

Austrian Presidency of the Council of the European Union

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

Opening Statement of the European Union

1. The European Union would like to thank ODIHR and the Belgian chairmanship for organising this Seminar on a very important and timely theme. The experience of the OSCE and participating States in the fight against organised crime and in efforts to combat the threat of terrorism clearly demonstrate that lawlessness and threats to society constantly shift their forms. We welcome the fact that Belgium has made the fight against organised crime a major theme of the chairmanship in 2006. Transnational in its nature, organised crime affects all participating States, both east and west of Vienna. In some instances the extent of organised crime goes so far as to threaten the institutions and political life of states.

2. The wrong response to new forms of criminality would be to weaken the protections which criminal justice systems must afford to those accused of even the most serious crimes. The European Union is convinced that any such move would be a grave mistake. We also recall the commitments made in the Copenhagen Document in 1990, in particular those relating to the rights of persons arrested or detained on a criminal charge. We are also mindful of the important rights guaranteed to accused persons under the Moscow Document of 1991 and of its provisions on the independent exercise of the functions of judges and legal practitioners and we scrupulously respect our commitments under UN, Council of Europe and other international instruments. These provisions remain fully relevant in all participating States and in all circumstances. Any retreat from the high standards which we have set for ourselves could indeed be seen as a victory for organised crime or terrorism.

3. The effectiveness of criminal justice systems is also part of our agenda. One important parameter of this effectiveness is the degree to which human rights are protected. Another is the quality of the protection against crime as well as the possibility

for citizens and society to find redress. Among other things, the issues of management of public resources and crime policy have to be addressed. All actors in the criminal justice system need to see themselves as part of a chain where each link depends on the other. Communication is therefore of paramount importance.

4. Earlier meetings within the Human Dimension give us a foundation for our current work, including the 2002 Seminar on *Judicial Systems and Human Rights* and the very rich work of the 2005 Supplementary Human Dimension Meeting on the *Role of Defence Lawyers in Guaranteeing a Fair Trial*.

5. The themes of the four Working Groups cover the full range of actors in criminal proceedings, judiciary, police, prosecutors and defence lawyers – not forgetting of course, prisons, which are the last but crucial part of the criminal justice chain, even if not a principal subject of this seminar. We look forward to fruitful discussions under all these headings.

6. The European Union hopes that these discussions will not remain at the level of general principles, but will also address the contribution which the OSCE and participating States can make to uphold the rule of law and due process in criminal justice systems. This discussion should encompass the work of the Secretariat, Institutions and Field Operations, interaction with national authorities and the role of civil society. We also need to consider where there is scope for closer cooperation with other international organisations and NGOs.

7. An important issue which should be considered during these discussions is whether we can translate these discussions into practicable guidance for OSCE Field Operations involved in assisting participating States in developing and reforming their criminal justice institutions. Over the past decade and more, the OSCE has gained much experience in advising and assisting in the reform of police, judiciary, criminal defence, prosecutors and prisons. Could the OSCE, and in particular ODIHR, do more to capture this experience, to learn lessons, disseminate good practice, and to ensure that current and future field staff are given the best instruction and training to deliver assistance and advise in the most effective way?

8. At the level of the judiciary it is difficult to avoid corruption if it is prevalent in other areas of public life. Yet at the same time the integrity and independence of the judici-

ary is fundamental to the administration of justice. Can OSCE make a greater contribution to eliminating corruption? Does trial monitoring have a role to play in strengthening the judiciary against outside influence and the threat of corruption? Can OSCE Field Operations play a greater role?

9. In policing the OSCE has considerable experience and expertise on which to draw. We should use these lessons learned when discussing the proposed "OSCE Guidelines on Democratic Policing". The EU attaches high importance to the OSCE's work on policing, in particular its practical support to police reform in various participating States, and therefore welcomes the Chairmanship's initiation of a discussion on guidelines. EU member states intend to contribute to this process. We also have some pertinent questions to ask with regard to policing: Is our work in this area contributing to more effective investigation of criminal matters? Are policing models in participating States as responsive to the needs of the citizen as to the needs of the State? Is OSCE active in building a culture which rejects torture and ill treatment as tools of investigation?"

10. Additional questions for this seminar would be: Is the work of prosecutors kept at an appropriate distance from the work of judges? Are prosecutors independent of the police or over dependent on them? What resources are needed to ensure an autonomous prosecution service?

11. Do defence lawyers face professional or other disadvantages for defending those accused of serious crimes? In systems where prosecutors and defenders are both publicly funded is there "equality of arms" between the two sides? Are defence lawyers sometimes too closely linked to the judicial or State authorities? A robustly independent and fearless criminal bar is a cornerstone of democracy, how can we promote such institutions throughout the OSCE area?

12. These are a few of the questions which we hope to see addressed during this seminar. Many EU Member States are eager to contribute to the discussions and to share their own national experiences and best practises. We also hope to gain insights into the experiences of others and to identify possible areas of cooperation which will bring us closer to our common goals and to the attainment of the standards to which all OSCE participating States have voluntarily committed. Our deliberations

here should be a major contribution to the work of the Human Dimension Implementation Meeting later this year.

The Acceding Countries Bulgaria and Romania, the Candidate Countries Turkey, Croatia and the former Yugoslav Republic of Macedonia¹, the Countries of the Stabilisation and Association Process and potential candidates Albania, Bosnia and Herzegovina, Serbia and Montenegro, EFTA countries Iceland and Norway, members of the European Economic Area, as well as the Republic of Moldova align themselves with this declaration.

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