

Opening Remarks
by Ambassador Christian Strohal,
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at the Human Dimension Seminar
on
“Constitutional Justice”

Warsaw, 14-16 May 2008



Please check against delivery!

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 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.