

**OSCE 2007 Human Dimension Implementation Meeting  
Session on Rule of Law III**

## **FAIR TRIALS INTERNATIONAL**

### **“Fair Trial Rights of Foreigners”**

Ladies and Gentlemen,

Thank you for inviting NGOs to join this important debate.

I would like to highlight the practical difficulties that defendants face when charged with a criminal offence in a country other than their own. With increasing numbers of people living or traveling abroad for professional or personal reasons, the number of people being arrested abroad has similarly increased.

I represent FAIR TRIALS INTERNATIONAL, an independent NGO based in London. We work to promote fair trials according to international standards of justice and to defend the rights of those facing criminal charges in a country other than their own. To that end, we work closely with domestic lawyers, consular representatives and media. Our casework experience has enabled us to identify the most systematic violations of fair trial rights; we therefore raise awareness of such violations and lobby governments to ratify international norms and amend legislation in such way that it complies with international standards.

#### **Essential Fair Trial Rights**

With no understanding of the local language and no knowledge of the judicial system, foreign defendants are particularly vulnerable and need not only to be guaranteed the same fair trial rights as nationals, but also afforded enhanced protection.

In order to reduce the isolation such prisoners experience and monitor their prison conditions, it is essential to inform consulates of their arrest and detention. Also, foreign defendants should be allowed to inform their family and employer.

They must also have access to legal advice and should receive legal aid on the same conditions as nationals. They must be informed of the charges against them and of their rights. Such information has to be given from the beginning of proceedings and delivered in a language they understand. At all stages, an interpreter must be present and all legal documents should be translated

In many states, interpreters only work for the benefit of the court and as a result, defendants do not understand the proceedings of the court. Moreover, court interpreters should be trained to undertake such a role.

FTI urges OSCE member states to ensure that such basic rights are granted to all defendants.

### **Violation of the Principle of Equality of Arms**

Being a foreigner in legal proceedings raises specific issues at the investigation stage. The gathering of evidence and witness statements can become extremely difficult and expensive. However it is of paramount importance to investigate, despite such difficulties. A trial would not otherwise be fair.

Furthermore, defendants must be able to cross-examine witnesses and to call their own witnesses to support their defence.

Exceptional proceedings such as fast track trials are thus highly contentious. Those most likely to agree to these are usually the most vulnerable defendants.

An example is the case of lorry drivers, who are regularly found guilty of trafficking illegal goods or products. Lorry drivers act on the instructions of their employer and pick up loads which have been packaged by unknown third parties. They are unable to check the load as they are not permitted to open it and in any event, it is usually shrink wrapped. In many cases lorry drivers agree to a fast track trial in return for a lower sentence, meaning that no investigation is done and the real traffickers are not identified.

### **Violation of the Principle of Presumption of Innocence**

Finally, foreign prisoners are not usually granted bail, even if they have lived in the country of arrest for many years, because of unfounded fears that they will abscond. Consequently, foreign prisoners are kept on remand, even for minor offences. This is discriminatory.

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To conclude, I would say that there is still a lot to do in order to improve the situation of foreign defendants in criminal proceedings and every state should take the necessary steps to ensure that a fair trial is afforded to both its citizens and foreigners. However, I would like to praise all States that have already started to take such steps.

As I have urged the states to take action, I would also say that NGOs have also an important part to play. FTI hosts a network of lawyers and NGOs who endeavor for a better justice, and would be happy to welcome new organizations that share this concern.

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