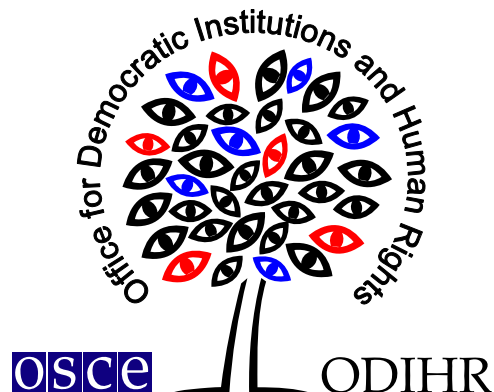


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Opening Remarks by Ambassador Christian Strohal,
Director of the OSCE Office for Democratic
Institutions and Human Rights (ODIHR)

Human Dimension Seminar
“Upholding the Rule of Law and Due Process in
Criminal Justice Systems”

Warsaw, 10-12 May 2006



Excellencies,
Ladies and Gentlemen,

Let me welcome you all very warmly to this year's Human Dimension Seminar. Our topic is "Upholding the Rule of Law and Due Process in Criminal Justice Systems". It reflects an area of ongoing importance and concern throughout the OSCE region, and an area in which my office has focused considerable resources, time and energy. I know that the issue is very close to the heart of the Chairman-in-Office, who has declared the Rule of Law as one of his priorities for this year. I am therefore particularly glad to welcome Ambassador Frank Geerkens, Head of the Chairmanship Taskforce who will be amplifying on this priority in a minute. I also thank our Polish hosts, represented here today by Deputy Minister Janusz Stanczyk, not only for addressing us, but also for the support they have been giving my Institution all year round as ODIHR's host country.

At the outset, I wish to thank the participating States and the Chairmanship for selecting this topic for the Seminar. I hope we all see it as a key opportunity to not only discuss the most important issues in this area, but also for the sharing of good practices and lessons learned. The Seminar should not only provide a forum for reflection, but also for concrete recommendations.

Some may question why this topic matters at all: in every country it is, or should be, only a small percentage of the population that are ever involved in the criminal justice system. However, even though relatively few people will ever be arrested in their lifetimes, and only a somewhat larger number will experience the pain of being a victim of a crime, we all recognize that the way a criminal justice system functions plays a key role in how every society views and organizes their legal system and, ultimately, their government. If people do not trust the system then it is more likely that they would not report crimes or that individuals will resort to "self help" methods when they are victims of crimes. And, how people view the criminal justice system plays no small part in how safe they feel in their homes and in the country as a whole. In the end how crime is dealt with in a society does impact everyone in some way, even if only in terms of their attitudes towards the rule of law. Thus, it impacts not only on security in the narrow sense, but also in the sense of the OSCE comprehensive concept of human security.

In order to truly uphold the rule of law and due process in criminal justice systems, it is paramount that all parts of the system work together towards that end. We are therefore devoting each working session to one of the four pillars of every criminal justice system: judges, police officers, prosecutors and defence lawyers. In doing so we recognize that there is no one system, one approach, one model or one set of laws that everyone must adopt. Differences between the legal systems in the OSCE region are considerable and the legal institutions involved in criminal justice vary to a considerable degree in their structure and functions from one country to another. Yet there are some things that these systems do have, or should have, in common in order to achieve due process of law and protection of human rights.

Judicial independence is an essential element of due process and rule of law. Judicial independence can be threatened at many levels. Participating States must ensure that judges are independent from other branches of government, including the executive. Judges should have the procedural powers to protect and preserve human rights, such as the power to supervise and review actions taken by law enforcement. One of the most serious impediments to judicial independence in many countries is corruption. Judges are not alone in facing challenges due to corruption, but there are obvious unique aspects to combating and protecting against judicial corruption. Having a system in place such as electronic court recording to ensure accurate records of court proceedings can provide protections for judicial independence and help in the fight against judicial corruption.

Working Group Two is devoted to **policing**. First I would like to thank the Strategic Police Matters Unit of the OSCE Secretariat for their strong co-operation in organizing this part of the seminar. It is clear to us all that in the absence of physical security there can be no rule of law. Police play a key role in maintaining peace in a society, but also in setting the standards for human rights and, through their actions, how the general public perceive their governments. Clearly effective policing requires that the police act in a way that fully complies with the law, that values each individual and that reflects democratic principles. Every country faces problems of crime. Every country must deal with the reality of crime and violence, both within the home and often committed against strangers. Working Group II will discuss how to deal with crime through developing qualified police forces and confronting issues of corruption and bias.

Public **Prosecutors**, as judges and police, have a major role in ensuring due process and human rights protection. The scope of duties, responsibilities and powers that prosecutors have under the law has a significant impact on how they are able to do their jobs. In six countries of the OSCE region the power to sanction arrest has still not been transferred from prosecutors to the judiciary. The ODIHR has consistently encouraged such a transfer to help bring those nations into compliance with their international obligations. However, merely changing laws is not enough if the prosecutorial branch still sees itself as a law unto itself. Working Group three will discuss some of the challenges that prosecutorial offices face to preserve their autonomy while working under the letter and the spirit of the law to ensure that justice is done.

The final Working Group is devoted to the topic of **defence lawyers**. This is an all-too-often forgotten pillar of the criminal justice system. I want to thank again last year's Slovenian Chairmanship for their support and assistance in recognizing the importance of this topic last year when a Supplementary Human Dimension Meeting was held on "The Role of Defence Lawyers in Guaranteeing a Fair Trial" in Tbilisi. This meeting was a success in that it brought together a large number of practising defence lawyers from around the OSCE region to discuss their common challenges. Among these challenges are overly restrictive bar admission practices that limit the number of new lawyers admitted to criminal practice; limited access to clients or to information regarding clients' cases; and difficulties achieving equality of arms, including often non-functioning of legal aid systems. A strong and active defence bar is a key element of any criminal justice system that is achieving due process and adhering to rule of law standards. This fact was recognized by the participating States

with last year's Ministerial Decision on Upholding Human Rights and the Rule of Law in Criminal Justice Systems.

You may have noticed that there are two topics that have not been singled out for discussion during one session. That is because I would hope and expect that these topics would be discussed in all sessions. These topics are the prevention of torture and improved gender equality in criminal justice systems.

Every part of the criminal justice system plays an important role in preventing **torture**. The ODIHR recognizes that instances of torture often occur within criminal justice systems that have larger problems; they, in fact, reflect these larger problems. If, for example, police are pressured to solve cases, and if their promotions and bonuses are dependent on the numbers of cases they solve or fail to solve, it encourages the use of torture and ill treatment to extract confessions and thereby "solve" the case. Prosecutors who fail to act on complaints of torture or ill treatment or who are happy to use confessions without questioning how they were obtained, are as much part of the problem. Judges who fail to hear complaints of torture and allow confession evidence to be admitted under questionable circumstances are also failing to do their jobs. Finally, defence lawyers who do not have the skills, knowledge, or courage to move to exclude confessions obtained through torture or ill treatment are also part of what is an often unbroken chain of violating a fundamental principle of every legal system.

Ensuring **gender equality** in criminal justice systems is another cross cutting issue. Gender equality means that women as well as men have equal opportunity to join the various institutions of the criminal justice system and become judges, lawyers, prosecutors and defence lawyers. Gender equality also speaks to the way in which the system deals with crimes and with victims. Laws should be written so that no crime or crime victim is limited by gender. Police and prosecutors should take seriously any allegations of crimes, including those that occur in the home. Domestic violence is clearly not a "family matter" but is a crime and should be handled as such. Improving professionalism in all parts of the criminal justice system is part of how this can be achieved.

Let me briefly refer to a third cross-cutting issue which I hope will be reflected in all discussions: **juvenile justice**. It is in this area where every society is not only confronted with specific needs and concerns, but where it can shape the future of how criminal justice systems are being perceived, as well as address issues such as crime prevention and rehabilitation.

Ladies and Gentlemen,

I am, of course, only briefly touching on the issues that we will be discussing in more detail in the next three days. I am very pleased with the high quality of experts that we have for this meeting. They are truly leaders in the legal communities in their countries and it is an honour that so many have agreed to join us here for this meeting. We are fortunate to have a group of experts to lead us in these discussions and help inform our thinking and ultimately the recommendations of this seminar. I look forward to the interesting discussions that we will have with our Keynote Speakers

and our introducers. We are particularly grateful that Judge Pocar and Prof Despuy will remain with us for the seminar.

Before closing, allow me to briefly touch on the work that the ODIHR is doing in this field. It is work that we can be quite proud of and reflects what can be done with limited resources when combined with strong expertise. You will find a brochure explaining the ODIHR approach to criminal justice reform work on the tables outside. I take this occasion to express my sincere thanks to Cynthia Alkon and her team at the Rule of Law Unit for their dedicated work, and their preparations for this Seminar. In addition, we are organizing a side event tomorrow over the lunch time to discuss the ODIHR's work in this area; several OSCE field missions have agreed to join in to discuss their on-going work and approaches to providing assistance.

Ultimately, how a criminal justice system works is the responsibility of each participating State. The ODIHR stands ready to provide assistance, but the initiative must come from each of you.

Thank you.