

Human Dimension Seminar

Constitutional Justice

Warsaw, 14-16 May 2008

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 2008 Human Dimension Seminar is devoted to *Constitutional Justice* in accordance with PC Decisions No. 840 of 13 March 2008 (PC.DEC/840) and No. 845 of 17 April 2008 (PC.DEC/845).

The participating States have expressed their conviction that full respect for human rights and fundamental freedoms and the development of societies based on pluralistic democracy and the rule of law are prerequisites for progress in setting up the lasting order of peace, security, justice and co-operation that they seek to establish in Europe. The OSCE participating States have solemnly declared that “*the duty of the government and public authorities to comply with the constitution and to act in a manner consistent with law*” is among those elements of justice which are essential to the full expression of the inherent dignity and of the equal and inalienable rights of all human beings.¹

Participating States employ different institutional models to safeguard compliance with their constitutions. In some participating States this function is vested in special constitutional courts and tribunals, while in others judicial review of constitutionality may be carried out by ordinary (highest) courts. It is therefore necessary to cover all bodies authorized to carry out constitutional review.

Constitutional courts play a key role in upholding the rule of law in the OSCE area. They often resolve difficult disputes involving highest public offices of all branches of government. Their decisions often have far-reaching consequences for individuals’ constitutional rights. This Human Dimension Seminar will give the participants an opportunity to discuss the impact of constitutional courts and their decisions on the democratic development of OSCE participating States, and to highlight the current challenges they face.

This discussion will also ensure a timely continuation of the exchange of views on the rule of law and separation of powers at the 2007 Human Dimension Implementation Meeting. The HDIM debates underscored the importance of the checks and balances between the legislative, executive, and judicial branches of the government for accountability and democratic decision-making. Constitutional review is one of the key instruments for these purposes.

¹ 1990 Copenhagen Document, especially paragraph 5.3.

II. Aims

Seminar participants will exchange views on topical issues that affect the rule of law, constitutionalism, and separation of powers in the OSCE area. The Seminar aims to promote debate on horizontal accountability of state institutions and the role of constitutional review of legislative and executive actions, as well as stimulate exchange of opinions on the constitutional courts' contribution to strengthening the rule of law at national and international levels.

Participants will also be invited to identify lessons learned from assistance to strengthen constitutionalism and constitutional courts. This will further the participating States' commitment to encourage, facilitate, and support "*practical co-operative endeavours and the sharing of information, ideas and expertise among themselves and by direct contacts and co-operation between individuals, groups and organizations*" in the areas of "*constitutional law, reform and development*" and with regard to the "*establishment and management of courts and legal systems.*"²

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 constitutionalism and constitutional justice will be particularly encouraged. In this regard, participating States are requested to publicise the Seminar within their constitutional expert community and in academic circles and to include in their delegations, wherever possible, representatives of constitutional review bodies and 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 constitutional 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 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, 14 May 2008, at 10:00. It will close on Friday, 16 May 2008, at 18:00.

² 1990 Copenhagen Document, paragraph 26.

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. Constitutional justice and the rule of law;
2. Constitutionalism and the separation of powers: the role of the courts;
3. Access to constitutional justice;
4. Independence and the effectiveness of constitutional courts.

The closing Plenary session, scheduled for the afternoon of 16 May, 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.

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 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 14 May 2008	Thursday 15 May 2008	Friday 16 May 2008
Morning	Opening plenary session	WG II	WG IV
Afternoon	WG I	WG III	Closing plenary session

V. WORK PLAN

14 May 2008, 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

Mr. Pertti Torstila
Secretary of State, Ministry for Foreign Affairs of Finland

Mr. Witold Waszczykowski
Under-Secretary of State, Ministry for Foreign Affairs of Poland

Keynote Speakers

Mr. Gianni Buquicchio
Secretary of the European Commission for Democracy through Law (Venice Commission)

Dr. Marek Safjan
Professor of Law, Justice and President of the Constitutional Tribunal of Poland (retired)

**15:00 – 18:00 Working Group I:
Constitutional justice and the rule of law**

Moderator: **The Right Honourable Lord Falconer, QC LL.D**

Introducer: **Dr. Vojin Dimitrijevic**
Professor of Law, Director of the Belgrade Centre for Human Rights,
Member of the International Commission of Jurists, Serbia

Rapporteur: Mr. Alastair Long, UK

Constitutional courts play a key role in upholding the rule of law. Their jurisprudence helps ensure compliance of legislation with the constitution, thereby maintaining consistency in the legislative framework and safeguarding constitutional principles.

Participating States employ different institutional models for ensuring supremacy of constitutional provisions and safeguarding constitutional principles. While in some States this function is vested in the judiciary, specialized constitutional tribunals and councils have been created in other States. Some constitutional courts may only examine legislation which has entered into force, while others may also review legislative drafts. This Working Group will provide an opportunity to discuss the comparative advantages of different models, identify lessons learned from their activities, and highlight the common principles of constitutional justice.

Constitutional courts frequently define and interpret both constitutional rights and obligations. Importantly, constitutional courts also play a role in translating international legal obligations of a state, including international human rights law, into the domestic legal order. Many constitutional courts in the OSCE region refer to international instruments in their reasoning. Occasionally, they also determine the effect of these instruments on the national legal system. Participants in this Working Group will be able to discuss challenges and good practices in this area, including examples of co-operation between national constitutional courts and relevant international bodies when appropriate.

15 May 2008, Thursday

10:00 – 13:00 Working Group II:

Constitutionalism and the separation of powers: the role of the courts*

Moderator: **Mr. Edward Swaine**
Associate Professor, George Washington University School of
Law, United States

Introducer: **Dr. Renata Uitz**
Associate Professor, Central European University, Hungary

Rapporteur: Mr. Louis Simard, Canada

Constitutional courts have a special place in the system of separation of powers. They are often called upon to interpret and clarify the boundaries of authority of the executive and the legislature. In this role, constitutional courts not only provide a vital dispute-resolution function, but also safeguard constitutionalism and democratic governance.

Constitutional review is one of the strongest mechanisms of horizontal accountability of state institutions. This Working Group will give Seminar participants an opportunity to share experiences and good practices on the interaction of constitutional courts with other state authorities to ensure accountability.

Legal issues handled by constitutional courts cannot be neatly separated from the political context in which they arise. Constitutional courts are sometimes requested to

* All courts authorized to carry out constitutional review are hereinafter referred to as “courts”.

make decisions which impact policy-making. Participants are encouraged to discuss good practices and lessons-learned from constitutional courts' role in such issues, and suggest principles that could guide the courts.

The stability of the constitutional order facilitates legal certainty and coherence of legislative regulation. Frequent constitutional changes may undermine this stability. Constitutional courts across the OSCE area have also faced constitutional amendments resulting from reform in the distribution of powers between state authorities. What lessons transpired from such cases? Seminar participants are welcome to share their opinions on these and related issues.

**15:00 – 18:00 Working Group III:
Access to constitutional justice**

Moderator: **Dr. Adam Bodnar**
Polish Helsinki Foundation for Human Rights

Introducers: **Dr. Alexander Vashkevich**
Associate Professor, Justice of the Constitutional Court of
Belarus (retired)

Rapporteur: Mr. Lorenz Barth, Germany

Access to constitutional courts is one of the key factors that determines their impact and effectiveness. This access is especially important since constitutional courts are in the position to bring specific issues to the fore of public debate.

Some constitutional courts in the participating States are not accessible to individuals and civil society groups. Should the right of individual petition to a constitutional court become an explicit OSCE commitment? This Working Group offers an opportunity to discuss this and other pertinent issues.

Practices of co-operation with civil society vary across the OSCE area. While some constitutional courts allow interested groups to submit their views on pending cases (*amicus curiae* briefs and similar mechanisms), others offer no avenues for civil society to voice their opinions. Participants are invited to share their knowledge and views on good practices and make practical suggestions in this regard.

Media shows interest in important constitutional courts decisions. How can constitutional courts respond to this interest? How can constitutional courts ensure sufficient transparency? When can constitutional courts be accused of insufficient transparency? What guidelines should constitutional courts follow in this regard? What administrative arrangements are and should be made in constitutional courts to respond to public interest?

16 May 2008, Friday

**10:00 – 13:00 Working Group IV:
Independence and the effectiveness of constitutional courts**

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

Introducer: **Dr. Tamara Morshchakova**
Professor of Law, Deputy Chief Justice of the Constitutional
Court of the Russian Federation (retired)

Rapporteur: Ms. Valda Rukštelytė, Lithuania

As with other institutions endowed with judicial functions, independence is an indispensable enabling attribute for the proper performance of constitutional courts' duties. Constitutional courts are vulnerable to becoming targets of political pressure and influence. In this Working Group, participants will be invited to discuss the necessary safeguards and share examples of practices that ensure independence of constitutional courts and judges. Related questions include the professional qualifications of justices, their selection, appointment, and removal from the office.

The effectiveness of constitutional courts is undermined if their decisions are not enforced. Compliance with the constitutional courts' decisions is essential not only for the sake of legal certainty, but also for maintaining public trust in the legal system and the legal process. What factors influence compliance with constitutional courts' decisions and how can this compliance be improved in the participating States? Participants are invited to share experiences and good practices in this regard.

The effectiveness of constitutional courts may also be reduced by their inability to cope with the number of complaints they receive. Delays in the administration of constitutional justice may in urgent cases amount to denial of justice. What resources should be allocated by the participating States to prevent this from happening? What other practical measures may be taken to improve the administration of constitutional courts and their effectiveness?

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