

Statement by the Delegation of CANADA

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Human Dimension
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By Ms. Marilou Reeve, Counsel, Justice Canada

Mr. Chairperson,

The concept of the rule of law forms a cornerstone of the OSCE's human rights principles. The OSCE has, since the 1990s, given the rule of law a central place as an instrument of stabilization in the European security dialogue and crisis management, while developing appropriate structures for implementation. It is also one of the fundamental principles found in the Canadian Charter of Rights and Freedoms, which entrenches in the Constitution of Canada the rights and freedoms Canadians believe are necessary in a free and democratic society.

The principle of the rule of law has several facets. It means, first that everyone is subject to the law; that no one, is above the law - not the government; not the head of State; not the most powerful bureaucrat; not the armed forces. Secondly, the rule of law contemplates a State governed by a body of recognized law; no State or society can exist without laws. Thirdly, the rule of law requires that all governments' action be authorized by law. At its most basic level, the rule of law vouchsafes to the citizens and residents of the country a stable, predictable and ordered society in which to conduct their affairs. It provides a shield for individuals from arbitrary state action. Mr. Chair, these are not abstract principles but living, everyday practices, and they are not, as some may think, unrealistic in terms of essential interests or State security. In Canada, we believe that if anyone were above the law, none of our liberties would be safe. It is a principle that OSCE participating States have repeatedly committed to and Canada will remain in the forefront of those countries working to expand the rule of law internationally.

Judicial independence is a guarantee that judges will make decisions free of influence and based solely on fact and law. In Canada, the principle of judicial independence is a cornerstone of the Canadian judicial system. Under our Constitution, the judiciary is separate from and independent of the other two branches of government, the executive and legislative. Judicial independence is an institutional requirement for all OSCE participating States and is crucial to the organization's rule-of-law-related commitments. We would like to remind that in some OSCE participating States, courts and judges are biased in favour of the government in power, despite OSCE commitments in the impartiality of the judicial branch.

We wish to commend in particular the ODIHR and OSCE field missions for the work on judicial independence in countries that face the greatest challenges in issues such as access to the profession of judge, the election and appointment of judges, and continuous legal education.

Mr. Chair, if we think that the rule of law is this important, what can we do, at the domestic level and within the OSCE, to enhance and protect it? Many things could be mentioned, but in the interest of time, we only suggest the following: We can build a dialogue which builds consensus on fundamental rule of law values, while at the same time recognising the diversity of legal systems. Within the framework of the rule of law, there is a range of specific possibilities and many options open to allow each State to find a system that meets its unique needs. At the same time, this should not divert any of us from the basic fundamentals of the rule of law. If decisions are made in a consistent, fair and transparent manner based on established facts and consistent public rules, then the rule of law exists. If they are made on ad hoc considerations in an inconsistent and unpredictable manner, then we must be clear that the rule of law does not exist.

We must also all come to understand and recognise that while the rule of law is a collection of standards and practices, it is much more. It is a cultural philosophy. OSCE participating States must strive to explain to the people what the rule of law really means and to persuade them that it will serve them well. Without popular support, legal institutions cannot be built and without a sustained rule of law culture they cannot survive.

The promotion of the rule of law by the OSCE has had a particular contribution to European security. We would encourage OSCE participating States to support and cooperate with the ODIHR, the High Commissioner for National Minorities and the OSCE field missions in the work undertaken to strengthen the rule of law across the OSCE region.

Merci, Monsieur le Président