

Working Session 4: Rule of law I, including:

- **Independence of the judiciary**
- **Right to a fair trial**
- **Democratic law-making**

Rapporteur: Boštjan Širnik, Minister Counsellor, Permanent Representation of Slovenia to the UN, OSCE and other international organizations in Vienna

No of Statements: 50

Delegations: 12

Civil Society: 37

National Human Rights Institutions: 1

OSCE Institutions: 0

International Organizations: 0

Media: 0

Rights of Reply: 15

Working Session 4 on the rule of law addressed the issues of independence of the judiciary, the right to a fair trial and democratic law-making.

First introducer, Ms. Nina Betetto, Judge of the Supreme Court of the Republic of Slovenia and Vice President of the Consultative Council of European Judges of the Council of Europe emphasized the importance of independence of the judiciary. Judges have to respect the law and act without bias or partiality. She added that the judiciary must act independently from executive and legislative branches. While judges are sometimes portrayed as the enemies of the people and their rulings are sometimes unpopular, the functioning judicial system cannot work on the basis of what majority wants. She concluded that it is of utmost importance that judges are professional and that their work is exposed to public scrutiny.

Ms. Simona Granata-Menghini, Deputy Secretary of the Venice Commission stressed that states cannot opt out international legal standards. She reminded that Venice Commission in 2016 adopted "Rule of Law Checklist" that was, among others, endorsed by the Council of Europe Ministers' Deputies. Internal and external independence of judiciary is crucial as we are all equal before the law. This should not be seen as shield from public scrutiny, which is connected with public trust. If judiciary is not responsible towards public it becomes blind to its needs. She also said that judiciary must not be target of other branches of power. As crucial element she exposed legality, because all procedures must be in accordance with laws and public has to be consulted when legislation is being adopted. These procedures should not be quick, as legitimacy of laws is gained through transparent and gradual adoption of legislation.

Mr. Murray Hunt, Director of the Bingham Centre for the Rule of Law said that today rule of law is often being challenged and that judicial independence has found its way into the daily news, also by portraying judges as the enemies of the people. This is happening in the atmosphere of growing nationalism and xenophobia. One should not forget the independence of rule of law, democracy and human rights. He focused on connection between judicial independence and democratic lawmaking that are important parts of rule of law. He emphasized that (members of) parliaments must not attack court decisions, refrain from having control over them and defend it, if necessary, from executive branch. Both should cooperate in the lawmaking process that converges with the judiciary, where courts can contribute by directing the government to consult with the parliament before making important decisions. This is an important role in strengthening democracy.

Several participating States affirmed that the rule of law is inextricably linked to protection of human rights and fundamental freedoms. They also emphasized that judicial independence and the rule of law are essential to democratic government, as well as that violations of rule of law principles are an indication of weakness of

democracy. Access to justice must be universal and no group must be favored over another. They also highlighted that every person is entitled to equal protection by law and the right to a fair trial.

Many representatives of civil society and some participating States have pointed to negative trends in the OSCE area, including with regard to ill-treatment, torture, arbitrary arrest and (long) detention, as well as political (often closed) trials, political prisoners and their disappearances. Steps by some participating States to undermine rule of law, including separation of powers, were also highlighted. The discussion also touched upon people detained in the context of armed conflicts, as well as violations of the principle of independence of judiciary, appointments of judges by ruling authorities, as well as interference in their work, threats to lawyers defending human rights defenders, including of being disbarred and undermining the rights of marginalized populations (e.g. sexual minorities). Delegations and civil society representatives referred to many individual cases.

One National Human Rights Institution expressed high concern for the state of rule of law in one participating State, in particular with regard to the independence of the judiciary.

Several participating States outlined the state of play and judicial reform processes, as well as other steps taken in their countries in the field of rule of law and the independence of judiciary.

Recommendations made by participants during this session include (non-exhaustive list):

Recommendations to the OSCE participating States:

- Ensure full respect for the independency of the judiciary and the separation of powers in line with international standards and commitments.
- Respect the independence of lawyers in accordance with the international standards and cease adopting measures infringing on the independence of lawyers;
- Reinforce international mechanisms and standards that prevent violations of the rule of law;
- Monitor violations of the right to a fair trial within a reasonable time, especially in cases where defendant is in pre-trial custody;
- Create clear grounds for reviewing court decisions;
- Free all political prisoners.
- Bring the law on bar and legal aid in line with international standards;
- Not to misuse media to hinder the work of judges;
- Stop the practice of holding closed trials, as well as to have them without interpreters, where applicable;
- Use trial monitoring as a means to strengthen fair trial guarantees;
- Uphold the right to equality of arms and the procedural rights of detainees in practice.
- Support the involvement of civil society and other independent actors with regards to judicial and prosecutorial services, including through trial monitoring, in order to improve transparency and accountability;
- Step up the efforts in realizing the Sustainable Development Goals and in particular in promoting peaceful and inclusive societies;
- Establish appropriate legal and legislative frameworks to prevent and address all forms of discrimination and violence against women and to secure their empowerment and full access to justice.

Recommendations to the OSCE institutions, executive structures and field operations:

- ODIHR, together with civil society, should more closely monitor how participating States uphold commitments related to rule of law, the right to a fair trial and independence of the judiciary;
- The OSCE and ODIHR should give further technical assistance to participating States in reforming their judicial systems.