



**HUMAN DIMENSION
S E M I N A R**

THE HUMAN DIMENSION SEMINAR

**Upholding the Rule of Law and Due Process in Criminal Justice Systems
Warsaw, 10-12 May 2006**

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 2006 Human Dimension Seminar will be devoted to *Upholding the Rule of Law and Due Process in Criminal Justice Systems* in accordance with PC Decisions No. 716 of 19 January 2006 (PC.DEC/716) and No. 723 of 30 March 2006 (PC.DEC/723).

Justice is rightfully recognized as a cornerstone of the rule of law, good governance and democratic order. The OSCE participating States have committed themselves to “*support and advance those principles of justice which form the basis of the rule of law*” and explicitly acknowledged that rule of law does not mean merely a formal legality but “*justice based on the recognition and full acceptance of the supreme value of the human personality and guaranteed by institutions providing a framework for its fullest expression.*”¹ In light of this understanding, a criminal justice system is seen as a part of the institutional framework that translates rule of law from an abstract principle into reality.

All OSCE participating States have undertaken international obligations and committed themselves to certain fundamental principles related to the administration of criminal justice. These obligations and principles are designed to ensure that criminal proceedings uphold the rule of law, guarantee the fairness of proceedings and create safeguards to protect human rights

II. Aims

This Human Dimension Seminar follows up on the Ljubljana Ministerial Council Decisions No. 3 and No. 12 that tasked the participating States to focus on criminal justice systems. In addition, the focus on the rule of law and due process in criminal justice systems is an important part of the Chairmanship's priority on the fight against organized crime: an effective and efficient fight against organized crime requires that the basics of the criminal justice system function properly, while respect for the rule of law and due process is crucial in ensuring the respect of human rights.

¹ Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (Copenhagen 1990), paragraph 2.

The 2006 Human Dimension Seminar will take a comprehensive look at criminal justice systems of the participating States and invite them to examine their adherence to OSCE human dimension commitments, most notably the 1990 Copenhagen Document and the 1991 Moscow Document.

The discussions will be structured in four Working Groups, corresponding to the four core institutions of a criminal justice system: the police, prosecutors, defense lawyers, and the judiciary. This approach will be conducive to a comprehensive review of the effectiveness of criminal justice systems and allow a focus on the fact that the system is a chain and can only be as strong as its weakest link. The seminar builds on earlier human dimension events that focused on particular institutions, including the 2002 Human Dimension Seminar on *Judicial Systems and Human Rights* and the 2005 Supplementary Human Dimension Meeting on the *Role of Defence Lawyers in Guaranteeing a Fair Trial*.

Seminar participants are invited to discuss interaction between these core criminal justice institutions, share the experiences and best practices from their States, and make recommendations to improve their operation and co-operation. The Seminar Agenda also invites discussion of specific procedural safeguards that ensure upholding human rights and fairness of criminal proceedings.

The ODIHR is preparing to distribute to the Seminar participants a set of reference materials with selected international standards relevant to the Seminar discussions. All documents related to the Seminar will be available at the OSCE/ODIHR website (www.osce.org/odihr) under *Meetings*.

III. Participation

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

Participation of experts on criminal justice systems and reform will be particularly encouraged. In this regard, participating States are requested to publicize the Seminar within their professional legal community and in academic circles and to include in their delegations, wherever possible, representatives of the core criminal justice institutions and experts on related issues.

The Mediterranean Partners for Co-operation and the Partners for Co-operation are warmly invited to attend and share their views and ideas on upholding the rule of law and due process in criminal justice systems.

All participants are encouraged to submit in advance written interventions describing their activities and 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 Sessions, free-flowing discussions and exchanges are encouraged during the Working Group sessions.

IV. Organization

The Seminar venue is the “Sofitel Victoria” Hotel in Warsaw, ul. Krolewska 11.

The Seminar will open on Wednesday, 10 May 2006, at 10:00. It will close on Friday, 12 May 2006, at 18:00.

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. An independent judiciary and due process in criminal justice systems;
2. Accountable and responsive policing in upholding the rule of law;
3. Role of public prosecutors in upholding the rule of law;
4. Defence lawyers as a fundamental pillar of an effective criminal justice system.

The closing Plenary session, scheduled for the afternoon of May 12th, shall focus on practical suggestions and recommendations for addressing the issues discussed during the Working Group sessions.

An OSCE/ODIHR representative will chair the Plenary sessions.

Standard OSCE rules of procedure and working methods will apply to the Seminar.

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 18:00.

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: 10:00 – 13:00
15:00 – 18:00

	Wednesday 10 May 2006	Thursday 11 May 2006	Friday 12 May 2006
Morning	Opening Plenary session	WG II	WG IV
Afternoon	WG I	WG III	Closing Plenary session

V. WORKPLAN

10 May 2006, Wednesday

10:00 – 13:00 Opening Plenary Session

Welcome and introduction from the Seminar Chair

Amb. Christian Strohal

Director of the OSCE/ODIHR

Welcoming Remarks

Amb. Frank Geerkens

Head of the OSCE Chairmanship Unit, Ministry of Foreign Affairs of Belgium

Mr. Janusz Stanczyk

Undersecretary of State, Ministry of Foreign Affairs of Poland

Keynote Speakers

Judge Fausto Pocar

President of the International Criminal Tribunal for the former Yugoslavia (ICTY)

Mr. Leandro Despouy

UN Special Rapporteur on the Independence of Lawyers and Judges

15:00 – 18:00 Working Group I:

An independent judiciary and due process in criminal justice systems

Moderator:

Dr. Vladimir Shkolnikov

Head of Democratization Department, OSCE/ODIHR

Introducers:

Dr. Tamara Morshchakova

Professor, Advisor to the Constitutional Court of the Russian Federation

Dr. Piotr Hofmański

Judge of the Supreme Court of Poland, Professor

Rapporteur:

Mrs. Maria Kostyanaya

Third Secretary, Permanent Mission of the Russian Federation to the OSCE

An independent judiciary has long been recognized by the OSCE participating States as an essential element of justice.² Independence of the judiciary is an established constitutional principle, not an abstract value. It has far-reaching implications for the protection of individual rights and ensuring due process of law.

² 1990 Copenhagen, paragraph 5.12.

The participants of this Working Group will be invited to discuss the importance of judicial independence in the context of criminal justice, also giving consideration to issues of organisation and management. Several clusters of issues are proposed for consideration.

The first deals with ensuring independence of judges vis-à-vis other branches of government and institutions of the criminal justice system. The relationships with the executive power and with the prosecution are of particular significance. Lack of institutional barriers to undue influence from these quarters threatens judicial independence and may lead to political and other pressure on the bench. Participants are invited to discuss the safeguards against such influence.

Experts often point out the need to balance judicial independence with measures to ensure judicial integrity. Indeed, the judiciary is rarely immune from corruption when it is prevalent in other areas of public life. Corruption undermines the fairness of criminal proceedings and the quality of justice. Participants are welcome to share their views on the measures to combat this while preserving judicial independence.

A separate cluster of issues is devoted to the role of judges in criminal proceedings and procedural safeguards to uphold human rights. This includes judicial supervision and review of actions taken by the law enforcement in the course of investigation. The participants are specifically invited to consider the responsibilities of judges with regard to allegations of ill-treatment and torture and the appropriate scope of judicial enquiry into such allegations.

Judges' responsibilities to ensure legality and fairness of the proceedings as well as effective remedy on appeal are greatly facilitated by an accurate trial record. In this regard, the participants are invited to discuss ways to ensure verifiable and accurate recordings of trial proceedings and share the experiences from their jurisdictions.

11 May 2006, Thursday

10:00 – 13:00 Working Group II:

Accountable and responsive policing in upholding the rule of law

Moderators:

Mr. Kevin Carty

OSCE Senior Police Adviser, SPMU

Mr. Tim Del Vecchio

OSCE Police Affairs Officer, SPMU

Introducers:

Dr. Fatih Karaosmanoglu

Deputy Director of the Institute for Security Sciences, Turkish Police Academy

Mr. Paal Christian Balchen

Assistant Chief of Police, Section for Analysis and Crime Prevention, National Police Directorate of Norway

Rapporteur:

Dr. Robin Brooks and Mr. Stephen F. Steger

Political Officers, United States Mission to the OSCE

Policing and, more broadly, the criminal justice system has a crucial role in building and maintaining the sense of effectiveness and fairness on which loyalty to democratic institutions depends. As a start, physical security is of paramount importance to the citizens of any country. When a State is unable to provide protection against the predatory activities of other citizens, the call for authoritarian alternatives grows. So the effectiveness of everyday policing and law enforcement matters greatly to the strength of popular support for democratic institutions and the rule of law.

Law enforcement also matters to democracy in terms of the sense of equality on which loyalty to democratic institutions also depends. A willingness to pursue corruption and to examine, without undue deference, the activities of the powerful and the well connected is an attribute of a strong criminal justice system that creates faith in democracy.

A police force is democratic when it responds to the needs of individuals and private groups as well as the needs of government. Democratic models of policing orient their activities primarily to the needs of the disaggregate public. What problems the public brings to the police to resolve and how the police respond are a clear indication of the extent to which democratic policing practices have been adopted. Democratic policing includes police forces that represent the society as a whole with balanced ethnic and gender representation reflecting the community at large.

Similarly, accountability to oversight institutions, independent of ruling regimes, is an important underpinning of democratic policing. These institutions may include courts, legislatures, the media, and complaint review boards or independent ombudspersons. Democratic police can be distinguished, ultimately, by their submission to and acceptance of outside supervision and examination.

Is the shortest path to a strong justice system in a fragile democracy the slow building of competence in the police and other law enforcement institutions, or does it require a forceful stand on issues of corruption, bias, political violence, and intimidation? That question is of fundamental importance for those trying to build democratic institutions and strong justice systems.

The Working Group participants are welcome to share their experiences and best practices from their countries on these issues.

**15:00 – 18:00 Working Group III:
Role of public prosecutors in upholding the rule of law**

Moderator: **Mr. Robert Adams**
Deputy Head of Democratization Department, OSCE/ODIHR

Introducers: **Mr. David Evans**
Office of the Director of Public Prosecutions, UK

Mr. Christopher Lehmann
Regional Director for Eurasia Programs, Office of Overseas
Prosecutorial Development, Assistance and Training, U.S.
Department of Justice

Rapporteur: **Ms. Frida Jangsten**
Second Secretary, Permanent Delegation of Sweden to the OSCE

Powers and the role that public prosecutors play in criminal proceedings vary significantly in the legal systems of the participating States. At the same time, prosecutors in all criminal justice systems play a major role in ensuring due process and protection of human rights. This Working Group will discuss how prosecutors fulfil that role.

The participants are invited to discuss the relationship between public prosecutors and the executive branch of government. The prosecution must preserve its autonomy in operational matters in all justice systems. The participants are invited to share experience from their States and make recommendations to limit unjustified interference by the executive in the prosecutorial realm and vice versa.

The functions of prosecutorial agencies and the scope of their duties are of particular importance to the participating States that are considering or implementing structural reform of their prosecution services. Should prosecutorial organs have any functions other than prosecution of criminal cases? How should the responsibilities for investigation of crimes be shared between the police and the prosecutors? How should gender equality be ensured in the prosecution service? How should prosecutors deal with gender-based violence? The participants are invited to share their views on these and related issues.

In this discussion, the participants specifically are invited to comment on the role of prosecutors in implementing paragraph 23.1(vii) of the 1991 Moscow Document, whereby the OSCE States committed themselves to ensure that law enforcement bodies do not take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess, or otherwise incriminate himself, or to force him to testify against any other person.

12 May 2006, Friday

**10:00 – 13:00 Working Group IV:
Defence lawyers as a fundamental pillar of an effective criminal justice system**

Moderator: **Dr. Vladimir Shkolnikov**
Head of Democratization Department, OSCE/ODIHR

Introducers: **Dr. Margarete von Galen**
President of the Berlin Chamber of Lawyers

Mr. Gennady Sharov
First Vice-President of the Federal Union of Lawyers, Russian Federation

Rapporteur: **Mr. Mustafa Osman Turan**
First Secretary, Permanent Mission of Turkey to the OSCE

In recognition of the essential role that defence lawyers play in administration of criminal justice, the OSCE devoted its Supplementary Human Dimension Meeting (SHDM) in November 2005 to the topic “*The Role of Defence Lawyers in Guaranteeing a Fair Trial.*” This session will follow up on the SHDM discussions and place them in the broader context of the Seminar.

In particular, the participants are invited to discuss the role of other actors in the criminal justice system, most notably the police and prosecutors, in ensuring access to legal counsel at all stages of the criminal proceedings. Access to legal assistance for defendants in custody continues to be a problem in some OSCE States. This problem acquires special significance for the countries where ill-treatment and torture in custody are frequent. Timely access to a lawyer is seen as one of effective safeguards against such abuses.

One of the SHDM recommendations to the participating States was to ensure non-discriminatory, transparent admission to the legal practice based on objective and fair criteria. The Working Group participants are welcome to share their experiences and best practices from their countries on this issue.

Ensuring equality of parties as a working principle of criminal procedure is dependent not only on appropriate legislative guarantees, but also on the institutional practices of the police, prosecutors, judges, and defence lawyers. The Working Group is invited to discuss the implementation of existing national legislation and suggest improvements that may further equality of arms in practice.

The relationship between procedural adversaries – prosecutors and defence lawyers – deserves special consideration. Ensuring their co-operation is vital to the protection of procedural rights of all persons involved in the criminal process. At the same time collusion between lawyers and prosecutors that is commonplace in some participating States often results in procedural violations and deterioration of fair trial standards.

15:00 – 18:00 Closing Plenary Session

Rapporteurs’ summaries from the Working Groups

Statements from Delegations

Closing Remarks

Amb. Christian Strohal
Director of the OSCE/ODIHR

Closing of the Seminar