities to further consult the Council of Europe and take into account the opinions of the Venice Commission.

In light of the political crisis in the Former Yugoslav Republic of Macedonia the EU wants to re-iterate that the various parties must respect the rule of law and the independence of the judiciary. It also recalls that allegations must be subject to a thorough and independent investigation with full regard for due process, the principle of the independence of the judiciary and the presumption of innocence.

Thank you.

The Candidate Countries TURKEY, MONTENEGRO\*, and ALBANIA\*, the Country of the Stabilisation and Association Process and Potential Candidate BOSNIA and HERZEGOVINA, and the EFTA country NORWAY, member of the European Economic Area, as well as UKRAINE, GEORGIA, and SAN MARINO align themselves with this statement.

\* Montenegro, and Albania continue to be part of the Stabilisation and Association Process.