

9th Winter Meeting of the OSCE Parliamentary Assembly

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and Human Rights (ODIHR)

at the

General Committee on Democracy, Human Rights and Humanitarian Questions



Vienna, 19 February 2010

Madame Chair and Mr Vice-Chair,
Honourable Members of the Parliamentary Assembly,
Ladies and Gentlemen,

It is a pleasure and a true privilege to address this distinguished gathering today, all the more so since the PA's Secretary-General has asked me to speak on the subject of the rule of law and ODIHR's activities in this field. Thank you, Chair, for inviting me to this Committee today. I am grateful to you personally, Mme Habsburg Douglas, for your energetic involvement in the OSCE's human dimension.

At the Human Dimension Seminar on the Rule of Law held in Warsaw in May last year, I emphasized **three reasons** why this topic is of particular importance to the OSCE. Allow me to repeat them here.

First, the rule of law should serve as the **foundation** for developing democratic institutions and the full realization of human rights. This is why the 1990 Copenhagen Document, which we will commemorate this year, reaffirmed that "*democracy is a an inherent element of the rule of law*" (para 3). It means that States **cannot hide**

behind “the law”. If it is not democratic, and if it fails to deliver justice, law risks turning into a tool of oppression. Without the foundation of a *Rechtstaat*, our human dimension of security disintegrates.

Second, the rule of law provides a framework for co-operation on other issues. The 2008 Helsinki MC Decision on Strengthening the Rule of Law rightfully underlines its **cross-dimensional character**. Our progress in other dimensions relies on the premise that rules will be followed.

Third, the rule of law enables us to **build and maintain trust**. This trust is vital for us as citizens and for the governments of our participating States. Reform efforts which seek to strengthen the rule of law should develop that trust, or risk ultimate failure.

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These considerations guide **ODIHR’s activities** in the field of rule of law assistance. Our activities supply policy-makers with the information and tools they need to **better implement their OSCE commitments** on the rule of law. We also work directly with the legal communities and other civil society actors to help them strengthen the rule of

law in our region. Let me give you **five examples** of these activities.

- ▶ Together with the ICTY, ODIHR initiated a project designed to strengthen the capacity of the jurisdictions in the region to process war crimes, in a manner that is consistent with international standards. This kind of **knowledge transfer** is crucial in view of the Tribunal's imminent closure.

- ▶ Another area of activities I would like to mention involves **trial monitoring** – a tool widely used in the OSCE area to gather information on the functioning of justice systems. It proved to be valuable both for designing reform and technical assistance projects, and as an instrument for **promoting fair trial guarantees** and upholding the independence of the judiciary in individual cases. To effectively serve these purposes, trial monitoring must be based on a sound, well-defined methodology and must be carried out by properly trained staff. To consolidate the expertise gathered by our Office and OSCE field operations, we have published a **reference manual** on trial monitoring.

Most recently, ODIHR was able to apply its trial monitoring methodology on the ground in **Armenia**. The final report from this project, presented to the Armenian authorities last November, includes a list of recommendations for reforms to address the identified shortcomings, including

- the need for better safeguards against arbitrary detentions, and
- further measures to improve the professionalism of judges.

We have received official comments from the Armenian authorities and look forward to follow-up discussions [after the publication of our report] later this year.

- ▶ Findings from trial monitoring operations provide a solid basis for another important area of ODIHR activities – **criminal justice reform**. We have focused our efforts on Central Asia, where we employ a full-time Rule of Law Coordinator to follow legal developments, liaise with our partners, and implement projects. We are currently preparing our annual *Expert Forum on Criminal Justice for Central Asia* that will be held in Dushanbe in June. I hope you will agree that this kind of exchange is important for

countries that have had to overcome the legacy of the past system where the judiciary was all but one of the transmission belts of power of the one-party state.

- ▶ As a fourth example, let me highlight a contribution to advancing the rule of law which may be of special interest to you as lawmakers – **legislative assistance**. Our Office reviews draft legislation, usually as part of a political dialogue with the authorities of the participating State. In 2009 alone, ODIHR issued 22 legal opinions on draft laws – ranging from political parties in Kyrgyzstan to the confidentiality of information in Serbia. The purpose of these reviews is to provide prompt advice **while legislation is being drafted**. This often involves the sharing of experiences and practices from other OSCE states that have dealt with similar issues.

- ▶ Finally, ODIHR is active in providing technical assistance to participating States in order to build their capacity to respect international human rights norms and international humanitarian law, while **countering terrorism**. In the same way, we have been able to examine key issues of concern to participating States, such as prevention of violent extremism and radicalization leading to terrorism.

Also in these fields, we facilitate the exchange of experiences between law enforcement experts and the sharing of lessons learned.

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Ladies and Gentlemen,

There is no universal recipe for success in building and maintaining the rule of law. But we do have our **joint commitment** to uphold its key principles and build a framework for their implementation.

I do not wish to sound alarmist when I say that democracy withers when parliamentarism worldwide is under the **undue influence of lobbies and corporations** that represent special interests rather than the *res publica*. Democracy dies in darkness, they say, and laws should not be made in a black box. **Greater transparency** and **inclusiveness** is a proven recipe against shadowy deal-making. In this, parliamentarians should lead the way. Vigorous inclusion of **civil society** in democratic law-making and the exposure of draft laws to the scrutiny of international and domestic organizations specialized in

international human rights and rule of law standards also help ensure that responsible and sound policy-making is **not replaced** by a lobbying competition.

I am of the opinion that the role of parliamentarians in **re-invigorating parliamentarianism** is imperative. And your work - elected by the people as you are - is not necessarily restricted to your national jurisdictions. Parliamentarians are natural agents of reform, and particularly rule of law reform, also **beyond your national borders**.

Legislators have a vested interest in promoting the rule of law - it underpins the very **functioning of parliamentarianism** - from elections to the floor debates; another reason why parliamentarians can lead by example in promoting the rule of law.

Thank you.