



United States Mission to the OSCE

Session 2: Rule of Law

As delivered by Orest Deychakiwsky
to the OSCE Copenhagen Anniversary Conference
June 10, 2010

Thank you, Madam Moderator.

The Copenhagen Document offered a blueprint for pluralistic democratic development, rooted in the rule of law and protection of human rights, throughout the OSCE region – a revolutionary document at the time and one that remains relevant two decades later. Reflecting the rapidly changing environment of the late 1980s and early 1990s, even the chief Soviet delegate at the Copenhagen meeting called the document “Europe’s new constitution.” Indeed, Copenhagen was the first to explicitly embrace concepts such as “pluralism” and “the rule of law.”

At Copenhagen the participating States recognized “the duty of the government and public authorities to comply with the constitution and to act in a manner consistent with law,” to ensure that the rule of law does in fact apply to and control all governmental activity. Our specific commitments from the Copenhagen Document on the rule of law in a democracy are clear.

The executive branch is to be accountable to the legislature or electorate and there should be a clear separation between the State and political parties. Separation between the legislative, executive and judicial branches of government contributes to proper debate of public policy issues and helps promote government accountability. It is no accident that the States with genuine – not merely declarative – separation of powers also constitute the strongest democracies.

We also committed to ensuring the independence of the judicial system and the impartial operation of the law enforcement services. Effective oversight must be provided to challenge administrative decisions. Citizens cannot develop trust in their legal systems unless they can assume that police and judicial officials will act in accordance with the law, that all individuals are equal before the law, and that the law honors OSCE commitments and complies with international obligations. The presumption of innocence should be explicit – if charged, an individual is to be brought promptly before a judge to determine the legality of the arrest. And no one should be tried or convicted of any criminal offense not spelled out with precision and clarity in a specific law. Citizens must have faith in their right to a fair trial when charged with a crime, and not fear that their fate will be decided by a phone call from the executive branch or a bribe to the judge. Regrettably, two decades and numerous OSCE seminars later, many individuals have yet to experience justice in their own country. In some participating States, the judicial systems are not independent, and are weighted toward the prosecution. Due process violations too often appear in judicial proceedings that commonly result in guilty verdicts.

Legislative transparency is another central element of general democratic governance. In Copenhagen, we committed to legislation that is adopted in a public procedure where texts

are accessible to everyone, but we were unfortunately unsuccessful in reaffirming these commitments last year in Athens. Some OSCE participating States have resorted to restrictive laws and regulations that constrain and have a chilling effect on NGOs and other elements of civil society that are crucial to meaningful participation of the public in the life of any democracy.

Some participating States have pursued what they call “managed democracy,” characterized in part by concentrating power in the executive. But democracies are not meant to be systems that facilitate control by any one branch of government. They are designed to be messy and rambunctious, marked by the rough and tumble of competitive politics, checks and balances among the branches, robust public debate. That is why democracies are resilient and capable of adapting to change that is the healthy result of a free market of ideas, free and fair electoral processes, and the constant juggling of a host of public interests. And because there is equality in the ballot box and under the law, those democratic decisions arrived at freely, fairly and transparently are broadly accepted and the compact between citizens and their government peacefully sustained. Copenhagen stated the principle that democracy is an inherent element of the rule of law; this remains as true today as it was 20 years ago.

In a very real sense, the Copenhagen meeting laid the groundwork for the Charter of Paris adopted at the highest political level later that year, in which our leaders vowed “to build, consolidate and strengthen democracy as the only system of government of our nations.” The rule of law – laws consistent with the principles found in the Final Act – is essential in this building process.

In all participating States, ensuring rule of law and an independent judiciary is an ongoing process that entails dedication to the noble principles whose practice separates democracies from tyrannies. The United States would be pleased to cooperate with all OSCE participating States in that endeavor.

Thank you, Madam Moderator.