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# Prohlášení

## Statement

## Déclaration

Warsaw 12 May 2009

### Human Dimension Seminar

### Strengthening the rule of law in the OSCE area

### EU Opening Statement

Mr. Chairman, Excellencies, Ladies and Gentlemen,

The EU would like to express its gratitude to the OSCE Office for Democratic Institutions and Human Rights for organizing this highly relevant event. The EU greatly appreciates the fact that the Greek OSCE Chairmanship-in-office made the rule of law one of its priorities for 2009 and welcomes the opportunity provided by this seminar to exchange information and discuss this important issue.

We would also like to thank all the panellists who accepted the invitation to share their thoughts with us. Our gratitude also goes to the representatives of other international organisations and civil society. The EU believes that it is essential to maintain a free and open dialogue between the NGOs and the participating States of the OSCE, as established by the Helsinki 1992 document. This is one of the principal strengths of the organization. The seminar would lack much substance and impact, if civil society was excluded from it.

The promotion of the rule of law is a priority for the EU. We consistently and strongly supported the idea of a MC Decision on the rule of law from the outset last year. The rule of law is one of the corner-stones upon which the EU is based and is one of the fundamental aspects of our common foreign and security policy. Strengthening the rule of law in third countries through various EU programmes including the European Neighbourhood Policy, Partnership and Cooperation Agreements, Human Rights Dialogues and regional strategies has proven to be an effective means of protecting human rights worldwide.

The rule of law is also a key issue of the human dimension of the OSCE and the EU appreciates the valuable work which is done, in particular, by the ODIHR and the OSCE field missions in this regard. The rule of law helps to guarantee human rights for all and to ensure that those who violate the human rights of others do not enjoy impunity. It constitutes one side of a crucial triangle, where the other two sides are democracy and human rights. Our work for the human dimension will not be concluded until all three sides are equally strong.

An effective and independent judiciary is of paramount importance for ensuring the rule of law. Judiciaries must be free from attempts by the private and governmental sectors to influence their findings. In order to prevent any possible interference in the judicial decision making process, the concept of separation of powers is deeply enrooted in our constitutional systems and is generally implemented and safeguarded through formal procedural rules of conduct.

However, although most OSCE participating States have already adopted institutional guarantees of judicial independence, institutional

independence alone is not sufficient to ensure a strong and effective judiciary. Hence, wider support for individual independence and impartiality of judges can contribute to extending the rule of law further in the OSCE area. Likewise, it is important to bring more transparency in the judicial system. The appointment procedure, the decision making process, the publication of judgements and many other aspects should all be subject to public scrutiny. It is of great importance that Courts are accessible and transparent, independent and impartial. Access of justice should be guaranteed, courts decisions rendered within a reasonable delay and judgements fully enforced.

The right to a fair trial in due time is a fundamental principle of the rule of law and occupies a prominent place in a democratic society. In recognition of the fundamental nature of the right to a fair trial, the participating States have committed themselves to allowing national and international observers to monitor trials. The EU believes that this transparency is vital for the improvement of justice administration and enforcement of judicial decisions.

The EU would also like to stress the need to address infringements of rights where they occur, and not wait for these infringements to reach the courts. The Ministerial Decision from Helsinki last year makes specific reference to the rule of law in public administration. It is in public administration that most encounters between the individual and public authorities take place, and it is here that the risk of infringements of rights is possibly even greater, whether we look at public administration in the shape of a police station or the tax authorities.

The EU regrets that torture continues to be committed with impunity in many parts of the world, including in the OSCE area. We believe that torture is a crime wherever and under whatever jurisdiction it is committed, and that all allegations of torture should be investigated. The United Nations Convention Against Torture requires all signatories to ensure that all acts of torture are offences under its criminal law and that any person who commits torture should be prosecuted. Proper independent and effective investigation of complaints is a necessary precondition to bring perpetrators to justice and fight impunity – and the fact that this is done obviously has a preventive effect. Furthermore, the EU believes that independent detention monitoring is a key tool in preventing torture. To this end the Optional Protocol to the Convention Against Torture (OPCAT) requires state parties to establish one or more independent National Preventive Mechanisms to monitor places of detention.

In our discussion special focus should be given to independent and effective systems of investigation of complaints, judicial and other monitoring of deprivation of liberty, cooperation with international monitoring, adherence to OPCAT, criminal investigation techniques, and better use of international legal instruments as well as soft law such as the resolutions against torture adopted at the United Nations.

In concluding, the EU would like to recall that all OSCE participating States have expressed their willingness to reinforce judicial independence and the right to a fair trial in their national juridical system committing themselves to the right to a fair trial (Vienna, 1989), to protect the independence of the judiciary (Copenhagen, 1990), and to respect internationally recognised standards relating to the impartial operation of

the public judicial service (Moscow, 1991). They declared that they will respect internationally recognized standards relating to the independence of judges and legal practitioners and the impartial operation of the public judicial service, including, inter alia, the universal declaration on human rights and the international covenant on civil and political rights. These commitments have been reaffirmed by all OSCE participating States only last year by adopting MC Decision 7/08.

Mr. Chairman, the EU is fully committed to the promotion of the rule of law for many weighty reasons. The EU is looking forward to engaging with the participating States as well as the representatives of other international and non-governmental organizations in free flowing discussions on this important topic in the days ahead. We are equally looking forward to continue to discuss ways to strengthen the rule of law in the OSCE area beyond the scope of this seminar in the future.

Mr. Chairman,

The candidate countries Turkey, Croatia and the Former Yugoslav Republic of Macedonia, the countries of the Stabilisation and Association Process and potential candidate countries Albania and Herzegovina, Montenegro and Serbia, as well as the Republic of Moldova align themselves with this statement.

Thank you Mr. Chairman