United States Mission to the OSCE

Session 13: Independence of the Judiciary; Right to a Fair Trial

As prepared for delivery by Ambassador Richard Williamson
to the OSCE Human Dimension Implementation Meeting
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Mr. Moderator,

All OSCE participating States have made various commitments to one another and to their own citizens. Most central are the obligations freely entered into for democracy, human rights and the rule of law. In a real sense, all of these human dimension commitments are part and parcel of a true democracy. For democracy is not just about the mechanics of voting during periodic elections. Rather democracy is built on the many institutions and habits of a society that contribute to the two parts of democracy: liberty – individual freedom – and popular sovereignty – rule by all the people.

As Professor Michael Mandelbaum writes in his book Democracy's Good Name, "Genuine democracy, and in particular, liberty, requires supporting institutions. These cannot function properly unless the people operating them have the necessary skills and habits, which are under pinned by a particular set of values." And among the most critical institutions to protect liberty, sustain popular sovereignty and help arbitrate competing interest in a democracy is the Rule of Law which, in turn, depends on an independent Judiciary free of corruption and the right to a fair trial. As the French "Declaration of the Rights of Men and Citizens" proclaimed:

> Law is the expression of the general will. All citizens have the right to take part personally or by their representatives in its formation. It must be the same for all, whether it protects or punishes. All citizens being equal in its eyes, are equally eligible to all public dignities, places, and employments, according to their capacities and without other distinction than that of their virtues and their talents.

As OSCE participating States, all of our countries have a commitment to ensuring that the independence of the judiciary is guaranteed. A system rooted in the rule of law is the most effective guarantee of respect for human rights, stability, and peace.

Individuals in participating States must have the opportunity to seek redress of grievances. In criminal cases, they must be able to trust that their right to a fair and public hearing by a competent, independent, and impartial tribunal will be honored.

If this right to a fair trial is to be respected in practice, OSCE commitments to prohibit the improper influence on judges, prevent the unlawful revision of judicial decisions, allow for the presence of observers in judicial proceedings, and ensure the equality of branches of government, must be upheld. These are elements of justice that are essential to the full expression of the inherent dignity and of the equal and inalienable rights of all human beings.

As participating States, we have accepted the importance of the unhindered presence of observers sent by other participating States and representatives of non-governmental organizations at criminal proceedings before courts as a fundamental confidence building measure. Therefore, we are particularly discouraged to see that international and domestic observers were barred from trials of independent journalists and human rights activists in Uzbekistan this past year.

Several Uzbekistani human rights defenders, who had been arrested on highly suspect charges and then convicted in trials that called into question Uzbekistan's commitment to fair trials, have been released in the last year. We appreciate profoundly that they are out of jail. But we were very disturbed by the apparent coercion of denunciations of their own actions and other human rights activists and were presumably a condition of their release. Rather than staging shows of recantation, we urge the Government of Uzbekistan to allowing independent journalists and human rights activists to operate without fear of retribution and ensure that criminal trials are open and fair..

We commend Turkmenistan's release of individuals who had been convicted of involvement in the events of November 2002. We hope their release signals a recognition on the part of the country's new leadership that certain judicial acts in the past did not correspond to OSCE commitments or reflect the values the OSCE upholds. There are still many people in prison in Turkmenistan whose cases deserve review, and we look forward to hearing that Ashgabat has begun that process.

The continued harassment of political opponents through politically motivated trials in Belarus again highlights the apparent willingness of the Belarusian authorities to disregard their human rights obligations and punish those who criticize that country's leadership. Cases like those of Artur Finkevich and Zmitser Dashkevich highlight the government's complete disregard for individuals' right to free expression and the importance of the ability of civil society and of opposition parties to function without harassment.

In Belarus opposition politicians, such as former Belarus presidential candidate Aleksandr Kozulin, continue to be brought before the courts and subjected to jail sentences, or unreasonably large fines for participating in unauthorized protests. In Azerbaijan, members of the opposition continue to be more likely to experience official harassment and arbitrary arrest and detention than other citizens.

The U.S. applauds the passage and implementation of Russia's new Code of Criminal Procedure, especially provisions establishing open, adversarial criminal proceedings. The U.S. also notes recent steps to improve harsh and dangerous prison conditions and to reduce the number of pre-trial detainees. The U.S. is, however, concerned by the frequency with which criminal trials are

closed to the public, which appears to contradict the commitment to public proceedings. The U.S. is also concerned by reports from the defense bar at both the federal and local level that defense lawyers are frequently harassed by law enforcement in order to prevent them from zealously representing the interests of their clients.

We welcome the steps taken in Azerbaijan to allow for the monitoring of judicial examinations and the passage of legislation in Kazakhstan establishing jury trials, and we commend the change in Armenia's legislation decreasing presidential authority to appoint and dismiss judges. These efforts are examples of simple steps states can take to build the public's confidence in the rule of law. However, it is disturbing that the verdicts in the Yeni Fikir trial in Azerbaijan were upheld on appeal in spite of numerous irregularities indicating that the trial did not conform to Azerbaijan's commitments on ensuring fair trials.

Mr. Moderator, the United States welcomes the decision by a Moldovan appeals court to release former Defense Minister Valeriu Pasat, who had been convicted in a closed trial of malfeasance in connection with the sale of military aircraft to the United States. This case appears to have been politically driven and we urge the Moldovan Government to insure that its judiciary system serves the people and not political interests.

In some participating States, including Azerbaijan, several recent high-profile criminal trials have been closed to the public. In a few instances, staff of foreign embassies, including our own, have not been admitted for part or all of the proceedings. Sometimes, the excuse used was that "there is not enough space in the courtroom." In other instances, the authorities have unconvincingly claimed that national security considerations make it impossible to allow defendants' family members, the press, foreign diplomats or representatives of international organizations, including the OSCE, to attend.

In general, judicial independence is still far from having been institutionalized in many participating States. Unfortunately, corruption continues to play a debilitating role in criminal and civil cases, while in political cases – which are often masked as criminal -- "telephone justice" is still the reality. Unless courts can rule on cases without executive branch interference, justice will not be served and separation of powers, which is the guarantee of democratic governance, will remain mere words.

Mr. Moderator, it is because of this vital role that judicial independence and the respect for a fair trial that the United States is discouraged to see persisting problems in many participating States. It is in the spirit of the Moscow Document that we raise these issues today and call on all participating States to fulfill their commitment to cooperate in identifying where problem areas exist and developing ways and means to address and resolve such problems.

Thank You.