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OSCE HUMAN DIMENSION IMPLEMENTATION MEETING 2006

EU statement for the working session 6 and 7: Access to justice

5 October, Warsaw

1. Access to justice

A. Accessible and affordable legal assistance

The fundamental right of every individual to assert his/her rights - and to have them recognized and upheld by a judge - is a crucial pre-condition of the Rule of Law.

The principle of access to court should be guaranteed in all cases concerning the determination of charges or the rights and obligations of individuals, especially in case of an arguable claim that fundamental rights have been infringed and irrespective of the civil, criminal or administrative nature of the matter.

National-domestic laws of OSCE participating countries should be in conformity with the relevant international standards. Within the framework of the EU, the constitutional principles of the EU member states, as well as the requirements of Article 6 of the European Convention on Human Rights, are very important references in this regard.

Concerning legal assistance, a legal aid system should be established and financed by the State.

But this is not necessarily the only alternative. The essential is that there should be some provisions facilitating individuals access to the competent authority or to legal advice. Reality has shown that practices differ from state to state. Thus, there is a need to recognize some minimum acceptable standards, which could facilitate the implementation of the said principle.

The Rule of Law requirements concerning access to justice also imply the existence of safeguards against illegal, arbitrary or otherwise abusive decisions of administrative authorities. This entails the obligation of ensuring access to a judicial or other appropriate institution capable of offering redress for any prejudice suffered as a result of such administrative decisions. Other forms of safeguard include, for instance, appropriate administrative procedures offering the citizens the opportunity to be involved in the decision-making process so as to ensure that their legitimate interests are taken into account.

The Court fees should not prevent persons with insufficient means from having proper access to court.

The EU, building upon, inter alia, the achievements of the CoE, attaches great importance to the protection of vulnerable persons and especially of the victims of violent acts, who should be entitled to bring civil claims against those alleged to have harmed them.

B. Timely and enforceable court decisions

An important element of the effectiveness of access to justice principle is the need to deliver judgments within a reasonable delay and to ensure that they are fully executed. We should enhance this principle by the simplification and acceleration of the judicial proceedings, while preserving fundamental procedural safeguards.

Participating states should provide their judicial system with appropriate means to reach such objectives.

Most of the problems encountered are of an organizational and material nature, and care should be taken, that they be dealt with.

Substantial delays in the administration of justice and the increasing workload of courts should be addressed by way of effective and practicable solutions, such as alternative resolution of disputes or procedural improvements.

The lack of adequate facilities, equipment, infrastructure and personnel often results in the denial or the unsatisfactory quality of justice, putting at risk the public's confidence in the judicial system.

The enforcement of judicial rulings sometimes raise also problems, especially, when the judicial system is not well organized as in the case of civil disputes without the useful institutions of bailiffs.

Problems could also arise in administrative proceedings where the state is involved as a party. It is clear that the effects of judgments should not be altered retrospectively to the detriment of the individual. The Rule of Law implies that the legislative or executive authorities of the state must not place themselves above the Law and that effective execution of judgments against the state should be ensured.

During the working session the exchange of views and the best practices in national systems will contribute to optimize good solutions. Improved administration of justice should be based on the principles of equity and transparency.

The Acceding Countries Bulgaria and Romania, the Candidate Countries Turkey, Croatia ¹ and the former Yugoslav Republic of Macedonia, the Countries of the Stabilisation and Association Process and potential candidates Montenegro and Serbia, EFTA country Norway, member of the European Economic Area, as well as Ukraine and the Republic of Moldova align themselves with this statement.

¹ Croatia and the Former Yugoslav Republic of Macedonia continue to be part of the Stabilisation and Association Process