

HDIM 2012

Working Session 4: Rule of Law I, including:

- Democratic lawmaking;
- Independence of the judiciary;
- Right to a fair trial.

Rapporteur: Ms. Linda Aspehult, Permanent Delegation of Sweden to the OSCE

Working Session 4 was devoted to the rule of law. The introducer, UN Special Rapporteur on the Independence of Judges and Lawyers Ms. Gabriela Knaul, highlighted the interrelation between the independence of the judiciary on the one hand, and the separation of powers on the other, as a prerequisite for a democratic society based on the rule of law. The need for providing adequate resources to enable and safeguard the independence of all stakeholders in the judicial system was also emphasized.

38 interventions were made after the introducer, of which 29 by civil society and non-governmental organizations. In addition, 11 participating States made use of their right of reply in response to prior interventions.

Many delegations expressed a comprehensive view, referring to the rule of law as one of the key elements in a democratic society, and as a fundamental safeguard for the implementation of human rights. The role of democratic lawmaking, independence of the judiciary and the right to a fair trial, as particular guarantors of the rule of law, was highlighted. In this context, several delegations made reference to the 1990 Copenhagen Document and the 1991 Moscow Document. Furthermore, several delegations emphasized the need to improve the independence of the judiciary, inter alia through the Kyiv Recommendations.

Many speakers, delegations as well as representatives from civil society, highlighted specific problems related to the rule of law in certain participating States. Examples included corruption undermining the independence of the judiciary; torture and other ill-treatment in detention and prisons, including police abuse; lack of transparency in judicial proceedings; restricted access to court; unfair trials and discrimination.

Some delegation gave information on legislative and other steps undertaken in order to improve respect for the rule of law. It was also noted that such improvement required political will, and that there was a need to engage national as well as international stakeholders in the process.

Recommendations to participating States:

- To fully uphold fair trial standards;
- To enable access to information from courts, including by enabling inquiries into cases from civil society and by respecting the freedom of the Internet;
- To adopt concrete measures regarding the right to speak one's own language in court proceedings;

- To initiate investigation into cases where needed, due to reports on abuse of power or other misconduct;
- To amend criminal and procedural codes, and other relevant legislation, to enable the implementation of non-discrimination commitments;
- To safeguard the equality between men and women, including by criminalizing domestic violence and improving women's access to court;
- To ensure that complaints on torture and other ill-treatment is registered and followed up upon, including through medical investigations and by providing access to medical assistance.

Recommendations to OSCE/ODIHR:

- To analyze relevant legislation of participating States, in order to promote compliance with OSCE commitments;
- To access information on investigations and judicial proceedings, and follow up on matters where needed.