

OSCE Human Dimension Seminar

CONSTITUTIONAL JUSTICE



CONSOLIDATED SUMMARY

Warsaw, 14-16 May 2008

TABLE OF CONTENTS

I. OVERVIEW.....	3
II. CONCLUSIONS AND KEY RECOMMENDATIONS	4
III. AGENDA AND ORGANIZATIONAL ASPECTS	6
IV. PARTICIPATION	7
V. SUMMARY OF THE PROCEEDINGS	8
VI. WORKING GROUP REPORTS	11
Working Group I	11
Working Group II.....	14
Working Group III	17
Working Group IV.....	20
ANNEX I: ANNOTATED AGENDA.....	23
ANNEX II: OPENING AND CLOSING REMARKS.....	30
ANNEX III: INFORMATION ABOUT THE SPEAKERS.....	39

I. OVERVIEW

The Human Dimension Seminar on *Constitutional Justice* (Warsaw, 14-16 May 2008) invited representatives of the participating States, experts, and civil society actors to examine the role of constitutional justice in strengthening compliance with OSCE commitments in the human dimension. Seminar participants shared their experiences, discussed challenges faced by constitutional review bodies¹ in the OSCE region, and cited good practices that help address these challenges. Keynote speakers, introducers and moderators of the working group sessions made a particularly valuable contribution to the discussions.

Participants emphasized the critical importance of effective constitutional review for maintaining the rule of law in the OSCE area. Such effective review may only be delivered by impartial constitutional review bodies that enjoy independence from external pressures. Constitutional courts are vulnerable targets of such pressures, due to the frequently sensitive political and social context of the issues they handle. The need for the courts themselves to develop responsible approaches in order to resist this pressure, on the one hand, but ruling in complete awareness of the political context in which they operate, on the other, was deemed extremely important.

Seminar discussions highlighted that the rule of law, as it is defined and understood in the OSCE Human Dimension, requires constitutional justices to interpret their national constitutional provisions in the spirit of what the OSCE's Copenhagen Document of 1990 termed "the supreme value of human personality".² Protection by constitutional courts of this higher set of rules was, in the opinion of many participants, strengthened through regular dialogue and exchange of experiences between constitutional courts, as well as international tribunals in the OSCE area.

Special emphasis was placed on access to and accessibility of constitutional justice. Participants discussed the variety of models that enable individuals to address constitutional courts, and debated their comparative advantages. The existence of other channels – such as *amicus curiae* submissions – that allow for civil society input into constitutional court reasoning, was also seen as beneficial for the quality of constitutional justice. Greater transparency of court proceedings through live broadcast, publication of transcripts, and press-conferences were cited as good practices in accessibility that also foster greater public confidence in the justice system.

¹ Unless specified otherwise, the terms "constitutional court" and "constitutional review bodies" are used interchangeably throughout this report, i.e. the term "constitutional courts" refers to all judicial and quasi-judicial bodies of constitutional review.

² 1990 Copenhagen Document, para. 2.

The Seminar was not mandated to produce a negotiated text. Main conclusions and recommendations of the Seminar are included in Section II of this Summary. Reports prepared by the rapporteurs of the four working groups were presented at the closing plenary session and are reflected in Section V of this report. Recommendations – put forward by delegations of the OSCE participating States and Partners for Co-operation, international organizations, and NGOs – are wide-ranging and addressed to various actors including OSCE institutions and field operations, governments, courts and civil society. Seminar recommendations have no official status and are not based on consensus, however they should serve as useful indicator for the OSCE in setting priorities and planning its programmes aimed at promoting constitutionalism and the rule of law. Documents from the Seminar are available at: http://www.osce.org/conferences/hds_2008.html.

II. CONCLUSIONS AND KEY RECOMMENDATIONS

The Human Dimension Seminar was chaired by the then Director of the ODIHR, Ambassador Christian Strohal. The Chairman addressed the opening and the closing plenary sessions (see Annex II) and expressed appreciation to all participants for their contributions to the Seminar. The Chairman also stressed the need to ensure follow-up on the Seminar discussions. The following conclusions and key recommendations emerged from the plenary and working group sessions.

Conclusions

An independent judiciary and the rule of law are cornerstones of peaceful and democratic societies. The rule of law safeguards democracy, and relies on an independent, impartial, and professional judiciary to uphold it. Effective functioning of constitutional review bodies is a guarantee for some of the most basic elements of the rule of law.

Constitutional courts play an important role in ensuring the supremacy of constitutional provisions. They are also pivotal in ensuring the fulfilment of obligations in international law, including international human rights law. Obligations assumed at the international level, including those translated into domestic legislation through constitutional provisions, should be fully implemented in order to protect the rights of all.

Constitutional courts are also an integral part of a system of checks and balances to ensure that power is not confined to the executive, but shared with an independent judiciary and a representative parliament. Constitutional courts are able to interpret and clarify the boundaries of authority for the executive and legislature, ensure the accountability of state institutions, and assist in maintaining the stability of constitutional order.

Constitutional courts, as guardians of the constitution, have the final word in the review of the conformity of the acts of all state authorities with the constitution. The rule of law requires an effective implementation of

constitutional court judgements against these state authorities to ensure that the legislature and the executive are not placed above the law.

All OSCE participating States have committed themselves to protect the right to a fair trial (Vienna 1989), to ensure the independence of the judiciary and compliance of all authorities with the constitution (Copenhagen 1990), and to respect internationally recognised standards relating to the impartial operation of the public judicial service (Moscow 1991). Courts must enjoy the conditions required to function effectively and fairly in all participating States of the OSCE.

Constitutional courts should be mindful of the larger political and social context of the disputes before them, as well as the foreseeable consequences of their judgments. Decisions of constitutional courts should not penalize policy-makers, but rather make it clear to them what policy choices are forbidden for constitutional reasons.

Access to justice must be guaranteed both in law and in practice. Access to justice can be impeded if courts are unable to render their decisions within a reasonable time. Participating States should enhance the principle of access to justice by simplifying and accelerating judicial proceedings, while preserving fundamental procedural safeguards. Substantial delays in the administration of justice and the increasing workload of courts should be addressed through effective and practical solutions, including improved case-management, additional clerks for judges, and fast-track procedures for certain types of cases.

Legal education is crucial for the comprehension and development of the rule of law in our societies. It should foster not only knowledge of the positive law, but inculcate in future legal professionals the values inherent to the rule of law and human rights as they are defined and understood within the OSCE's Human Dimension.

Key recommendations

To the participating States:

- All state authorities must respect the independence of constitutional courts and ensure that constitutional courts are free from political pressure in their decision-making.
- Judgments of constitutional courts should be final, respected by all state authorities, and implemented in a timely manner and in good faith. All public officials, including judges, should be aware of the role of constitutional courts and the imperative to comply with their judgments.
- Participating States should ensure the adequate financial independence of constitutional courts and allocate sufficient resources for their efficient functioning.

- Nomination procedures for constitutional court justices should contain sufficient safeguards to ensure their impartiality and freedom from undue influences by political or business interests.
- Participating States should develop an appropriate model of constitutional complaints for individuals, taking into account internationally-recognized standards for effective legal remedies and the need to maintain efficiency of constitutional justice.
- Constitutional courts should allow for civil society input into their decision-making process through the use of *amicus curiae* briefs and similar mechanisms. Such mechanisms may also facilitate a more comprehensive examination of evidence and well-informed decision-making.
- Constitutional courts should take steps to improve the transparency of their proceedings through, *inter alia*, means such as live broadcasts/webcasts of court hearings and publication of transcripts;
- Constitutional courts should regularly publish full judgments, including concurring and dissenting opinions, and their summaries.
- Participating States should develop and maintain effective and accessible administrative justice systems as a pre-requisite for ensuring vertical accountability of state institutions and the rule of law.

To the OSCE, its institutions and field operations:

- Promote greater awareness of the OSCE human dimension commitments also among constitutional justices.
- Facilitate contacts and exchanges of experiences among constitutional review bodies of the participating States and with international courts and tribunals.
- Develop, promote and support activities that strengthen the rule of law and constitutionalism in the participating States, including enhancing compliance with the constitution by all public authorities and improving the effectiveness of legal remedies.

III. AGENDA AND ORGANIZATIONAL ASPECTS

The Seminar on *Constitutional Justice* was organized by the ODIHR in co-operation with the Finnish Chairmanship of the OSCE in accordance with PC

Decisions No. 840 of 13 March 2008 (PC.DEC/840) and No. 845 of 17 April 2008 (PC.DEC/845).

This was the 24th event in a series of specialized Human Dimension Seminars organized by the ODIHR further to the decisions of the CSCE Follow-up Meetings in Helsinki in 1992 and in Budapest in 1994. The previous Human Dimension Seminars were devoted to: Tolerance (November 1992); Migration, including Refugees and Displaced Persons (April 1993); Case Studies on National Minorities Issues: Positive Results (May 1993); Free Media (November 1993); Migrant Workers (March 1994); Local Democracy (May 1994); Roma in the CSCE Region (September 1994); Building Blocks for Civic Society: Freedom of Association and NGOs (April 1995); Drafting of Human Rights Legislation (September 1995); Rule of Law (November /December 1995); Constitutional, Legal and Administrative Aspects of the Freedom of Religion (April 1996); Administration and Observation of Elections (April 1997); the Promotion of Women's Participation in Society (October 1997); Ombudsman and National Human Rights Protection Institutions (May 1998); Human Rights: the Role of Field Missions (April 1999); Children and Armed Conflict (May 2000); Election Processes (May 2001); Judicial Systems and Human Rights (April 2002); Participation of Women in Public and Economic Life (May 2003); Democratic Institutions and Democratic Governance (May 2004); Migration and Integration (May 2005); Upholding the Rule of Law in Criminal Justice Systems (May 2006); and Effective Participation and Representation in Democratic Societies (May 2007).

The Annotated Agenda of the Seminar is supplied in Annex I. The Seminar was opened on Wednesday 14 May 2008, at 10:00 and closed on Friday, 16 May 2008, at 16:30. All plenary and working-group sessions were open to all participants. The closing plenary session in the afternoon of 16 May focused on practical recommendations emerging from the four working group sessions. The plenary and working group meetings took place in accordance with the Work Programme. Ambassador Christian Strohal, then Director of the ODIHR, chaired the plenary sessions. The Rules of Procedure of the OSCE and the modalities for OSCE meetings on human dimension issues (PC.DEC/476) were followed, *mutatis mutandis*, at the Seminar. Also, the guidelines for organizing OSCE meetings (PC.DEC/762) were taken into account. Discussions were interpreted into all six working languages of the OSCE.³

IV. PARTICIPATION

The Seminar was attended by 179 participants, among them 101 representatives of 39 OSCE participating States.⁴ Seven participants of three

³ According to paragraph IV.1(B)1. of the OSCE Rules of Procedure (MC.DOC/1/06), working languages of the OSCE are English, French, German, Italian, Russian, and Spanish.

⁴ Delegations of the following participating States included relevant experts (based on the information submitted at the time of registration): Albania, Armenia, Belarus, Germany, Hungary, Ireland, Italy, Kazakhstan, Kyrgyzstan, former Yugoslav Republic of Macedonia,

Mediterranean Partners for Co-operation (Algeria, Egypt, and Tunisia) also took part in the Seminar.

Two representatives of the European Commission for Democracy through Law (Venice Commission), 18 representatives of OSCE institutions and field operations, and 34 representatives of 31 non-governmental institutions and organizations⁵ participated in the Seminar.

V. SUMMARY OF THE PROCEEDINGS

The then Director of the ODIHR, Ambassador Christian Strohal, opened the Seminar. Welcoming remarks were made by Mr. Pertti Torstila, Secretary of State, Ministry for Foreign Affairs of Finland on behalf of the Finnish Chairmanship of the OSCE, and Mr. Witold Waszczykowski, Under-Secretary of State, Ministry for Foreign Affairs of Poland.

Two keynote speakers addressed the opening plenary session: **Mr. Gianni Buquicchio**, Secretary of the European Commission for Democracy through Law (Venice Commission) and **Dr. Marek Safjan**, Professor of Law, Justice and President of the Constitutional Tribunal of Poland (retired).

The opening plenary session was followed by four consecutive working groups on the following topics.

Working Group I: Constitutional justice and the rule of law

Issues discussed included, *inter alia*:

- Separation of powers and a strong independent judiciary as cornerstones of constitutionalism and the rule of law;
- Definitions of the rule of law. Differences between a law-based state (*Rechtsstaat*) and the rule of law as defined in OSCE human dimension commitments; the related duty of constitutional courts to interpret national laws in the spirit of international law and human rights;
- The role of all courts, including administrative tribunals, in ensuring compliance with the constitution;
- Constitutional courts as key actors in developing and strengthening the tradition and practice of separation of powers;

Montenegro, Poland, Romania, Serbia, Russian Federation, Tajikistan, United States, and Uzbekistan.

⁵ Based on the information submitted at the time of registration, representatives of non-governmental institutions and organizations came from Belarus, Germany, Georgia, Hungary, Italy, Kazakhstan, Kosovo, Kyrgyzstan, Moldova, the Netherlands, Poland, Russian Federation, Turkmenistan, Ukraine, and Uzbekistan.

- Challenges constitutional courts are facing in different countries of the OSCE area and the need for all political actors to respect constitutional court judgments;
- The added value of regular contacts and exchange of experiences among constitutional courts in the OSCE area.

Working Group II: Constitutionalism and the separation of powers: the role of the courts

Issues discussed included, *inter alia*:

- The mandate of constitutional courts to decide on conflicts regarding the separation of powers and their consequent involvement in politically-charged matters;
- Guiding principles for constitutional courts involved in political disputes;
- Realization of constitutional rights as a judicial check on other branches of power; the political context of constitutional rights and consequences for the constitutional courts;
- Protection of individual rights and prevention of abuse of state authority as the ultimate objectives of the concept of separation of powers;
- Abstract versus causal interpretation of constitutions and the advantages of both instruments for constitutional courts;
- The relationship between constitutional courts and ordinary courts in some countries of the OSCE area and the impact on implementation of constitutions;
- The importance for all constitutional courts to be aware of each other's jurisprudence and decisions of international courts;
- The necessity of responsible approaches by constitutional courts when dealing with cases in sensitive political and social contexts.

Working Group III: Access to constitutional justice

Issues discussed included, *inter alia*:

- Individual petitions to constitutional courts and the implications of different models in the participating States on access to and quality of constitutional justice;
- Access to constitutional court proceedings and good practices in promoting greater transparency and better public understanding of constitutional justice;
- Ombudsman participation in constitutional court proceedings;
- *Amicus curiae* briefs and similar mechanisms that allow for civil society input into constitutional court reasoning and facilitate better-informed decision-making by constitutional courts;
- Appeal to the constitutional court as an effective legal remedy under the European Convention on Human Rights (ECHR);
- The important role of lawyers in constitutional court proceedings; building professional capacity of lawyers able to effectively grasp and articulate

- constitutional issues; the importance of legal education;
- Concurrent and dissenting judicial opinions and their impact on the development of constitutional jurisprudence.

Working Group IV: Independence and effectiveness of constitutional courts

Issues discussed included, *inter alia*:

- Constitutional safeguards of judicial independence;
- Appointment procedures for constitutional justices and political influences: ensuring impartiality of judicial decision-making;
- Fixed-term versus lifetime appointments and their comparative advantages;
- Disciplinary procedures and impeachment of judges;
- Financial independence of constitutional courts as a key element of judicial independence;
- Challenges to independence of the judiciary – experiences from the OSCE area;
- Implementation of constitutional court decisions – political will and the need for greater awareness.

VI. WORKING GROUP REPORTS

After the opening plenary session of the Seminar, discussions took place in four consecutive working groups. The following reports are prepared on the basis of notes taken by the ODIHR note-takers and presentations of the rapporteurs, who summarized the working group discussions at the closing plenary session. These reports cannot exhaustively convey the details of the rich working group discussions but rather aim to identify their common salient points. The recommendations from working groups were not formally adopted by the Seminar participants and do not necessarily reflect the views of any participating State.

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, Serbia

Rapporteur: Mr. Alastair Long
Second Secretary, United Kingdom Delegation to the OSCE

Working Group I focused on constitutional justice and the rule of law. The Moderator, Lord Falconer, stressed that one could not have a constitution in force without a separate means of enforcing it. He emphasized the importance of the separation of powers and strong courts to ensure the enforcement of the constitution. Where the rule of law did not prevail, a constitution could be ignored by the executive. Fundamental freedoms required something independent of the State to enforce them.

Lord Falconer outlined five basic principles to be adhered to in ensuring the required separation of powers: judges needed to be independent; appointed independently; removed only in cases of misconduct or incapacity; neither rewarded or punished for their judgments; and free to decide how to hear the cases before them. He also pointed out that democracy cannot survive without the rule of law and rule of law without an effective judiciary.

The Introducer, Dr. Vojin Dimitrijevic, called on the participants to consider the definition of the rule of law, especially for the relatively new participating States of the OSCE who are coming from traditions based on the principle of unity of power. The rule of law in the original strict sense suggested that the government should be run by rules and not by men, with the origins of this idea traceable to ancient documents and writings of philosophers. In such a

legal state (*Rechtsstaat*), judges subsume a situation under a rule and make the necessary conclusions.

Dr. Dimitrijevic then highlighted the OSCE definition of the rule of law, which he described to be closer to the Common Law tradition. As reiterated in a decision from the 2005 Ljubljana Ministerial Council “the rule of law does not mean merely a formal legality which assures regularity and consistency in the achievement and enforcement of democratic order, 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.”⁶ Dr. Dimitrijevic suggested that the difference between this definition and the *Rechtsstaat* is ascribable to the Anglo-Saxon tradition which makes it possible – only based on the sense of the rule of law that was higher than the positive law – to have a country where the rule of law and separation of powers prevail without the existence of specific institutions to guarantee them. Therefore the British courts were able to examine at all levels the constitutionality and conformity of the legislative acts with the principles of the rule of law, which contained principles above the positive law. Thus the courts in the UK and other Common Law countries were able to act as constitutional courts to a certain extent without being called such, and even the lower courts have retained the rights to review constitutionality of certain acts.

Dr. Dimitrijevic recalled that most Socialist countries did not have constitutional courts and that the gradual introduction of separation of powers in these States occurred only in the past few decades. He suggested discussing whether constitutional courts in practice follow the model of a positivist *Rechtsstaat* that takes into account primarily the consistency of the legal system with the constitution, or also act as protectors of a higher set of rules based on human rights.

Recalling that further to the same Ljubljana decision “the rule of law must be based on respect for internationally recognized human rights”, the Introducer pointed out that before the end of World War II these principles were considered political and existed in some countries, but not in others. However, currently human rights are of universal value to all democratic countries and judges would be inclined to compare the legislative acts with the most important international human rights instruments. The Introducer expressed hope that these internationally recognized norms will thus work for the entrenchment of the rule of law in its wider sense.

In the discussion that followed a number of OSCE participating States described the workings of their constitutional courts, while other participants highlighted shortcomings observed with constitutional courts and their role in upholding the rule of law. The many competences of constitutional courts – alongside their original function to compare legislative acts with the constitution – were highlighted. For example, in various jurisdictions they receive complaints of human rights violations, decide on election results, on the prohibition of political parties, on impeachment, on how to implement the

⁶ MC.DEC/12/05, 6 December 2005, p. 1.

decisions of international courts, and settle conflicts of jurisdiction. Some participating States described how their constitutional courts had shaped almost every aspect of the legal order.

Some participants highlighted the importance of history and local tradition for the development of constitutional courts and called for a recognition of the time required for young democracies to see true separation of powers established. It was suggested that the model with specialized constitutional courts (rather than the Common Law approach) was more effective in the countries which do not have a tradition of separation of powers.

It was also pointed out that the judicial control exercised by administrative courts should not be forgotten in the discussion of judicial review. Participating States should develop and maintain effective and accessible administrative justice systems as a pre-requisite for ensuring vertical accountability of state institutions and the rule of law.

A number of participants highlighted provisions in their constitutions granting power to the people, when in practice their rulers disingenuously assumed this power on behalf of the people. They stressed the need for constitutions to exist not only on paper but be fully implemented. It was considered important that decisions of courts be respected by the executive, the legislative and other courts, even when unpopular with these authorities.

The role of constitutional courts in interpreting international legal provisions and incorporating them into domestic law was raised in a number of contexts. Dr. Dimitrijevic commented that it was perhaps more the notion of courts seeking to interpret national legislation in a manner friendly towards international norms than seeking strict compliance. One participating State described the close co-operation between its constitutional court and the European Court of Human Rights. It was noted that, for the member countries of the Council of Europe, the European Court of Human Rights was in effect a constitutional court, as was the European Court of Justice for EU Member States.

Specific recommendations included:

To the participating States

- constitutional courts should arrive at their judgments based on constitutional provisions and balanced considerations of all relevant interests involved;
- constitutional court judgments should be respected by the executive and all other public authorities;
- constitutional court judgments should be final and binding;
- agree on the minimum responsibilities of constitutional courts;

- develop and maintain effective and accessible administrative justice systems as a pre-requisite for ensuring vertical accountability of state institutions and the rule of law;

To the OSCE, its institutions and field operations

- train judges of constitutional courts in legal writing and legal reasoning;
- design projects aimed at informing citizens of their right to appeal to constitutional courts.

Working Group II:

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

Moderator: Dr. 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
Counsellor, Delegation of Canada to the OSCE

The Moderator, Professor Edward Swaine, launched the session by referring to a seminal court case in the United States, which largely defined the parameters for the separation of powers in that country – *Marbury v. Madison*. He then introduced the speaker, Dr. Renata Uitz.

Professor Uitz began by emphasizing that European constitutional courts, by design, are aimed at deciding on issues related to the separation of powers. It is thus in the very mission of constitutional courts to become involved in politically sensitive scenarios. Therefore, the question should not be whether it is appropriate for constitutional courts to become involved in political disputes, but rather what makes the behaviour of a court appropriate or inappropriate in a particular politically-charged scenario.

A court performing constitutional review is one of many legitimate interpreters of a constitution in any exchange on matters of public interest – although it is a privileged one. In this exchange, a constitutional court is a specialist which applies unique tools of reasoning and renders a decision which, as a rule, is final and binding. It is crucial that when finding a statute or governmental act unconstitutional, the court does not punish the government, but signals which avenues or solutions are “off limits” to the political actors for constitutional reasons. Once a court has spoken, these actors are expected

to continue with their actions in the light of what the court ruled, respecting its decision to the full.

Disputes within the political branches may include questions about the appointment of the executive and dismissal powers, the power of the president to dissolve the legislative assembly or the power of parliament to impeach the president. Other important types of cases regarding separation of powers involve the powers of independent governmental agencies and independent commissions of inquiry, and importantly, the review of delegated legislation. Constitutional justices shape the powers of the executive and the legislative when they review the constitutionality of election rules or regulations governing the qualification of candidates. Dr. Uitz recalled the decision of the Lithuanian Constitutional Court on whether it was constitutional to ban an impeached president from running for the presidential office again.

Constitutional courts have played a key role in ensuring judicial independence. This role is especially acute in cases related to judicial budgets and judicial pay.

Courts run an increased risk of conflict when their decisions imply unexpected government spending. Usually courts take that into consideration and often give time for the government to prepare. However, when such time is not given, it can cause problems with the political branches. Interfering with an administration's spending plan may have consequences for a constitutional court's own budget.

Constitutional courts are part of a system of checks and balances. This is clearly demonstrated in cases where the courts themselves clash with the political branches in cases about constitutional rights, for example the German constitutional court striking down many pieces of anti-terrorism legislation. Constitutional rights are not *per se* political, but could be seen as political due to the unique national context.

Dr. Uitz concluded by emphasizing that by the internal logic of constitutional review, courts cannot avoid being part of political controversy, but they should be prepared and assess the political impact of their decisions as it is their responsibility to preserve democracy and the rule of law, and meaningfully protect human rights.

In the discussion that followed, many participants shared the view expressed by Dr. Uitz that courts inevitably will be involved in making decisions that have an impact on the political or social agenda, or public policy of a state.

There are a number of conditions for such action to be legitimate and be perceived as such. Courts have to be independent and perceived as such. Their decisions must not be politically motivated. Courts are impartial arbiters, they are guided by the supremacy of the constitution and are there to interpret the law and the constitution. They are not, and must not be driven by political motives.

However, courts must take into account the impact that their decision will have on the political, social or budgetary context. This may necessitate a balancing of the rights or establishing a hierarchy of rights. One participant referred to the deference that the courts in her country afford to the political branch, allowing it a broad discretion in certain matters such as international relations and financial matters.

In addition, the respect which constitutional courts enjoy also affords some protection from criticism when their decisions have an impact on political matters, as the courts will be seen as above the political fray and not politically motivated. This public trust, in turn, will facilitate respect for their decisions by the other branches, and their enforcement.

The method of appointing judges was mentioned by a number of participants as one element relevant to the questions of independence, impartiality and, ultimately, legitimacy of constitutional courts and their decisions. Dr. Uitz commented that, beyond the method of appointment itself, it was important to build in safeguards so that judges are free from political influences once appointed to the bench.

The question of the modalities for changing the constitution was also alluded to during the session. The conditions for triggering or initiating constitutional changes will vary from country to country, but the stability of the constitution was viewed as an important element.

Another issue raised by a participant was the refusal of courts to assume jurisdiction, which may leave complainants without any recourse. The role of an Ombudsman was mentioned in this context as well.

A number of delegates (from Italy, Germany, Georgia, Kazakhstan, Kyrgyzstan, Russia, Belarus, Algeria) described, in various degrees of detail, how the constitutional justice system of their respective countries operates. For their part, some NGO participants (notably from Tajikistan and Belarus) described what they saw as important *lacunae* in the constitutional justice systems in their countries. In particular, they questioned the independence of the judiciary and noted that access to courts was constrained significantly.

Dr. Uitz concluded the session by highlighting a number of key questions raised by participants. Among others, she mentioned the comparison of various models of constitutional justice, the method of appointment of judges, the issue of standing before the courts, and the need for mutual co-operation between the political branches and the judiciary.

Specific recommendations included:

To the participating States

- ensure that decisions of constitutional courts are final, binding, and duly implemented;

- review and improve the effectiveness of legal remedies available to the individuals whose constitutional rights are infringed upon by public authorities;

To the OSCE, its institutions and field operations

- facilitate more contacts and exchanges of experiences among constitutional courts of the participating States and with international courts and tribunals;
- promote greater awareness of the OSCE human dimension commitments also among constitutional justices.

Working Group III:

Access to constitutional justice

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

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

Rapporteur: Dr. Lorenz Barth
Counsellor, Permanent Mission of Germany to the OSCE

The Introducer, Dr. Vashkevich, underlined the role of constitutional courts not only in interpreting the Constitution, but also in promoting democratic and constitutional values in a society. He presented a brief overview of different models across the OSCE region with regard to individual constitutional complaints.

While the Common Law system represents a decentralized model of constitutional review, any affected individual may initiate review of constitutionality of the applicable acts in courts. By contrast, the European model of constitutional review typically provides for a specialized judicial or quasi-judicial organ and enumerates the subjects who have a standing to address it. This normally includes: members of parliaments, ordinary courts, ombudsmen or similar institutions, and individuals.

Dr. Vashkevich briefly commented on these four groups of applicants. While most constitutional courts in the OSCE area allow applications from the legislators, it is important to allow access to groups of parliamentarians in the opposition (for example, the Portuguese and Russian constitutional courts are open to applications from 1/5 of MPs). Countries who allow petitions only from the entire legislature or one chamber may in practice limit access to constitutional justice for the parliamentary opposition.

Most constitutional courts are open to applications from the general courts. Dr. Vashkevich noted that while this mechanism seemingly works well in some countries (for example in Lithuania and Italy), it is barely resorted to in others, especially in some countries of the Commonwealth of Independent States. He welcomed views on how these participating States could increase the role of general courts in bringing issues to the level of constitutional review bodies.

Ombudsman and similar human rights institutions have access to constitutional courts in many countries of the OSCE, including Armenia, Albania, Georgia, Spain, Latvia, Moldova, Poland, Portugal, and others. Many of these institutions actively use this right on behalf of individuals. In addition, some Ombudsman institutions, for example in Latvia, also actively participate in constitutional court proceedings through *amicus curiae* submissions.

The majority of OSCE participating States with specialized constitutional courts and tribunals give standing to address these courts to individuals who can claim that their constitutional rights were infringed. This creates additional legal remedies for the protection of constitutional rights, but has other positive aspects as well, such as an opportunity to defend public interests through individual action. Introduction of some form of individual constitutional complaint is currently being considered in Moldova, Ukraine, and Belarus.

Dr. Vashkevich also called on the participants to discuss possible ways of avoiding unmanageable workloads for constitutional courts that might result from individual complaints. He also drew attention to the CODICES database maintained by the Venice Commission as an important resource and suggested to boost the ODIHR's Legislationline.org website with more constitutional justice content.

In his capacity as Moderator, Dr. Bodnar suggested discussing good practices in ensuring greater transparency of constitutional justice. He gave examples from the Polish Constitutional Tribunal. In addition to regular publications of judgments, the Tribunal also publishes summaries of judgments prepared by court clerks. The Tribunal is open to visitors and also broadcasts some of its most important hearings online (webcast). Importantly, it holds press-conferences after highly-publicized cases to explain the Court's reasoning and decisions to the public. One of the participants added to this list a good practice from another jurisdiction – publication of transcripts of court hearings on the Internet.

Discussions about individual complaints to constitutional courts also highlighted different approaches with regard to the scope of such complaints: a full constitutional appeal, where the petition may address an unconstitutional rule or unconstitutional application of a constitutional rule, or limited appeal that may only challenge the constitutionality of a rule, as in many Eastern and Central European countries.

Participants gave examples of constitutional court measures to cope with heavy caseloads. These included additional staff (law clerks) for constitutional judges; letters from the court registrar to applicants whose cases are evidently inadmissible or devoid of merit; fines for lawyers for manifestly unfounded or abusive appeals; making legal representation in constitutional courts compulsory; and fast-track procedures for cases of high urgency or public importance. The importance of the principle of subsidiarity regarding individual appeals to constitutional courts was also highlighted in this context – i.e. all other available administrative and judicial remedies should be exhausted before the constitutional complaint is made.

The Moderator also encouraged discussion of *amicus curiae* submissions and similar instruments. Such instruments create avenues for civil society input into the constitutional court decision-making process. A participant also pointed out that constitutional courts could benefit from *amicus curiae* briefs as sources of additional evidence and arguments for their judgments, while the process of preparing such briefs may serve as a good educational tool for law students.

Participants repeatedly stressed the need for professional and articulate legal representation in constitutional courts. It was suggested that additional training may be needed for lawyers to be admitted to appear in constitutional courts.

Several participants highlighted the importance of maintaining constructive relationships between constitutional and ordinary courts in the participating States. Conflicts between these institutions not only negatively impact legal certainty but also undermine public trust in the judiciary.

Specific recommendations included:

To the participating States

- give standing to petition constitutional courts to individuals, groups of individuals, NGOs, legal entities, and national human rights institutions on their behalf;
- constitutional courts should allow for civil society input into their decision-making process through the use of *amicus curiae* briefs and similar mechanisms; such mechanisms may also facilitate a more comprehensive examination of evidence and well-informed decision-making;
- improve legal education and training of lawyers to facilitate better access to constitutional justice;
- provide qualified support staff such as law clerks to constitutional judges;
- make legal representation in constitutional courts compulsory;

- constitutional courts should take steps to improve the transparency of their proceedings through, *inter alia*, means such as live broadcasts/webcasts of court hearings and the publication of transcripts;
- constitutional courts should regularly publish full judgments, including concurring and dissenting opinions, and their summaries.

Working Group IV:

Independence and 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
Attache, Ministry of Foreign Affairs of Lithuania

The Introducer outlined three aspects essential for guaranteeing the independence and effectiveness of constitutional courts. These are: a) the status of judges of constitutional courts, including questions of their appointment, term of office, professional qualifications and procedures for their removal from office; b) procedures applicable to the administration of constitutional review by constitutional courts; and c) organizational aspects of the work of constitutional courts, including the financial independence of courts as a fundamental element of their independence and effectiveness. These points were developed in the subsequent discussion.

It was noted that the *European Charter on the Statute for Judges* as a collection of the guiding international principles in this field stipulates that the laws governing the status of judges should be of the highest level, such as the constitutional laws and other similar laws.

While general standards governing the status of judges are applicable to judges of constitutional courts, additional safeguards should be put in place to ensure that justices of constitutional courts are free of any potential political pressure in their work.

The concept of irremovability of constitutional judges was noted as an important guarantee of constitutional courts' independence. Participants noted that terms of appointment should not be too short and that appointment for a second term, where it is allowed, may be at odds with judicial independence, as the threat of non-reappointment may be used as an

instrument of pressure on the judge and/or create inappropriate incentives for judges.

The appointment of judges for life has been acknowledged as an effective way of guarantying their independence, with the advantage of minimizing the risk of reprisals. However, some participants noted that this type of appointment also “raises the stakes” for political actors and carries an added risk of political interference in the appointment process.

The appointment procedures of constitutional court judges should enshrine guarantees that exclude appointments based on political considerations. In addition, legislators should avoid changing the rules governing the appointment of judges in any way that may award or punish the judges for their decisions by changing their tenure.

Participants also emphasized that long experience in the legal profession should not be considered as the only and ultimate criteria for judicial appointments to constitutional courts. It was emphasized that constitutional court judges should be able to interpret laws and pass opinions not only according to the letter of the law, but should be able to understand and appreciate the spirit of the law.

With regard to removal of judges from office, it was noted that impeachment should only be evoked in most severe cases of gross professional misconduct, and decisions on impeachment of a judge should be taken by the judiciary and/or a professional independent body, and not the executive.

The importance of effective and timely implementation of constitutional court decisions was stressed as a fundamental issue since delays in the implementation of judgments constitute a denial of justice.

The question of responsibility for implementation of constitutional court decisions was discussed by various participating States of the OSCE who also presented their individual practices. It was emphasized that the responsibility for implementing constitutional court decisions remains with the executive and other structures. It was furthermore noted that in many participating States no sanctions are foreseen for the non-implementation of constitutional court decisions.

Still related to the implementation of decisions, some participants highlighted the situation from their jurisdictions when further action is necessary to enforce the decision of a constitutional court – such as amendment of a law by the parliament, or provision of remedies by the government. It was pointed out that failure of the responsible state bodies and agencies to take such action results in denial of justice and diminishes the authority of constitutional courts.

Decisions of constitutional courts should be well-founded and should avoid mere allusions to concepts such as national security. This will increase better public trust in the administration of constitutional justice.

It was also noted that there is no better effective oversight over constitutional courts than broad social control which should be ensured, *inter alia*, by free public access to the hearings and decisions of constitutional courts.

Finally, adequate funding and financial independence of constitutional courts were noted as fundamental in guaranteeing the overall independence of constitutional courts.

Specific recommendations included:

To the participating States

- legislators should avoid changing the rules governing the appointment of judges in any way that may award or punish the judges for their decisions by changing their tenure;
- impeachment of constitutional justices should only be evoked in most severe cases of gross professional misconduct; decisions on impeachment of a judge should be taken by the judiciary and/or a professional independent body, and not the executive;
- apart from impeachment, judges should be held accountable under disciplinary procedures and such procedures should be regulated in conformity with international standards;
- judgments of constitutional courts should be respected by all state authorities, and implemented in a timely manner and in good faith; all public officials, including judges, should be aware of the role of constitutional courts and the imperative to comply with their judgments;
- ensure adequate financial independence of constitutional courts and allocate sufficient resources for their efficient functioning;

To the OSCE, its institutions and field operations

- develop, promote and support activities that strengthen the rule of law and constitutionalism in the participating States including strengthening compliance with the constitutions by all public authorities and improving the effectiveness of legal remedies.

ANNEX I: ANNOTATED AGENDA



HUMAN DIMENSION S E M I N A R

Constitutional Justice

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 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 are called upon to resolve difficult and often bitter disputes involving highest public offices of all branches of government. Their decisions often have far-reaching consequences for individuals’ constitutional rights and obligations. 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 checks and balances between the legislative, executive, and judicial branches of the government for

¹ 1990 Copenhagen Document, paragraph 5.3.

accountability and democratic decision-making. Constitutional review is one of the key instruments for these purposes.

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.

² 1990 Copenhagen Document, paragraph 26.

The Seminar will open on Wednesday, 14 May 2008, at 10:00. It will close on Friday, 16 May 2008, 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. 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 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

Representative of the Finnish Chairmanship

Representative of the Polish Government

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, Serbia

Rapporteur: Mr. Alastair Long

Second Secretary, United Kingdom Delegation to the OSCE

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 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: **Dr. 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
Counsellor, Delegation of Canada to the OSCE

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 frequently requested to make decisions which impact policy-making. This may lead to clashes with other branches of government. Participants are encouraged to discuss good practices and lessons-learned from constitutional courts' role in such issues, and suggest principles that should guide the courts.

* All courts authorized to carry out constitutional review.

The stability of the constitutional order facilitates legal certainty and coherence of legislative regulation. Frequent constitutional changes undermine this stability. Constitutional courts across the OSCE area have faced constitutional amendments resulting from reform in the distribution of powers between state authorities. What lessons transpired from such cases? What considerations have guided constitutional courts in their decision-making? 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

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

Rapporteur: Dr. Lorenz Barth
Counsellor, Permanent Mission of Germany to the OSCE

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 to the fore of public debate issues that otherwise do not receive sufficient public attention.

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 considerably 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.

Relationship with the media is closely linked with the previous clusters of issues. Constitutional courts often find themselves under pressure from the media or stand accused of insufficient transparency. What guidelines should constitutional courts follow in that regard? What administrative arrangements are and should be made in constitutional courts to respond to these criticisms?

16 May 2008, Friday

**10:00 – 13:00 Working Group IV:
Independence and 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
Attache, Ministry of Foreign Affairs of 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 court 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

ANNEX II: OPENING AND CLOSING REMARKS

Opening Remarks by Ambassador Christian Strohal, Director of the ODIHR

Excellencies,
Ladies and Gentlemen,

Welcome to this seminar, representatives of governments, members of constitutional courts, representatives of other international and non-governmental organizations, and other members of the “OSCE family”.

On occasions like this, it is customary to highlight the importance of the topic and explain its significance for our annual Seminar. I am in a fortunate position because I do not need to do that today. It would be sufficient to simply open up a newspaper to learn, for example,

- That the Spanish Constitutional Court recently reiterated the need for effective investigation of all allegations of torture;
- That the Czech Senate just asked the Constitutional Court to examine whether the Lisbon treaty, which sets down new rules of the EU, is in harmony with the Czech constitutional order;
- That the US Supreme Court recently ruled that states can require voters to produce photo identification in order to cast their ballots, prompting an outcry from some civil liberties groups;
- And the complexities facing the Turkish Constitutional Court in the case of AK Party are publicized all too well to be described in detail.

In other words, constitutional justice is not something we need to bring to the fore of public attention – it is very much there. And of course for every case that makes the headlines, there are dozens of lower profile cases in which constitutional courts review, and if necessary strike down, laws and other enactments. This work is the backbone of the rule of law.

There are several very good reasons to discuss constitutional justice in the context of an OSCE Human Dimension Seminar, which – I recall – is conceived to “address specific questions of particular relevance to the Human Dimension and of current political concern” (1992 Helsinki Document). Let me mention three of these reasons.

First, constitutional justice is paramount to the rule of law in our societies. Constitutions set the basic legal framework that other laws build on. Constitutional courts (and let me clarify that the term constitutional courts, for

ease of reference, includes all bodies authorized to carry out constitutional review) are tasked with preserving this framework.

But the role of constitutional courts is even more challenging than that. They also have to make sure that constitutional foundations withstand the pressures of subsequent construction, or that the clock set in motion by the constitutional founders continues to show the accurate time.

This brings me to the second reason. Constitutional courts are key actors in the protection of human rights. They are frequently called upon to define the content of constitutional rights, set the standards – and sometimes also the limits – of their judicial protection, and to resolve collisions between different rights.

Finally and crucially, constitutional courts deal with the issues that are at the core of OSCE business – conflict prevention. Time and again, examples from across the OSCE region highlight the burden that courts have to carry in resolving particularly difficult disputes. This is especially true of election-related matters. The impact of constitutional court decisions in these cases may be explosive – unfortunately, on occasion, also quite literally - but these decisions do provide the basis for rectifying shortcomings, both in law and in implementation.

These three points should be sufficient to leave little doubt that the topic of this Seminar is of particular relevance to the Human Dimension.

You will note from the Agenda that the Seminar is structured in four Working Groups.

The first Working Group will be devoted to constitutional justice and the rule of law. There is no shortage of important issues that could be discussed in this session. Among them are the different institutional models for ensuring the supremacy of constitutional provisions and the common principles of constitutional justice.

The second Working Group on constitutionalism and the separation of powers will give us a good opportunity to continue the discussion we had on this issue at the last HDIM. As we know very well, constitutional courts are frequently called upon to venture into difficult political questions and make decisions which impact policy-making.

The third Working Group on access to constitutional justice invites us to discuss the relationship of constitutional courts with civil society and related issues. We would particularly welcome your views on whether the right of individual petition to a constitutional court could be discussed as a possible explicit OSCE commitment.

Finally, the fourth Working Group will focus on the independence of constitutional courts and their effectiveness. In this context, the importance of implementation of court decisions is also key.

At the outset, we will of course hear from two distinguished keynote speakers. I am very pleased that both Gianni Buquicchio and Marek Safjan responded to our invitation.

The Venice Commission, represented today by its Secretary, Gianni Buquicchio, is the international expert body when it comes to constitutional justice. Gianni is not only a good friend but an institutional partner of the ODIHR – our Office enjoys a unique level of co-operation with the Venice Commission in an increasing number of fields – from elections to freedom of assembly and freedom of religion or belief. One example of this close and privileged co-operation will have to suffice, but it is very telling indeed: all reviews of electoral legislation are now either carried out jointly with the Venice Commission or are co-ordinated between our two institutions.

Dr. Safjan does not need a special introduction for anyone here in Poland and indeed in the region. He played a leading role at the Constitutional Tribunal in Poland during challenging times. His experience and insight will certainly benefit our participants.

With that, let me wish us all an interesting Seminar, and also concrete recommendations we can build on for our follow-up. I am grateful to the moderators and introducers who responded to our invitation and I look forward to hearing from all of you in the next three days.

It is my particular pleasure to give the floor to the representative of the Chairman-in-Office, Secretary of State Pertti Torstila, who has accompanied the CSCE process from its very beginning and is witness to the importance of the 1975 Helsinki Final Act to the subsequent transformation process in the region. I also welcome Under-Secretary of State Waszczykowski from our host country Poland, who will play an important contribution to the follow-up to our discussions.

**Welcoming Remarks
by Mr. Pertti Torstila,
Secretary of State, Ministry for Foreign Affairs of Finland**

Mr. Chairman,
Excellencies,
Ladies and gentlemen,

It is a great honour to address the first regular OSCE Human Dimension meeting of the year 2008 in the name of the Finnish OSCE Chairmanship. I would like to express the Chairmanship's deep appreciation to Ambassador Strohal and his professional team at the Office for Democratic Institutions and Human Rights for organising this seminar on Constitutional Justice.

The theme "Constitutional justice" reflects the values of the respect for human rights and fundamental freedoms, the rule of law and democracy on which the OSCE's work is built and which the Finnish Chairmanship in 2008 wants to emphasize.

The OSCE participating States have committed themselves to significant standards to ensure the realisation of the rule of law. In Copenhagen in 1990 they acknowledged that the rule of law cannot be realized without giving effect to certain principles of justice. They include the realisation of the equal and inalienable rights of all human beings as well as the duty of the government and public authorities to comply with the constitution, their accountability and the duty to act in a manner consistent with law.

In line with the commitments undertaken every participating State has the right to choose and develop, in accordance with their international obligations, their judicial systems which may consist of different institutional models. I would like to make a few remarks on how the Finnish system meets the commitments undertaken by Finland.

In March 2000 the new Constitution of Finland entered into force. The aim of the constitutional reform was to harmonize and modernize existing constitutional acts as well as to increase the clarity and the coherence of constitutional provisions. Following European constitutional tradition the Constitution contains the basic provisions of government and the relationships between the government and those who are governed, including provisions on fundamental rights.

In order to ensure implementation of constitutional provisions, effective and impartial supervision is needed. The idea of a constitutional court in Finland comes up from time to time, but such a court has not been established.

Instead of a separate constitutional court, all instances of the judicial system are involved in the monitoring that constitutional provisions are implemented. When applying law all courts of law must take constitutional provisions into consideration and apply the law in a manner favouring basic rights and

liberties of the individual. In their reasoning the courts often refer to the international human rights obligations Finland has undertaken.

In addition to this the highest guardians of law - the Chancellor of Justice of the Government and the Ombudsman of the Parliament - have a special duty to monitor the realisation of basic rights and liberties and the legality of the decisions of authorities and courts.

In the legislative process constitutional review is ensured by the Constitutional Law Committee of the Parliament. The highest courts in Finland - the Supreme Court and the Supreme Administrative Court - may submit proposals to the Government for the initiation of legislative action.

Ladies and gentlemen,

Any system of constitutional justice is open to improvements. International human rights obligations of states give the framework in which these improvements should be made. The **principle of openness** should be applied to official court documents. **Transparency in court proceedings** is essential in guaranteeing that individuals can follow how law, including their constitutional rights, is applied. **Access to justice** is another key principle to be cherished. Individuals should be provided with information on how to seek their rights in courts of law, the right to be heard, the right to receive a reasoned decision and the right of appeal, as well as other guarantees of fair trial.

This seminar will provide an excellent opportunity to exchange best practices on the role of courts in guaranteeing implementation of constitutional provisions and what role individuals seeking their rights have in that process. The Finnish Chairmanship looks forward to fruitful, forward-looking discussions which may guide the OSCE participating States in their future efforts. We value the work undertaken by the OSCE and its institutions, in particular the ODIHR, in assisting the participating States in strengthening the rule of law. The participating States themselves bear the responsibility for upholding the respect for human rights and the rule of law.

Thank you.

**Welcoming Remarks
by Mr. Witold Waszczykowski,
Under-Secretary of State at the Ministry of Foreign Affairs
of the Republic of Poland**

Mr. Chairman, Excellencies, Ladies and Gentlemen

On behalf of the Government of the Republic of Poland I am pleased to welcome distinguished participants of this human dimension seminar, representatives of participating States, OSCE institutions and field operations, inter-governmental and non-governmental organizations.

Let me express appreciation to the Warsaw Office for Democratic Institutions and Human Rights for preparing this important meeting and giving us the opportunity to exchange information and to discuss the subject of constitutional justice. My appreciation goes also to the Finnish Chairmanship of the OSCE (I welcome very warmly distinguished Minister Mr. Pertti Torstila), which coordinates all activities of the Organisation in the year 2008.

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 international order, peace, security, justice and co-operation. 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.

Even though OSCE participating States use different institutional models to safeguard compliance with their constitutions, constitutional courts play a key role in upholding the rule of law in the OSCE area, ensuring compliance of legislation with the constitution. Thereby they contribute to the consistency, harmony and order in the legislative framework and to the protection of constitutional principles and the rule of law.

Constitutional courts have a special place in the system of separation of powers. One of their main task is to clarify the boundaries of authority of the executive and the legislature and interpret interdependence between them.

Poland has quite a long tradition of constitutional justice, since we were the first state in this part of Europe to create such a court back in 1985. My country then still struggled with the authoritarian regime, but the establishment of the constitutional court might be seen as a harbinger of a radical changes in the political and judicial system which took place four years later.

This human dimension seminar will give us an opportunity to discuss the impact of constitutional courts and their decisions on the democratic development of participating States, and to highlight the current legal, political and administrative challenges they face. Our 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 in Warsaw.

Ladies and Gentlemen

Let me use this opportunity to reiterate, that Poland highly values the work of the Warsaw Office for Democratic Institution and Human Rights and its Director, Ambassador Christian Strohal. The Office is one of the premier instruments of the OSCE providing essential help in the practical implementation of commitments and democratic values, as well as one of the key OSCE's assets in the human dimension framework, and practical tools in bridging the existing gap between national commitments and reality.

Government of Poland is proud to contribute to the OSCE human dimension cooperation by hosting in Warsaw the headquarters of the OSCE Office for Democratic Institutions and Human Rights.

I am confident that meeting will produce tangible and significant results. The agenda of the meeting offers the possibility to exchange views on the range of issues related to the constitutional justice. I hope our guests representing wide geographical and professional spectrum will share their ample experience and expert knowledge, what would further contribute to the common understanding of the role and importance of the constitutional justice. A critical analysis of the issues on the agenda of this conference will help us fulfill commitments undertaken in the framework of the Helsinki process.

I wish you fruitful deliberations. I am confident that the professionalism of Ambassador Christian Strohal and his team, proved by the excellent organization of this event, will contribute to its success.

Finally, let me take this opportunity to invite you, on behalf of the Ministry of Foreign Affairs, to a reception at 6 Foksal Street, 7 p.m. tonight.

Thank you.

Closing Remarks
by Ambassador Christian Strohal,
Director of the ODIHR

Excellencies,
Ladies and Gentlemen,

It is almost a banality to say that there are different models of constitutional review across our region. We have heard over the past three days that constitutional courts exercise varying scopes of jurisdiction and powers. There are also models without separate constitutional courts. Courts are accessible to different claimants – individuals, legal persons, and state organs. Equally, there are considerable differences in the way courts exercise their functions, in their reasoning, and their pronouncements. We have learned about different procedures for selecting justices and different ways in which they interact with the public.

But we also heard much about unity. And it is that unity that brought us together for this Seminar and kept our discussions so lively and enriching. It is the unity of purpose: we are here because we all want to develop and maintain peaceful democratic societies based on the rule of law and the realization of human rights. It is that unity of values that underpins the OSCE's existence.

Our rapporteurs have already coped with an extremely difficult task to summarize nearly three days of fruitful, intense, and interesting discussions. I would like only to pick up a few recurring themes – threads of conversation that ran through all the sessions in this Seminar.

First, constitutional justice paves the way for the maintenance of the rule of law. Gianni Buquicchio rightfully made a call for “living constitutions” in his keynote address. Constitutional justice brings constitutions to life, and gives the rule of law its frame of reference. The value of constitutions is not in their volume, or age – it is in their effect, in the conditions they create for human development.

Many of you have stressed that this is not merely a national process. Internationalization of constitutional law and the penetration of national legal orders by international law was mentioned here not only in the context of the need for more co-operation between national constitutional courts, but also with regard to international courts which have become constitutional tribunals at the international level.

Processes of internationalization certainly intensify the need for better access to constitutional justice for the individuals affected by unconstitutional action – as demonstrated by the rich debates in our yesterday's session. Again, references were made to the national and international levels.

The words “politics” and “political” were mentioned frequently in the last two days. It was rightfully pointed out that constitutional courts by their institutional

design have to handle politically sensitive matters. Their ability to do so with due care and competence strengthens our democracies.

Finally, it all comes to the people in the robes. Independence and impartiality of constitutional judges were mentioned very often – because without these two attributes any justice is impossible to achieve, and constitutional justice is no exception.

This Seminar addressed some fundamental issues at the heart of the Human Dimension. But what conclusion can we draw from these themes? I suggest that as a follow up we should start assessing whether constitutional themes such as the separation of powers or judicial review could be specifically addressed within the OSCE *acquis*, and particularly as part of additional commitments.

Ladies and Gentlemen,

I would like to conclude by thanking everyone for their interest and participation in this Seminar. The Chairmanship is to be complimented on the choice of this timely topic, and I am especially grateful to the delegations who brought here judges and experts whose participation made our debates so rewarding and worthwhile.

My words of appreciation go to the speakers – keynotes, introducers, and the moderators – for their stimulating contributions. We were very fortunate to have the benefit of their expertise, insight, and experience. I will also want to use this opportunity to thank the rapporteurs who have gone into much greater detail regarding each session than I was able to do here. As always, the Report from this Seminar will be posted on our website.

Special thanks to the interpreters. Let me also give extra credit to the staff in ODIHR's Rule of Law Unit who, under punishing timelines, worked very hard to make this event success.

Above all, I am also grateful to all of you for sharing your knowledge and your ideas with us. This was especially facilitated by a number of OSCE delegations which brought constitutional experts and practitioners to Warsaw. This supplied us with ideas and suggestions that will enrich our programmes for many months to come.

Thank you and have a safe trip home.

ANNEX III: INFORMATION ABOUT THE SPEAKERS

Gianni Buquicchio

After graduation from the University of Bari, Mr. Buquicchio worked at the University's Institute of International Law and Political Science in 1967-1971. He was recruited by the Council of Europe's Directorate of Legal Affairs in 1971. He had a professional career in progressively responsible positions at the CoE, rising to the position of Head of the Division of the Legal Advice Department and Treaty Office in 1990.

In 1990 Mr. Buquicchio was also appointed Secretary of the newly created European Commission for Democracy through Law (Venice Commission) in 1990. In 1996 he left the Legal Advice Department and Treaty Office in order to devote time exclusively to the work of the Venice Commission.

As Secretary of the Commission, contributed to its successful establishment and development (created by 18 member States of the Council of Europe, today this body has 57 European and non-European member States), by ensuring the conception, preparation and follow-up of projects concerning constitutional reforms and the setting up of democratic institutions within Europe and beyond. Has established and maintained high-level relations and has represented the Commission vis-à-vis persons at the highest political and judicial levels in member States and vis-à-vis international authorities.

Mr. Buquicchio frequently lectures and publishes articles, in particular on the activities of the Venice Commission. He is a member of Member of the scientific council of the Foundation "Venice for Research on Peace" and Member of the Executive Committee of the International Association on Constitutional Law (IACL).

Mr. Buquicchio is the Grand Officer of the Order of Merit of the Italian Republic (2002). He was also awarded Femida/Themis Prize (Russian Federation) in 2002; Medal of Honour of the President of the Republic of Albania in recognition of his contribution to constitutional and legislative reform in Albania (2003); Knight of the Legion of Honour (France, 2004); Cross of commander of the Republic of Lithuania (2005), and Commander of the Order "Star of Romania" (2006).

Marek Safjan

Dr. Safjan graduated from the Faculty of Law and Administration of Warsaw University in 1971 and received a judge's certificate in 1973. He earned his Juris Doctor degree in 1980 and a Habilitated Doctor's degree in 1990. He is a professor of legal sciences since 1998.

Between 1993 and 1996 Dr. Safjan served as Director of the Institute of Civil Law of Warsaw University. From 1996 to 1997 he was a deputy rector of Warsaw University and is a professor in the Chair of Civil Law of that

University. He represented Poland in the Committee on Bioethics of the Council of Europe. He is a chairperson of the Scientific Council of the Administration of Justice Institute, and is engaged in the work of Committee on Ethics in the Science at the Polish Academy of Sciences. He is also a corresponding member of the Polish Academy of Science and Arts.

In 1997 Dr. Safjan was appointed a Justice of the Constitutional Tribunal. In January 1998 he was appointed the Tribunal's President. He served in that capacity until he retired from the bench in 2006.

Dr. Safjan is a member of Association Internationale de Droit, Ethique et Science (since 1990), Académie Internationale de Droit Comparé (since 1995) and Association Henri Capitant des Amis de la Culture Juridique Française, in which he served as Secretary-General of the Polish Section from 1994 to 1998. He is also a member of the Polish Helsinki Committee.

Dr. Safjan is an author of over 150 scholarly publications, including 18 books on civil law, medical law and the EU law.

Charles Falconer

Educated at the Edinburgh Academy, Trinity College, Glenalmond, and Queens' College, Cambridge, Lord Falconer practised from Fountain Court Chambers in London and became a Queen's Counsel in 1991.

In May 1997 Lord Falconer was made a life peer as Baron Falconer of Thoroton and joined the government as Solicitor General for England and Wales. In 1998 he became Minister of State at the Cabinet Office. He joined the Department for Transport, Local Government and the Regions as Minister for Housing, Planning and Regeneration after the 2001 election and moved on to the Home Office in 2002. At the Home Office he was responsible for criminal justice, sentencing and law reform.

In June 2003 Lord Falconer became the Lord Chancellor and the first Secretary of State for Constitutional Affairs (a position created originally to replace the position of Lord Chancellor). In conjunction with the then Lord Chief Justice Lord Falconer worked out a detailed new relationship between the judiciary and the executive, which was embodied in the Constitutional Reform Act 2005.

His reforms included the creation, for the first time, of a Supreme Court for the UK, the creation of a commission to appoint judges, making a full-time independent judge the Head of the Judiciary for England and Wales, and introducing an elected Speaker for the House of Lords. In 2007 he became the first Secretary of State for Justice, bringing together courts, prisons and justice policy for the first time.

In May 2007 the Department for Constitutional Affairs (DCA) became the new Ministry of Justice with an enhanced portfolio. Upon that reorganization taking effect on May 9th, 2007, Lord Falconer became the

first Secretary of State for Justice, while keeping the title and role of Lord Chancellor. He held that office until the Cabinet changes in late June 2007.

Edward Swaine

Professor Swaine is a graduate of Harvard University and Yale University Law School. Before joining the faculty of George Washington University in 2006, Professor Swaine was an Associate Professor of legal studies and business ethics at the Wharton School and had a secondary appointment as an associate professor at the University of Pennsylvania Law School. During a 2005-2006 leave from the University of Pennsylvania he served as the Counsellor on International Law at the U.S. Department of State. After graduating from law school, where he was the editor-in-chief of the Yale Law Journal, he clerked for the late Judge Alvin B. Rubin of the U.S. Court of Appeals for the Fifth Circuit, was a member of the civil appellate staff at the U.S. Department of Justice, and practiced law at the Brussels office of Cleary, Gottlieb, Steen and Hamilton, where his work focused on European Community law and antitrust.

His research interests include public international law, foreign relations law, and international antitrust, and he has published work in the American Journal of International Law, Columbia Law Review, Duke Law Journal, Harvard International Law Journal, Stanford Law Review, University of Pennsylvania Law Review, Virginia Journal of International Law, William and Mary Law Review, and Yale Journal of International Law, among others. He has consulted on matters involving treaty law, antitrust, intellectual property, and international litigation and arbitration.

Renata Uitz

Renata Uitz is Associate Professor of comparative constitutional law at Central European University in Budapest. She received her Dr. iur. degree (*summa cum laude*) from Eotvos Lorand University, Faculty of Law, Budapest and her LL.M. and SJD degrees (*summa cum laude*) from Central European University.

Her research interests include comparative constitutional adjudication, constitutional rights protection, transition to democracy, and problems of transitional justice, the rule of law and constitutionalism in post-authoritarian societies. She teaches courses on comparative constitutional law, separation of powers, comparative constitutional adjudication and transitional justice. Her publications in English, Hungarian and Russian include over 20 scholarly articles, book chapters and three books. Her most recent book is *Europeans and their Rights: Freedom of Religion* (2007).

Adam Bodnar

Adam Bodnar is a member of the Board of the Helsinki Foundation for Human Rights (Warsaw), and supervises the Foundation's legal programmes, including Strategic Litigation Programme, Human Rights and Settlements with the Past, and Legal Intervention Programme. He is also an assistant

professor in the Human Rights Chair of the Warsaw University. Adam Bodnar graduated from the Warsaw University (M.A., 2000, Ph.D., 2006) and Central European University in Budapest (LL.M. in Comparative Constitutional Law, 2001). Before joining the NGO sector, Adam Bodnar worked as an associate for Weil Gotshal & Manges, Warsaw office (1999 – 2004).

Dr. Bodnar published several articles on constitutional law, EU law and human rights. His book on “*Multilevel citizenship. Status of an individual in the EU*” will be published in June 2008 by Wydawnictwo Sejmowe (in Polish). Adam Bodnar is an expert of the Agency for Fundamental Rights of the European Union, advising on the situation concerning human rights’ protection in Poland. He is also a representative of several applicants before the European Court of Human Rights.

Vojin Dimitrijevic

Dr. Dimitrijevic has held the position of Director of the Belgrade Centre for Human Rights since its foundation in 1995. Until 1998, he was a professor of Public International Law and International Relations at the University of Belgrade Law School. He is also a member of the Presidency of the Civic Alliance of Serbia and was President of the Yugoslav Association for International Law. Dr. Dimitrijevic is a member of the Venice Commission for Democracy through Law and of the Institut de Droit International.

Dr. Dimitrijevic obtained his doctorate at the University of Belgrade and holds Honorary Doctorates from the McGill University in Montreal and the University of Kent in Canterbury. In 2001, he was bestowed the order of the Legion d'Honneur by the President of France Jacques Chirac. He also served as a member of the UN Human Rights Committee from 1982 to 1994 and served as its Rapporteur and Vice-Chairman during this time. He was elected as an ICJ Commissioner in April 2003. He has lectured at many universities in Yugoslavia and abroad and has published numerous books and articles on human rights issues.

Alexander Vashkevich

Dr. Alexander Vashkevich is Associate Professor at the Department of the International Law at Belarusian State University and a former Justice of the Constitutional Court of Belarus. He teaches Comparative Constitutional Law and European Human Rights Law and has published extensively on constitutional justice and human rights issues. Dr. Vashkevich is the head of the working group of Belarusian experts that carries out compatibility study of Belarusian legislation and practice with the ECHR and the case-law of the European Court of Human Rights. From 1997 until 2004 he was a co-founder and Executive Director of a leading legal think tank in Belarus - Belarusian Center for Constitutionalism and Comparative Legal Studies.

Dr. Vashkevich was a Senior Fulbright Scholar at the American University in Washington D.C., Fellow of the British Institute of Comparative and International Law in London, as well as Fellow of Max Planck Institute for

Comparative Public Law and International Law in Heidelberg, Germany. He was also a Visiting Scholar at the Center for European, Russian and Eurasian Studies of the University of Toronto. Dr. Vashkevich is an individual member of the International Association of Constitutional Law, member of the OSCE/ODIHR Panel of Experts on the Freedom of Assembly, member of the LAWSS-Legal Alumni Web of the Salzburg Seminar and expert of the Council of Europe.

Tamara Morshchakova

A graduate of Moscow State University, Dr. Morshchakova was a researcher at the Academy of Sciences' State and Law Institute and then the Institute of Soviet Law and Comparative Legal Studies from 1958 to 1991. She was one of the authors of the Concept of Judicial Reform in the Russian Federation approved by the Parliament in 1991. She was a member of the Constitutional Council and a working group to draft the 1993 Constitution and the Law on the Constitutional Court.

Dr. Morschakova was appointed a Justice of the Constitutional Court in 1991. She served as a Deputy Chair of the Court from 1995 to 2002. She retired from the Constitutional Court in 2002 but continues to participate in its work in advisory capacity. She is also a member of the Academic-Advisory Council of the Supreme Court and a member of the Council for Improvement of Justice and the Council for Civil Society Promotion and Human Rights created by the President of the Russian Federation.

Dr. Morshchakova is a law professor at the Graduate School of Economics in Moscow. She has authored over 130 publications on the judiciary and judicial reform, criminal procedure, constitutional review, and related issues.