

Session Four.

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Some Concerns about Rule of Law in the Republic of Abkhazia

First of all I would like to thank you for giving me the opportunity to speak in such an honorable meeting. I am working as an expert at the NGO "Sandidzan" and I would like to speak about the state of the Rule of Law in the Republic of Abkhazia from the point of view of the civil society activist.

A more effective protection of human rights is possible only with the development and transformation of local authorities into truly democratic institutions. Civil society development, existence of local communities and NGOs are obligatory conditions for building of a democratic state in Abkhazia. Taking into consideration that state structures take some steps to improve the system of state governance and modernization of legislation, the question of how this process is aimed at strengthening democracy and promotion of human rights becomes relevant.

One of the leading public institutions to ensure legal security of an individual is the court, which secures and provides judicial protection of rights and freedoms. The state of rule of law in the Republic depends largely on the function of a judicial system designed to correct human rights abuses.

Rule of law is an important aspect of the Constitution of the Republic of Abkhazia adopted in 1994. The Constitution was modelled along the line with the It states that the rights of individuals are determined by legal rules and not the arbitrary behaviour of authorities. There can be no punishment unless a court decides there has been a breach of law and everyone, regardless of your position in society, is subject to the law.

The legislation consists of such laws as: "On the Judicial System", dated 13 August 1996 " On the bodies of judicial community "of 22 July 1997,"

On the Arbitration Court "of 3 June 1997," "On the Status of Judges in the Republic of Abkhazia", "June 18, 1996," On the Supreme Court "on August 13, 1996" On the military tribunals "of May 22, 1998.

Unfortunately, due to the consequences of the Abkhaz - Georgian war as well as economic sanctions the country faced from the rest of the world including the Commonwealth of Independent States it was hard and complicated to build a fully democratic state with highly transparent and independent legal system. One of the problem of transparency is that the set of laws is not freely and easily accessible to all individuals first of all because people are not able to find it in the Internet which is a huge instrument of getting information nowadays. Every law enters into force the moment it is published in the media. The compile of laws anyone can find in the library, but without a specialist it is hard to find the law one would like to get. There is an electronic version of the set of laws produced commercially and it is quite expensive for common people to buy.

It is important to mention that the Law on the Access to Information has been adopted by the Abkhaz Parliament and today it is a matter of importance and a requirement for the Law to be implemented properly on all levels.

There is a lack of independence of the judiciary. This problem stems partly from the Soviet past, and partly from violation of the principle of irremovability of judges. While judges previously were appointed reaching upon the maximum age, since 1999, they have been appointed by Parliament for a term of five years, based on nominations by the President. This decision and its consequences have been perceived quite negatively by the judicial society and criticised by independent Abkhaz experts and NGO activists. Law level of salaries and the uncertain tenure of judges may encourage corruption and bribery. These factors unfortunately undermine the independence of the judiciary and are among the questions of concern of Abkhaz civil society.

It is important to highlight the creation of the position of Commissioner for Human Rights in 2008. The major tasks of the Commissioner are to help to improve a mechanism for promotion and protection of human rights and freedoms and to promote government activity in protecting human rights, A number of tasks of the Commissioner include the preparation

of the annual report on the state of human rights in Abkhazia. The legal framework of the Commissioner for human rights is to be in line with international standards it lacks yet full independence as it just the independent work is able to realize a full protection of citizens' rights as well as the promotion of justice. In this regard it is worth to mention that the Law on Ombudsman is being worked at in the Abkhaz Parliament today and it will be a serious step on the way towards achieving a true and just situation in the field of rule of law.