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Opening Remarks
by Ambassador Christian Strohal,
Director of the OSCE Office for Democratic
Institutions and Human Rights (ODIHR)

at the Supplementary Human Dimension Meeting
on the Role of Defense Lawyers
in Guaranteeing a Fair Trial
Tbilisi, 3-4 November 2005



Excellencies,
Ladies and Gentlemen,

It is my pleasure to welcome you to the first ever OSCE event devoted to an essential pillar of every criminal justice system: defense lawyers.

I want to start by thanking our hosts, Georgia. This meeting is historic not only because it is the first OSCE meeting devoted to defense lawyers, but also because it is the first time a SHDM has been held outside Vienna. It was the initiative of President Saakashvili, himself a prominent lawyer, to have Georgia host this event. I am sure that everyone here will be impressed with the work of the Georgian Ministry of Foreign Affairs in preparing for this event, and with the strong contributions by the Georgian participants. We are confident that this meeting will also make a positive contribution to the successful transition of our host country to a State fully governed by the rule of law.

I am looking forward to the introductory remarks of the Foreign Minister of Georgia, Gela Bezhuashvili, the Minister of Justice Konstatine Kemularia and of the representative of the Slovenian Chairmanship Ambassador Jozica Puhar.

Before, let me briefly set the context. The OSCE is governed by a comprehensive security concept. The Office for Democratic Institutions and Human Rights works in the human dimension, where an impressive range of concrete commitments have been developed by the 55 participating States. These commitments include, of course, those of international human rights law. In our activities to support judicial reform in participating States, we have seen clearly the simple fact that the important role that defense lawyers play receives little attention while much international attention and focus go to reform efforts for the judiciary, for the prosecution and for the police. It is clear to us through our work throughout the OSCE region that for rule of law to develop there must be a strong defense bar, as well as independent judiciary, and prosecutors and police who perform their jobs with respect for human rights and law. I want to draw your attention to the Reference Materials that we prepared for this meeting which include the current OSCE Commitments relating to defense lawyers and guaranteeing the right to a fair trial.

Clearly, defense lawyers are front line human rights defenders in any society. Lawyers are the first people that a person arrested and facing criminal charges turns to. Usually, lawyers are the first people outside law enforcement personnel, who hear complaints of torture and see the evidence of mistreatment. Defense lawyers in every country in the OSCE region represent those who are the least popular in every society: persons accused of committing crimes.

The work of a defense lawyer is made more difficult when the kind of case is one of high emotional impact such as when their clients are accused of acts of terrorism, murder or child molestation. It is the defense lawyer who voices objections to prevent cases being rushed forward to guilty verdicts without respecting the presumption of innocence and procedural protections. The marker of a society that truly respects human

rights and freedoms is when it is a society where lawyers can freely and without obstruction represent those who are the most condemned, feared, or hated, to assure that their rights are fully respected. It is these cases which challenge how strongly fundamental human rights protections are guaranteed.

Lawyers play a crucial role in any democratic society. But, to play this role, certain conditions are necessary. First, people who are arrested must have access to a lawyer. This access must include not only speaking to a lawyer, but doing so privately, and without interference from the state. And, lawyers should have unimpeded access to their clients in custody. The first session of this event is devoted to discussing these issues. Primary among these issues is how OSCE participating States are providing legal assistance in criminal cases to those who cannot afford a lawyer. One thing that every OSCE participating State has in common is that the majority of people arrested cannot afford to hire a lawyer. The state therefore has a clear obligation to provide a lawyer under conditions that insure every defendant has a competent legal defense at every stage of the criminal proceedings, including during the investigation stage.

Secondly, the system for admission to and regulation of the bar must be one that allows for sufficient numbers of lawyers to enter the practice of law each year. In some OSCE participating States the number of lawyers admitted to criminal law practice remains far too low to be able to realistically provide an adequate defense to every citizen arrested in those countries in any given year. Session two of this meeting is devoted to these topics.

In addition to the question of who is admitted to practice law, there are related and serious questions of how to guarantee that lawyers are independent. Lawyers should not face being disbarred or being threatened with it for doing their jobs of providing strong representation for their clients, regardless of the charge or politically unpopular stand their clients may represent. If lawyers can have their licenses to practice easily taken away for representing unpopular clients then there are serious implications to whether lawyers will take unpopular cases. So the topic of admission to the bar is closely tied to disciplinary procedures and ethical standards.

The third topic for this SHDM which we will be discussing tomorrow is the Equality of Parties in Criminal Proceedings. This is a key area and one that we could have devoted the entire meeting to. In many countries of the OSCE region defense lawyers are not allowed under their codes of criminal procedure to investigate cases or to present evidence in court in the same manner and with the same protections as the prosecution.

Beyond the procedural problems, defense lawyers routinely face a range of practical problems. For example, they have a right under law to have access to all evidence in a court file. However, in practice they are not allowed to receive it because there are no copy machines and they are not allowed sufficient time with the file to fully read and copy down all relevant information.

I am of course, only briefly touching on the issues that we will be discussing in more detail in the next two days. I am very pleased with the high quality of experts that we have for this meeting. You are truly leaders in the legal communities in your countries and it is an honor that so many defense lawyers have agreed to join us here for this

meeting. It is indeed an honor to welcome you here. I look forward to the discussion that we will have with not only our Keynote Speaker, and our introducers, but with the vibrant group of defense lawyers who are participating in this event. For many here today it is your first opportunity to attend an OSCE meeting, and my staff has worked hard to insure that this meeting, as a first OSCE Meeting on defense lawyers, reached beyond our “usual” community of participants and identified practicing lawyers from a diverse group of OSCE countries.

In this effort, I want to thank the strong assistance and co-operation that we have received from the OSCE field Missions, the American Bar Association Central European and Eurasian Law Initiative, and the Open Society Institute. I also would like to thank those participating States that included representatives of Bar associations and defense lawyers in their official delegations. This event represents a model example of co-operative work both within the OSCE and between the OSCE and other organizations devoted to work in this area.

I hope that this SHDM can provide a forum for an exchange of experiences regarding how to meet the challenges faced by defense lawyers in every OSCE country. In addition, I hope that the discussion can bring together concrete recommendations for OSCE participating States, the OSCE field missions, and the OSCE institutions, including the ODIHR, on what can be done to improve the situation for defense lawyers. And, I hope that this meeting will give strong impulses for many more years of work and attention to defense lawyers.

We look forward to your continued involvement.