

## **Annex**

### **Suggestion for topics for discussion**

#### **1) Functioning of courts during state of emergency**

The pandemic has created considerable challenges for courts to retain their key functions while preserving the right to life and health of judges and judicial staff, as well as for lawyers, parties and witnesses. Courts have a vital function in ensuring an effective remedy against human rights violations during and after the pandemic. Courts also need to uphold the separation of powers and scrutinize compliance of emergency legislation with the constitution and national and international law. Many states introduced or expanded the use of video conference hearings and other online tools; however, concerns relating to the legality, consistency and adherence to fair trial standards emerged.

#### **2) Observance of the right to a fair trial and independence of the judiciary**

Access to justice in the OSCE region faces challenges due to a noted deterioration in the respect for judicial independence and the observance of fair trial rights. A number of OSCE participating States face challenges in ensuring the independence and impartiality of judges, the presumption of innocence, the right to an effective defence, equality of arms and providing effective access to legal assistance and publicity of trials. Many of these rights have been further impacted by the pandemic. ODIHR observed in recent years a deterioration of judicial independence and attempts of political interference with the processes of appointment, promotion, and sanctioning of judges. This deterioration may be exacerbated by the functioning of emergency legislation during the pandemic. ODIHR has developed effective tools to monitor the observance of fair trial rights in courts and to monitor transparency and fairness of judicial appointments.

#### **3) Functional independence of prosecutors**

Prosecution services should benefit from autonomy and individual prosecutors should have a sufficient level of functional independence to be able to effectively investigate crime and provide access to justice and effective remedies. The functional independence of prosecutors in Eastern Europe is often limited by the influence of senior prosecutors and by an inappropriate culture and practice of informal instructions in some prosecution services. Undue interference with the work of prosecutors has been exacerbated during the pandemic.

#### **4) Human Rights of Armed Forces Personnel**

In addition to being subject to the same criminal laws as civilians, armed forces personnel in many countries must also adhere to a separate system of military discipline. Military justice systems are usually justified by the need to maintain high standards of discipline due to the risks and demands associated with military operations. A system of military discipline that is separate from the civilian courts is also useful in establishing common legal systems for all personnel, including those deployed abroad. The existence of separate military justice systems can, however, raise concerns of judicial independence, particularly in case any court members are under the direct influence or control of the superior officers of the person charged. Safeguards are equally required to ensure military personnel enjoy comparable rights to due process guarantees applicable to civilians. Overall, access to justice for military personnel is critical for them to challenge discrimination and to fully exercise their human rights and fundamental freedoms, including freedom of association, the right to conscientious objection, and right to be free from torture and other forms of ill-treatment and abuse.

The 2020 edition of the ODIHR-DCAF *Handbook on Human Rights and Fundamental Freedoms of Armed Forces Personnel* explores existing laws, policies and mechanisms for ensuring the protection of the human rights of armed forces personnel in line with international standards and OSCE commitments. Its discussion of these issues in the context of military justice systems, and the identified good practices and recommendations could form the basis for discussion at the forum.

### **5) Access to justice for Roma and Sinti**

Europe witnesses recurring patterns of racially-motivated attacks and hate-driven incidents against the Roma and Sinti, with perpetrators, ranging from state officials and politicians to extremist organizations and individuals, often fully escaping justice or bearing only minor consequences. The ongoing climate of impunity over hate crimes and incitement to hatred against the Roma population is indicative of a long-standing issue concerning access to justice of Roma. There is a perpetuation of States' inadequacy of action in promptly investigating hate incidents and crimes against Roma and punishing the perpetrators to the full extent of the laws and according to international obligations. The ECtHR jurisprudence is quite illustrative in this regard.

The goal of including fully Roma and Sinti in their societies and ensuring that they are able to play an equal part in public and political life, is prevented by their poor access to justice and a slow progress by States in combating racism and discrimination, the root causes of their exclusion. The plight of Roma and Sinti from the perspective of 'Equal access to justice for all' continues to remain a litmus test for all democracies.

### **6) Access to justice in electoral matters - a core element of a rule of law based society**

Democracy is an inherent element of the rule of law and is often appreciated from the angle of organisation of free and fair elections. However, conflicts involving electoral stakeholders can arise even in the most democratic electoral process. Ensuring access to legal redress during the electoral process is important to increase public trust in elections, contribute to the legitimacy of the government, and protect voters' rights. Moreover, safeguards are needed for citizens, candidates and other parties to an electoral process when deciding to conduct or postpone elections in exceptional situations, such as COVID-19 pandemic. Legal certainty, availability of effective remedies, possibility to be heard in a fair with due process guarantees should be guaranteed at all times and applied when punishing misconduct or restoring electoral rights.

As part of its efforts to develop and refine its election observation methodology, ODIHR published in 2019 a new *Handbook for the Observation of Election Dispute Resolution*. Election observers pay close attention to the handling of election disputes, including such specific aspects as the availability of effective remedies, legal standing, accessibility and timelines for handling the cases. The handbook aims to establish a more systematic and comprehensive approach to observing this key part of the election process, thus contributing to further protection and promotion of the fundamental rights and freedoms necessary for ensuring democratic elections. It also provides valuable information for a wider audience including election practitioners, judges, lawyers, political parties, voters, academia and civil society organizations.

### **Side Event**

Finally, our Tolerance and Non Discrimination Department has suggested a topic for a potential side event on the Need to Support Victims of Hate Crimes Through Rule of Law Procedures and Social Support drawing from the recently released ODIHR Guide on Hate Crime Victims in the Criminal Justice System.