



EUROPEAN UNION

Human Dimension Implementation Meeting Warsaw, 28 September 2011

EU Statement – Session 4: Rule of law I

Ms/Mr Moderator

I am honoured to speak on behalf of the European Union.

The rule of law as a universal principle of governance is once more at the forefront of the seismic international developments we have been witnessing since the beginning of this year. The enduring uprisings in North Africa and the Middle East is just as much a manifestation against the denial of the rule of law by the governing elite as it is a struggle for the respect of the most basic fundamental political, economic and social rights. These recent events demonstrate clearly that the supremacy of the law, equality before the law, accountability to the law and independent adjudication are examples of notions which are not subject to the whims of governments but are rather universally legitimate human desires and expectations. The EU welcomes the efforts of the OSCE to support the concerned Mediterranean Partners for Cooperation, including the possible ODIHR assistance at their request.

The Arab Spring is sending ripples across the globe, the European continent included. We shouldn't fool ourselves. We know that the rule of law is sophisticated in its fragility and this equally applies to the OSCE participating States. The democratic barometer of any governing system is the confidence which the people install in the public institutions entrusted with the political, judicial, social and economic foundations of the State. Because the rule of law is not a static principle of governance but interacts and interferes with daily life, it is continuously subject to natural checks and balances. *Pacta sunt servanda* therefore equally applies to the

functioning of public authorities who should endeavour to uphold and strengthen public trust in their mandate. Without public trust the rule of law is ultimately dysfunctional.

A key element of the checks and balances safeguarding the rule of law and democracy is transparency in legislating. Foreseeable and accessible laws, both in the law-making process as well as in their execution and judicial interpretation, are benchmarks of the idea of governance by the people and for the people. The EU therefore stresses the need for inclusive law-making, involving broad layers of society, as well as the need for strengthening efforts to increase the understanding of the implications of the adopted laws. Furthermore, the implementation of laws and regulations remains a sore but critical issue. A high degree of transparency and involvement of society in the law-making process may actually serve to counter sometimes opaque ways and means of how laws ultimately shape our daily lives. Out of concern for enhancing equal access of EU citizens to legal information, the EU has for example set up its 'e-justice portal'. This tool aims, among others, to remove the barriers which citizens of the European Union may face either at national or EU level when seeking information about laws, jurisprudence or the functioning of the different judicial systems.

Transparency is also important in the administration of justice, as one of the safeguards of impartial adjudication. 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 the 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, thus fulfilling its essential role in the *Trias Politica* of checks and balances. Impartial adjudication must therefore go hand in hand with a constitutionally guaranteed independent functioning of the judicial system. Judgements must be rendered without undue influence. This requires, among others, adequate resources, staffing and remuneration, objective and merit-based selection procedures and security of tenure for judges. The EU firmly believes that the independence of the judiciary, as part of the separation of powers, is the stronghold in the foundations of the rule of law. The EU therefore welcomes the many efforts undertaken by ODIHR to strengthen the independence of the judiciary in the OSCE area and in particular, more recently, through the Kyiv Recommendations on Judicial Independence in Eastern Europe, South Caucasus and Central Asia. More generally, the EU also draws the attention to the recommendations of the Committee of Ministers of the Council of Europe on the independence, efficiency and responsibilities of judges which were adopted in November of last year.

Judicial independence, of course, should not be confused with unfettered judicial liberty. A transparent, impartial and independent judiciary, and the judicial system as a whole, is equally subject to restraints. The guarantees of a transparent and open judicial system, for example, are inextricably linked to the respect for the right to a fair trial. While high-profile litigation can be of general interest, the right of the public to be informed is limited out of consideration for due process and the interests of the litigating parties. Moreover, the presumption of innocence, a delicate notion easily tainted by the consequences of the fact that adjudication does not occur in a void, deserves the most stringent respect. This is all the more important in times of instant and massive media coverage. The EU therefore urges all OSCE participating States to uphold the highest standards when ensuring the right to a fair trial, because an acquittal or a deprivation of liberty by means of a fair trial is one of the most palpable manifestation of the rule of law and thus most worthy of public confidence in our governing systems.

Thank you.

The candidate countries TURKEY, CROATIA*, the FORMER YUGOSLAV REPUBLIC OF MACEDONIA*, MONTENEGRO* and ICELAND**, the country of the Stabilisation and Association Process and potential candidate country ALBANIA, the European Free Trade Association countries LIECHTENSTEIN and NORWAY, members of the European Economic Area, as well as UKRAINE, the REPUBLIC OF MOLDOVA, ARMENIA, ANDORRA and SAN MARINO align themselves with this statement.

*Croatia, the Former Yugoslav Republic of Macedonia and Montenegro continue to be part of the Stabilisation and Association Process.

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