

SUPPLEMENTARY HUMAN DIMENSION MEETING

**“ROLE OF DEFENCE LAWYERS IN GUARANTEEING A
FAIR TRIAL”**

**3-4 November 2005
Tbilisi, Georgia**

ANNOTATED AGENDA

OVERVIEW

Defence lawyers play a vital role in ensuring the right to a fair trial. Access to legal counsel is one of key fair trial guarantees which is recognized in international human rights law and reiterated in the OSCE commitments. The Vienna Document (1989) reaffirms the commitment of the participating States to the right to a fair and public hearing, including “the right to present legal arguments and to be represented by the legal counsel of one’s choice” (para 13.9). The Copenhagen Document (1990) adds that “any person prosecuted will have the right to defend himself in person or through prompt legal assistance of his own choosing or, if he does not have sufficient means to pay for legal assistance, to be given it free when the interests of justice so require” (para 5.17).

The UN Basic Principles on the Role of Lawyers (1990) emphasize the importance of the right to access lawyers and legal services, the special safeguards that should exist in criminal cases, and the need to guarantee both training for lawyers and open, non-discriminatory admission to the practice of law.

Availability of lawyers may be viewed as a “threshold” indicator of fair trial standards. A recent study by the Council of Europe’s Commission for the Efficiency of Justice reveals that there are States in the OSCE area where fewer than 4 lawyers per 10,000 of the population are admitted to legal practice. This contrasts with an average of 10 lawyers per 10,000 for European Union countries in the same survey. Low numbers of lawyers is rightfully recognized as a problem in some countries and efforts are underway to reform admission to the bar to expand bar membership.

Access to legal counsel must be ensured by appropriate procedural safeguards. Fair trial guarantees apply to all stages of the criminal procedure, not just the court hearing per se. Defence lawyers in many OSCE participating States face obstacles and constraints that

inhibit their ability to effectively defend their clients and ensure that they get a fair trial. Equality of arms of the prosecution and defence is still merely a declaration of intent in some OSCE States, rather than a principle of criminal procedure embodied in appropriate legislative measures and practice.

The meeting will focus on three main areas:

- Access to Legal Counsel
- Admission to and Regulation of the Bar
- Equality of Parties in Criminal Proceedings

Recommendations may be addressed to the OSCE as a whole, the participating States, OSCE institutions including the Office for Democratic Institutions and Human Rights and to the OSCE field operations.

THURSDAY, 3 NOVEMBER

10:00 – 13:00

SESSION ONE

Access to Legal Counsel

Right to legal counsel is a recognized fair trial guarantee that may be found in legislation of nearly all OSCE States. However, the practical implementation of this right varies, as does the role of defence lawyers at the pre-trial stage of criminal proceedings.

Early access to legal advice in the course of criminal proceedings serves as a preventative measure against illegal treatment and forced confessions. Defence lawyers are often the first to learn about instances of forced confessions obtained through illegal treatment or torture. Their professionalism is essential to the effectiveness of redress for victims and prosecution of perpetrators.

Possible discussion topics for this session:

- Access to a lawyer after arrest or detention and at all stages of criminal proceedings: in law and in practice. Does the legal framework in the OSCE participating States adequately protect this right? Are there problems in practice that deviate from the right guaranteed under law?
- Access to clients by the lawyers and confidentiality of lawyer-client communications. Do defence lawyers have access to their clients at early stages? If a client is in custody, are there adequate safeguards to ensure for lawyer-client meetings to be conducted in privacy? Is the confidentiality of

lawyer files and lawyer-client communication protected adequately under law and in practice in the OSCE participating States?

- State interference and restrictions on the right to legal counsel. How can OSCE participating States balance the right to legal counsel with security concerns? Are there OSCE participating States where the legal framework is insufficient, favouring investigators and the investigative process at the expense of the right to legal counsel?
- Access to legal counsel for the indigent and provision of legal aid. What models are participating States using to insure indigent citizens' right to legal counsel, particularly in criminal cases?

15:00 - 18:00

SESSION TWO

Admission to and Regulation of the Bar

A strong well-functioning bar is more than an important institution of the legal system – it is an influential element of a democratic society. The bar not only upholds high professional standards for its members but also frequently acts as a lobbyist for positive change and provides an independent corrective to proposals for legislation that may compromise international human rights standards.

Bar reform issues are intrinsically intertwined with access to legal counsel and other fair trial guarantees.

Possible discussion topics for this session:

- How to ensure transparent merit-based admission to the bar? In countries with low numbers of practicing lawyers, the problem is often not the lack of law graduates but rather an overly restrictive bar admission procedure that makes it difficult for new lawyers to be admitted to practice based solely on merit. Discussion may also include bar examination models that help to ensure that the process of admission to the bar is transparent and based on merit, not connections or corruption.
- Structure of the bar and forms of legal practice. How are bar associations structured in the participating States? Do these structures create undue restrictions on legal practice?
- Independence and governance of the bar. An independent bar is an essential element to guaranteeing the right the counsel. What are the various working models for independent bar associations in the participating States? How is independence of the bar ensured? How do independent bar associations act to protect the rights of defence lawyers?

- Training and continuing legal education. For lawyers to provide competent legal assistance, they must regularly update their knowledge. How is this ensured in the participating States? How can training and continuing education be improved and made more widely available?
- Professional ethics and disciplinary procedures. How are professional ethics standards set? How are lawyers who fail to meet those standards disciplined? What disciplinary procedures are in place that guarantee the independence of the bar, ensure that lawyers adhere to high professional standards, and protect against targeting lawyers who are outspoken on behalf of their clients?

FRIDAY, 4 NOVEMBER

10:00 – 13:00

SESSION THREE

Equality of Parties in Criminal Proceedings

Equality of arms between the prosecution and defence is a fundamental principle for a fair trial. This principle dictates that defence should be in an equal position with the prosecution in criminal trials. In some States of the OSCE area this principle is merely a declaration. Defence lawyers have limited rights and sometimes cannot perform their duties because of interference or harassment.

Possible discussion topics for this session:

- Role of defence lawyers at the pre-trial stages of proceedings. Are there OSCE participating States where the legal framework needs to be improved to strengthen the role of defence lawyers during pre-trial proceedings to insure they are able to adequately represent their clients' interests at all stages of the criminal process?
- Access to the prosecution's files. Both in law and in practice, do defence lawyers have the right to access the files of the prosecution to ensure access to all information gathered by the state against their client?
- Rights of defence lawyers vis-à-vis gathering and presentation of evidence. Can defence lawyers gather evidence and investigate cases for their clients? Are defence lawyers limited in their ability to present evidence in court on behalf of their clients?
- Equality of arms during the trial. Does the legislative framework adequately guarantee that the defence and prosecution are treated equally during trial? If the legislative framework is sufficient, how do the OSCE participating States guarantee the protection of this principle in practice?