



**PORTUGAL 2007**  
Portugal 2007- Presidency of the European Union



S. PERMANENT REPRESENTATION OF PORTUGAL  
TO THE OSCE R.

HDIM.DEL/367/07  
03 October 2007

## OSCE HUMAN DIMENSION IMPLEMENTATION MEETING 2007

### **EU Statement for the Working Session 13:**

#### **Rule of Law III:**

#### **Independence of the Judiciary and Right to a Fair Trial**

**2<sup>nd</sup> October, Warsaw**

The independence of the judiciary is a cornerstone not only in respect of human rights, but also in the rule of law.

Yet in international instruments for the protection of human rights, the independence and impartiality of the judiciary is subsumed under other rights: they are mainly included in article 6 of the European Convention of Human Rights and in article 14 of the International Covenant on Civil and Political Rights. The actual importance of judicial independence is, however, of a different category from other individual rights; it is a fundamental principle of the organization of a state.

The judiciary has a unique position in a democratic society. Independence presupposes a separation of powers in which the judiciary is institutionally protected from undue influence by, or interference from, the executive branch and, to a lesser degree, from the legislative branch.

The importance of judicial independence extends beyond the political; actually we have noted the importance of an independent and impartial judge to a stable and prosperous economy. Individuals and institutions must be able to rely on predictable justice, free of the vagaries of political interference or economic influence by either party, in the adjudication of their claims. In societies struggling to reform their economies, judicial

independence contributes to the confidence, security and predictability of economic transactions.

The European Union considers the guarantee of judicial independence of paramount importance.

According to article 6 (1) of the EU Treaty the Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms and the rule of law. The rule of law principle and the right to a fair trial provide that the judiciary must be independent and impartial.

The content of these notions has been clarified in the jurisprudence of the European Court of Human Rights, which is an accepted reference for the EU Acquis under Article 6(2) of the EU Treaty. The EU Acquis for the independence of judges and the respect of a fair trial also finds its roots in the constitutional traditions common to the Member States, as general principles of Community Law. This EU Acquis is enriched by legislation and practice of the Council of Europe standards as e.g. the Council of Europe (COE) Committee of Ministers, Recommendation No R(94) 12 on the Independence, efficiency and the role of judges which provide further clarifications. Similarly, the European Guidelines on Ethics and Conduct for Public Prosecutors (the Budapest guidelines) offer useful guidelines about a Common European standard in the field.

This element is also important for the establishment of the European Area of Freedom, Security and Justice, and a precondition to be complied by candidate countries.

Moreover the EU considers this matter as a priority policy in its external relations with neighbouring countries and it attempts to strengthen the relevant institutional capacity of third countries through assistance and transfer of best practices know-how.

The OSCE standards in the matter have been declared in many occasions. The participating states have expressed their willingness to reinforce the judicial independence and the right to a fair trial in their internal systems. We could mention the OSCE commitments relating to the right to a fair trial in Vienna (1989) and in Copenhagen

(1990) as well as to the independence of the judiciary (Moscow 1991), where they declared that they will respect the internationally recognized standards that relate to the independence of judges and legal practitioners and the impartial operation of the public judicial service including inter alia, the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights.

As far as the 56 participating states in the OSCE are concerned, although significant progress has been made towards judicial independence and necessary legal reforms, the process is far from being completed since we shall always aim at the highest possible standards both for the independence of the judiciary and the right to a fair trial for any individual, irrespective of his status, not only before the criminal courts, but also in the fields of civil and administrative procedures.

There is also an imperative need to guarantee the independence of the judiciary in practice and to set up necessary mechanisms to achieve it. Some of the practical safeguards include the terms of appointment, the specialization of judges, the need for guaranteed tenure, the requirement of efficiency, fair and independent disciplinary proceedings, the duty of our states to provide adequate resources as salaries and training to promote and facilitate the judiciary's freedom of expression and association, and to co operate through dialogue, contacts and exchanges in order to identify where problem areas exist.

The Candidate Countries Turkey, Croatia and the former Yugoslav Republic of Macedonia\*, the Countries of the Stabilisation and Association Process Albania, Bosnia and Herzegovina, Montenegro, and Serbia, EFTA country Norway, member of the European Economic Area, as well as Ukraine and the Republic of Moldova align themselves with this statement.

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\* Croatia and the former Yugoslav Republic of Macedonia continue to be part of the Stabilisation and Association Process.