

2010 HUMAN DIMENSION SEMINAR

STRENGTHENING JUDICIAL INDEPENDENCE
AND PUBLIC ACCESS TO JUSTICE

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Novotel, Warsaw



Opening remarks by

Ambassador Janez Lenarčič

Director of the Office for Democratic Institutions and Human Rights (ODIHR)

Check against delivery!

Excellencies,
Ladies and Gentlemen,

Good morning and a very warm welcome to everyone at the 2010 Human Dimension Seminar on independence of judicial systems and public access to justice.

I would first like to express my appreciation to the Kazakh OSCE Chairmanship, and in particular Ambassador Madina Jarbussinova, for having proposed this topic which is familiar to those of you who participated in last year's Seminar here in Warsaw - on Strengthening the Rule of Law.

In fact, this year's Seminar is a seamless continuation of the discussions last year where our first Working Group was devoted to independence of the judiciary. This, frankly, also made our preparatory work easier: we did not, for instance, need to put together a new compilation of relevant OSCE commitments – you will find everything we prepared last year equally relevant to our discussions today.

A warm welcome also to the representative of ODIHR's host country, Secretary of State Jan Borkowski, as well as to our keynote speaker, a distinguished member of the Constitutional Council of the French Republic, Guy Canivet.

Before I ask Ambassador Jarbussinova to take the floor, let me just re-emphasize what I said on the same occasion last year: an

independent judiciary is undoubtedly a cornerstone of the rule of law. In order to apply laws fairly and with integrity, judges must be independent and impartial. This message is hardly new, nor is it original. It may be regularly heard at our meetings, including our annual Human Dimension Implementation Meeting. And yet independence of the judiciary continues to remain an issue. Why does it pose such a challenge to many OSCE States?

At a first glance, ensuring independence of the judiciary should not be an overly difficult task for a government. As any public service, the judicial system should be provided with adequate resources that would enable it to function properly. It should be staffed with professionals who have the requisite knowledge and skills. But then comes an important difference with other public services: instead of managing this system, the government must relinquish control and refrain from interfering. In plain words, it must leave the judiciary alone.

That, in itself, would not pose any difficulty if only the judges simply minded their own business and did not interfere with the government's areas of responsibility. But of course part of the judges' job is to do precisely that. The judiciary resolves conflicts between the state and individuals, and it must defend individuals against abuses by the government. And the government must comply with and enforce judicial decisions. And so in the end it is not enough for the government to relinquish control of the judicial system, but the latter must also

be given power. And this is the crux of the matter: sharing power does not come naturally to governments. It is just something governments are not very good at, worldwide.

A popular wisdom suggests that ‘practice makes perfect’. This is true not only in crafts, education and sports, but also in governance. Those countries which have practiced separation of powers and independence of the judiciary for a long time are naturally better at it today. And, conversely, countries with the history of unity of state power and a centralised state find it difficult to allow the rule of law – not the rule by law – to take flourish. But they must continue to practice – or risk turning into oppressive regimes despised by their people.

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Ladies and Gentlemen,

I would not do justice to our Office, the ODIHR, if I failed to mention at least some of our Rule of Law Programme activities. As in the past, ODIHR continues to supply policy-makers in the participating States with the information and tools they need to implement their OSCE commitments. We also work directly with the legal communities and other civil society actors to help them strengthen the rule of law in our region. I will mention here only three of the many activities we undertake.

- During the past year, and in partnership with the Max Planck Institute for Comparative Public Law and International Law, we carried out an in-depth assessment of the most pressing issues and gaps with judicial independence in the OSCE area. The results of this assessment will be discussed at an expert meeting in Kyiv next month, which will also help us prioritize our future activities. In this context, I invite you to tomorrow's side event on the topic hosted by the OSCE Spillover Mission to Skopje and ODIHR.
- To continue our good tradition, we will again convene an Expert Forum on Criminal Justice for Central Asia this year. This annual event, now in its third year, will be held in Dushanbe in June and will bring together some 100 participants from all Central Asian states to exchange experiences with experts from other participating States, and discuss the most topical issues for criminal justice reform in the region.
- And finally, in May, we started to implement a large project which aims to strengthen the capacity of South-East European justice systems to deal with war crimes cases. We count on the continuing co-operation from the OSCE field operations in this region, and we are especially fortunate to enjoy a good working relationship with the International Criminal Tribunal for the former Yugoslavia

– whose President, Judge Robinson, was the keynote speaker at last year's Seminar.

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Ladies and Gentlemen,

This Seminar will assist the participating States and their civil societies to achieve better results with practicing judicial independence and access to justice. We have a full programme ahead of us and it is now my particular pleasure to hand the floor to Ambassador Madina Jarbussinova, followed by State Secretary Jan Borkowski.

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Thank you, State Secretary.

I would now like to introduce our distinguished keynote speaker, and I must say that not everyday we can greet a famous member of the equally famous *Conseil Constitutionnel* of the Republic of France. I shall thank you, Judge Canivet, very much for accepting our invitation to deliver the keynote address for this year's Human Dimension Seminar. Let me mention some of the offices you have held and achievements you are responsible for. In 1999, you were appointed as President of the *Cour de cassation*, the highest Court in France. You also are the founding president of the Forum of European Judges in Matters of the Environment and the Network of European Judges for Mediation, and the founder and President of the Association of

Heads of Supreme Courts of the European Union. In 2006, the then Minister of Justice entrusted you with the task of examining methods of training of judges to be appointed to posts as heads of courts, a topic directly relevant to this week's seminar.

I could go on and talk about you, but rather give you the floor so that you can talk to us.

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Thank you, Judge Canivet, for an inspiring opening keynote that has set the scene for an interesting three days of exchanges. Many issues which appear on the agenda are rather technical. But these technicalities and details create the machinery which sets in motion those very important values we came here to discuss.

Our first working group will be devoted to judicial administration, with a special focus on judicial councils. The participants will be invited to submit their views on whether judicial councils in many participating States have in fact strengthened judicial independence. And if not, what must be done to improve their role?

In our second working group, we will discuss the selection of judges. This is rightfully seen as a matter of paramount importance: it is no accident that fierce political battles are

fought over judicial appointments in many participating States. But these battles also provide evidence that in these States judicial power is real. I would like to encourage the participants of this Working Group to find ways to ensure that individuals who become judges not only have the legal knowledge, but also the requisite courage and strong values.

Our third working group will tackle a thorny issue that we simply cannot ignore, the accountability of judges. I was reminded of an old joke this morning. At the beginning of the hearing the judge announced to the plaintiff and the defendant that the amount of the bribes they paid to the court was equal. “In this situation, said the judge, I have no choice but to resolve your dispute on the basis of the law.” We may safely conclude from this joke that unbiased decisions also come at a price.

On a serious note, independence should not be used to shield from responsibility those who don't belong on the bench. Judges who engage in corruption and other unbecoming conduct must be held accountable. How should this be achieved without undermining the basis of judicial independence? More generally, this working group should address the question “how can judges be held accountable to constitution and laws, without compromising their independence”. We hope to hear some answers from you tomorrow afternoon.

Finally, our fourth working group will deal with public access to justice and should ensure that we don't lose sight of the forest

behind the trees. At the end of the day, judges must uphold justice. In this working group, the participants will have a chance to exchange views and good practices on improving access to justice in their countries.

In closing, allow me to give a special welcome to the moderators and introducers who accepted our invitation – thank you for taking up these important roles. As always, we look forward to the lively and enriching debate, to the productive exchange of ideas, good practices, and critical reflections.

Thank you.