



## EUROPEAN UNION

**OSCE Human Dimension Implementation Meeting 2012**  
**Warsaw, 26 September 2012**

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### **EU statement – Session 4**

#### **RULE OF LAW I:**

#### **DEMOCRATIC LAWMAKING, INDEPENDENCE OF THE JUDICIARY, RIGHT TO A FAIR TRIAL**

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Mr / Madam Moderator,

I am honoured to speak on behalf of the European Union. The rule of law is one of the key elements upon which the EU is founded, as illustrated in the Treaty on European Union and the Charter of Fundamental Rights of the European Union. It is also one of the fundamental aspects of our common foreign and security policy, as the EU Strategic Framework and Action Plan on Human Rights and Democracy has recently reaffirmed. Democratic lawmaking, the independence of the judiciary and the right to a fair trial are different faces of the same concept. The rule of law will be guaranteed only if there is a particular care over improving the respect for these three pillars.

Legislative transparency, efficiency and security are central elements of genuine democratic governance. The EU stresses the need for inclusive law-making, involving broad layers of society, in particular those affected by the legislation, as well as the need of strengthening efforts to increase the understanding of the implications of the adopted laws. In accordance with the 1990 Copenhagen Document and the 1991 Moscow Document, legislation should be formulated and adopted as a result of an open process and public procedure reflecting the will of the people. Such legislation should be published, which should be the condition for its applicability. This legislation should also guarantee a certain degree of stability to the citizens concerned. The EU therefore encourages the participating States to improve access to the legislative process and to make all legislation accessible to its citizens.

The fair, impartial and independent administration of justice is also essential to safeguard human rights. That is the reason why various articles of the Universal declaration of Human Rights refer to this vital institution, such as article 10 on the right to an independent and impartial tribunal or article 8 on the right to an effective remedy. This shows the dual nature of this institution: access to justice is at the same time a right itself, but also the tool by which individuals can challenge the violation of their rights. The ICCPR elaborates on this and establishes concrete obligations for the States parties.

Individuals and institutions must be able to rely on an impartial justice, free of any influence in the adjudication of their claims. The confidence that court decisions will be fair and timely favours the security and predictability of economic transactions. Support for individual independence and impartiality of judges can contribute to extending the rule of law further in the OSCE area. Some of the practical safeguards to achieve it include the terms of appointment, the specialization of judges, the need for guaranteed tenure, the requirement of efficiency, fair and independent disciplinary proceedings, the duty of our States to provide adequate resources as salaries and training to promote and facilitate the judiciary's freedom of expression and association. The EU welcomes the efforts undertaken by ODIHR to strengthen the independence of the judiciary in the OSCE area through tools like the Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia.

The majority of individual rights vis-à-vis public authority are not primarily challenged in contact with the judicial system, but inside the public administration. The rule of law is just as vital throughout the administration, in any situation where the individual seeks to exercise his or her rights. In this respect, we welcome the attention that ODIHR is devoting, through its Rule of Law Programme, to the functioning of administrative justice systems.

Access to justice must be facilitated to a maximum, both in terms of offering the possibility of legal redress, as well as with regards to inclusion of the stakeholders throughout the proceedings. No access to an otherwise efficiently functioning justice is useless.

Moreover, the EU believes that transparency is essential for the improvement of justice administration and enforcement of judicial decisions. Judgements should be reasoned, and unless inevitable public security concerns object to this principle, publicly promulgated and made accessible considering the impact they have on litigating parties and may have on society as a whole. Indeed, judicial decisions enrich public debate on issues of general interest and may in turn correct the flaws of the executive or legislative branch.

There must be an absolute respect for the separation of powers. Unfortunately, a culture of political subordination of judges to politicians is still prevalent in some participating States, as reflected in the appointment system of judges or the lack of enforcement of rulings.

The integrity of the judicial bodies must be pristine. This requires investment in training of judges, ensuring the highest of qualities and standards in the recruitment and appointment of judges, and a fair system of checks on the judicial branch that also allows an effective legal redress for judges whose integrity or independence is put into question. Corruption must be rigorously eradicated.

Not only an independent and transparent judiciary safeguards the rule of law, the very essence of the principles of justice and accountability requires judicial proceedings to be fair, timely and thus effective.

The OSCE standards in the matter have been stated on many occasions. The right to a fair and public trial has been solemnly acknowledged by OSCE participating States as one of those elements of justice, which are essential to the full expression of the inherent dignity of all human beings. ODIHR's work is extremely valuable in assisting participating States implement their commitments, in particular through its trial monitoring programmes based on the principles of objectivity, impartiality, professionalism and confidentiality.

The Acceding Country Croatia\*, the Candidate Countries Montenegro\*, Iceland+ and Serbia\*, the Countries of the Stabilisation and Association Process and potential candidates Albania and Bosnia and Herzegovina, and the EFTA countries Liechtenstein and Norway, members of the European Economic Area, as well as the Republic of Moldova, Armenia, Georgia, Andorra and San Marino align themselves with this statement.

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

*+ Iceland continues to be a member of the EFTA and of the European Economic Area.*