



HUMAN DIMENSION
S E M I N A R

2010 OSCE HUMAN DIMENSION SEMINAR
Strengthening Judicial Independence and Public Access to Justice
Warsaw, 17-19 May 2010

ANNOTATED AGENDA

I. Introduction

Human Dimension Seminars are organized by the OSCE/ODIHR pursuant to the CSCE Summit decisions in Helsinki (1992) and Budapest (1994). The 2010 Human Dimension Seminar is devoted to *Strengthening Judicial Independence and Public Access to Justice* in accordance with PC Decision No. 931 of 26 March 2010 and No. 936 of 22 April 2010.

Judicial independence is central to a democratic system of government based on the separation of powers and the rule of law. Public confidence in government is undermined and the rule of law, upon which the protection of human rights depends, cannot be ensured if a judiciary cannot be relied upon to decide cases competently, independently and impartially. In that sense, judicial independence is important for precisely the reasons that the judiciary is important. Respect for the principle of judicial independence is a key OSCE human dimension commitment. In the Charter for European Security participating States agreed to promote the development of independent judicial systems (Istanbul 1999), a commitment reiterated in Helsinki Ministerial Council Decision no. 7/08 on *Further strengthening the rule of law in the OSCE area* (MC.DEC/7/08) and reflected in recent human dimension meetings such as the 2009 Human Dimension Seminar on Strengthening the Rule of Law in the OSCE Area.

More specifically, participating States have acknowledged the significance of judicial independence for the full expression of the inherent dignity and of the equal and inalienable rights of all human beings (Copenhagen 1990). They have committed themselves to respect the internationally recognized standards that relate to the independence of judges and legal practitioners and the impartial operation of the public judicial service, and in implementing the relevant standards and commitments to ensure that the independence of the judiciary is guaranteed and enshrined in the constitution or the law of the country and is respected in practice. They agreed to pay particular attention to the Basic Principles on the Independence of the

Judiciary¹, which address such issues as the methods of appointing, remunerating and removing judges as well as the procedure for promotions, transfers, evaluation, discipline, training and continuing education that all potentially affect the courts and judges' independence (Moscow 1991). Participating States have thus made far-reaching commitments relating to practical issues, going well beyond written guarantees that alone do not ensure the actual independence of the judiciary as an institution or the independence of individual judges.

Over the past two decades many participating States have implemented reforms, both legislative and institutional, which were intended to foster separation of powers and judicial independence. They have faced multifaceted challenges in their efforts as judicial independence requires a comprehensive approach and while certain measures may be obvious, others are open for discussion, requiring that different views and interests be considered. For instance, balancing the independence of the judiciary with the need for democratic legitimacy in a society governed by the rule of law is a challenge for every participating State. The time is now ripe for a fresh look at these efforts, to assess the progress made in establishing truly independent judiciaries, as well as to identify remaining challenges in strengthening them.

Discussions at the 2009 Human Dimension Seminar on Strengthening the Rule of Law in the OSCE Area confirmed that judicial councils and judicial administration more generally, selection and appointment of judges, as well as accountability, discipline and removal of judges are crucial issues affecting judicial independence that deserve more in-depth examination and further discussion. A recommendation made at this Seminar called on the OSCE, its institutions and field operations to continue facilitating exchanges of practices and contacts between the judiciaries of participating States.

As much as judicial independence is an essential element of democracy, unfettered access to a fair and efficient justice system, supported by an independent and impartial judiciary, is one of the fundamental pillars of a democratic government. Access to justice would remain a pious wish if special measures were not taken to translate it into reality. Among these measures, free or subsidized legal aid schemes have been advocated and implemented in a wide range of participating States. When assessing the effectiveness of such measures, it may prove important to examine the extent to which they reach out to remote and rural areas. Participating States have been encouraged by the Ministerial Council of the OSCE to continue and to enhance their efforts to strengthen the rule of law, including by facilitating access to courts and providing for the right to legal assistance (Helsinki 2008). Earlier commitments recalled that any person prosecuted will have the right to defend himself in person or through prompt legal assistance of his own choosing or, if he does not have sufficient means to pay for legal assistance, to be given it free when the interests of justice so require (Copenhagen 1990). While developing policies to give effect to such a right, it is also important to pay attention to vulnerable groups. With this in mind, participating States have recognized how crucial it is that all female victims of violence be provided with full, equal and timely access to justice and effective remedies (Ljubljana 2005).

The 2010 Human Dimension Seminar will address some of the key issues related to judicial independence and access to justice, namely: 1) judicial administration with a special focus on

¹ Adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders held at Milan from 26 August to 6 September 1985 and endorsed by United Nations General Assembly Resolutions 40/32 of 29 November 1985 and 40/146 of 13 December 1985

judicial councils; 2) selection of judges: criteria and procedure; 3) accountability of judges; and 4) public access to justice. All these elements form part of the foundation for strengthening judicial independence and access to justice in the OSCE area.

II. Aims

In Helsinki in 2008, the Ministerial Council encouraged participating States, with the assistance, where appropriate, of relevant OSCE executive structures in accordance with their mandates and within existing resources, to continue and to enhance their efforts to share information and best practices and to strengthen the rule of law, *inter alia* in the area of independence of the judiciary.

More specifically, in the Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE (Moscow 1991), participating States committed themselves, for the promotion of the independence of the judiciary, to

(20.2) - promote and facilitate dialogue, exchanges and co-operation among national associations and other groups interested in ensuring respect for the independence of the judiciary and the protection of lawyers;

(20.3) - co-operate among themselves through, *inter alia*, dialogue, contacts and exchanges in order to identify where problem areas exist concerning the protection of the independence of judges and legal practitioners and to develop ways and means to address and resolve such problems;

(20.4) - co-operate on an ongoing basis in such areas as the education and training of judges and legal practitioners, as well as the preparation and enactment of legislation intended to strengthen respect for their independence and the impartial operation of the public judicial service.

In line with these goals, the Human Dimension Seminar aims to serve as a platform for exchanging good practices between the participating States on the issues related to judicial independence and access to justice. It will also provide an opportunity to discuss how reform processes could benefit from such exchanges of good practices. The discussions will be structured in four Working Groups as outlined in the Work Plan below.

III. Participation

Representatives of the OSCE participating States, OSCE institutions and field operations, inter-governmental and non-governmental organizations will take part in the Seminar.

Participation of experts on judicial independence, access to justice and the rule of law more generally will be particularly encouraged. In this regard, participating States are requested to publicise the Seminar within their rule of law and justice expert community and in academic circles and to include in their delegations, wherever possible, experts on related issues.

The Mediterranean Partners for Co-operation and the Partners for Co-operation are invited to attend and share their views and ideas on judicial independence and access to justice.

All participants are encouraged to submit in advance written interventions outlining proposals regarding the subject of the Seminar, which will be distributed to the delegates. Participants are also

encouraged to make brief oral interventions during the Seminar. While prepared interventions are welcomed during the Plenary session, free-flowing discussion and exchanges are encouraged during the Working Group sessions.

IV. Organization

The Seminar venue is the “Novotel Warszawa Centrum” Hotel in Warsaw, ul. Marszałkowska 94/98.

The Seminar will open on Monday, 17 May 2010, at 10 a.m. It will close on Wednesday, 19 May 2010, at 6 p.m.

All plenary sessions and working group sessions will be open to all participants. The plenary and working group sessions will take place according to the Work Programme below.

Four working group sessions will be held consecutively. They will focus on the following topics:

1. Judicial Administration with a Special Focus on Judicial Councils
2. Selection of Judges: Criteria and Procedure
3. Accountability of Judges
4. Public Access to Justice

The closing plenary session, scheduled for the afternoon of 19 May 2010, will focus on practical suggestions and recommendations for addressing the issues discussed during the working group sessions.

A representative of the ODIHR will chair the plenary sessions.

The Rules of Procedure of the OSCE and the modalities for OSCE meetings on human dimension issues (Permanent Council Decision No. 476) will be followed, *mutatis mutandis*, at the Seminar. Also, the guidelines for organizing OSCE meetings (Permanent Council Decision No. 762) will be taken into account.

Discussions during the Plenary and Working Group sessions will be interpreted from and into the six working languages of the OSCE.

Registration will be possible during the Seminar days from 8:00 until 16:30.

By prior arrangement with the OSCE/ODIHR, facilities may be made available for participants to hold side events at the Seminar venue. A table for display/distribution of publications by participating organizations and institutions will also be available.

WORK PROGRAMME

Working hours: 10 a.m. – 1 p.m. and 3 – 6 p.m.

	Monday 17 May 2010	Tuesday 18 May 2010	Wednesday 19 May 2010
Morning	Opening plenary	Working group II	Working group IV
Afternoon	Working group I	Working group III	Closing plenary

V. WORK PLAN

17 May 2010, Monday

10:00-13:00 Opening Plenary Session

Welcome and introduction from the Seminar Chair

Ambassador Janez Lenarčič, Director of the OSCE/ODIHR

Welcoming Remarks

Representative of the host country, the Republic of Poland

Representative of the Chairperson-in-Office of the OSCE, the Republic of Kazakhstan

Keynote Speaker

Dr Guy Canivet

Member of the Constitutional Council of France and former President of the Court of Cassation, France

15:00-18:00 Working Group I:

Judicial Administration with a Special Focus on Judicial Councils

Moderator: **Dr Anja Seibert-Föhr**

Head of Minerva Research Group on Judicial Independence, Max-Planck Institute for Comparative Public and International Law

Introducer: **Ms Elizaveta Danielyan**

Judge of the Criminal Chamber of the Court of Cassation of Armenia

Judicial Councils and bodies of judicial self-governance are in many participating States tasked to protect the independence of the judiciary, and play a vital role in judicial administration. The composition of these bodies, their appointment, status and competencies differ from country to country. However, these bodies and other actors responsible for justice administration, such as ministries of justice, face similar challenges: preventing and addressing undue influences on the judiciary while at the same time maintaining professional accountability.

Judicial councils often share the competencies for judicial administration with the executive. What should be the role of judicial councils, the executive and legislature in judicial administration?

What is the role of judicial self-governance bodies, especially where judicial councils are dominated by the executive and not considered part of the judiciary? In many participating States, judicial councils have the mandate to protect the independence of the judiciary. What are the powers and mechanisms necessary for this task? Are judicial councils willing and able to protect judges from improper influences in individual cases?

In some countries judicial councils consist primarily of judges, while in other countries the three branches of power are represented equally, or the executive plays the strongest role. Should the composition of the judicial council or other bodies ensure a balance of the need for independence with the requirements of democratic legitimacy? If so how? When does the composition of judicial councils become an obstacle to realizing the one or the other? How are the members of judicial councils appointed and dismissed?

The role of court presidents is crucial for the administration of their respective courts. In some countries, court presidents are selected by the executive and have an important role in selecting judges, evaluating them for promotion purposes or before permanent appointment, and disciplining them. Sometimes, the assignment of cases to judges is entirely in their hands, *de facto* or even *de jure*. When does their influence jeopardize the independence of judges? Which models of random cases assignment can serve as good practices to prevent undue influence in case assignment?

18 May 2010, Tuesday

**10:00-13:00 Working Group II:
Selection of Judges: Criteria and Procedure**

Moderator: Mr Frank Dalton

Head of Rule of Law and Human Rights Department, OSCE Presence in Albania

Introducer: Dr Leny de Groot-van Leeuwen

Professor, University of Nijmegen

A strong and independent judiciary requires merit-based selection and appointment procedures. Objective criteria should enable the selection of the most qualified candidates for the judicial profession. Subjective criteria tend to give more room for arbitrary decisions, they bear the risk of undue executive influence to block politically unwanted candidates, and have the potential of undermining public trust in judicial independence. Which objective and subjective criteria guarantee a merit-based selection, while on the other hand ensuring the identification of candidates with the appropriate character and values to maintain independence? How can a representative and pluralistic composition of the judiciary be ensured?

Written examinations and personal interviews are widely used to assess candidates' knowledge, skills and character. How are these components weighted to ensure the most effective testing of future judges? Which elements should guarantee the fairness and transparency of evaluation systems for candidates and the public? The participants are invited to share their views in this regard.

Executive authorities in many participating States are involved in the appointment of judges, even when the selection and nomination is left entirely to the judiciary. In most countries, the discretion

of the appointing authority is limited. During the Human Dimension Seminar 2009, it was suggested that the intervention of the executive and legislative branches of government should be limited to confirming the nominations made by an independent body. What is the role of the executive and the legislature in selecting and appointing judges? When does the involvement of executive authorities in the actual selection or their discretion in appointments become an obstacle to the actual or perceived independence of the judiciary?

**15:00-18:00 Working Group III:
Accountability of Judges**

Moderator: **Dr Evgeni Tanchev**

President of the Constitutional Court of Bulgaria/Venice Commission

Introducer: **Ms Maria Giuliana Civinini**

President of the Assembly of EULEX² judges

Accountability of judges is often seen as a threat to their independence; on the other hand, the need for judicial independence arguably reduces the scope for holding judges accountable. To maintain professionalism and integrity, judges should be held accountable in disciplinary proceedings. Only a professional and ethical judiciary can win public trust, be independent and be strong enough to withstand attempts to exert undue influence. Which disciplinary and removal procedures and sanctions pose a threat to judicial independence? How can the fight against unprofessional conduct and corruption make the judiciary stronger?

While judges enjoy a certain degree of immunity from criminal prosecution in most participating States, there are specific offences related to adjudication of cases. Criminal and disciplinary proceedings may be initiated in several participating States for alleged offences characterized as “wrong application of the law” or by similar terms; such proceedings may in some but not all instances be related to the reversal of relevant judgments on appeal. When does criminal prosecution and the threat of regress compromise judicial independence inadequately? Which practices effectively balance accountability with the need for independence in adjudication?

In several participating States, the number of reversed judgments plays a role for evaluating judges’ professional performance, and consequently for their career and financial status, sometimes even their tenure. When does judges’ accountability for “correct application of the law” unduly influence their adjudication? How can the need for accountability and independence be balanced in this regard? This Working Group is invited to address contemporary challenges regarding accountability of judges *versus* their independence.

19 May 2010, Wednesday

**10:00-13:00 Working Group IV:
Public Access to Justice**

Moderator: **Prof. Laurence H. Tribe**

Senior Counsellor for Access to Justice, United States Department of Justice

² European Union Rule of Law Mission in Kosovo.

Introducer: **Mr Dmitry Shabelnikov**

Country Director of Public Interest Law Institute, Russia

Access to justice is conditional on ensuring access to courts and availability of legal assistance to those who need it to exercise and protect their rights. Which good practices may be shared by the participating States in advancing access to justice? What programmes have been carried out to improve access to justice in general?

For residents of rural and remote areas in the OSCE region, access to justice is limited by great distances, expensive transportation, and lack of infrastructure. Can new technologies foster public access to justice in rural areas? Or conversely, can they rather deepen the existing gap between those who are familiar with the new technologies and those who are not? Which best practices in ensuring access to courts may be shared by the participants?

Defendants in criminal cases in some participating States often have no access to legal counsel due to shortages of lawyers and the lack of legal aid schemes. Which measures are taken by the participating States to ensure access to legal counsel in criminal cases as one of key guarantees of the right to a fair trial? In non-criminal cases, which models of legal aid have been most effective to ensure access to justice, especially for residents of rural and remote areas? How should the needs for legal aid be assessed? Which partnerships may be forged between the legal profession and governments to address the existing gaps?

Justice must be equitable and accessible for all. Unfortunately, women victims of gender-based violence, or other forms of gender-based discrimination, are too often left without adequate protection and assistance in seeking justice. While many women may fear stigma and rejection by their communities for speaking out about the violence they have faced, judicial institutions also often lack sensitivity about the experiences of women during conflict or treat violations of women's rights as a low priority in comparison to other crimes. What can the judicial authorities and more broadly the participating States do to ensure that all female victims of violence or gender-based discrimination are provided with full, equal and timely access to justice and effective remedies?

Court judgments are worth little if their timely enforcement is not ensured. Which special arrangements and mechanisms may be cited as good practices in this regard?

15:00-18:00 Closing Plenary Session

Rapporteurs' summaries from the Working Groups

Statements from Delegations

Closing Remarks

Amb. Janez Lenarčič

Director of the OSCE/ODIHR

Closing of the Seminar