

## Session 4

“Veresk” Charity Foundation for Disabled and Amputees,  
Abkhazia

Democratic Lawmaking and the Rule Law in the Republic of  
Abkhazia

I kindly thank you for offering such an opportunity to speak at this honorable and important meeting today and would like to turn your attention to some aspects regarding the main topic of this session connected to human rights promotion and respect.

There are various barriers on the path to democracy building in Abkhazia. A real protection of human rights is possible only with the development of truly democratic institutions, modernization of legislation, provision of judicial protection of the rights and fundamental freedoms.

A continuing isolation of Abkhazia from the West, consequences of the Abkhaz - Georgian war in 1992-93, severe economic sanctions imposed by the entire international community Abkhazia faced after the war, partial international recognition made a negative effect on the development of democracy in the Abkhaz society. The fragile process of democratic transformation, compromised by the difficult post-war realities, did not receive a support it needed from the outside world. The absence of a full international recognition of Abkhazia put obstacles to the implementation of international law standards in the human rights field and did not allow cooperating as a partner with foreign countries and their state structures and international organizations which leads to lagging in the development of democratic institutions. All this adversely effects reformations implemented in the judicial system.

The situation with judiciary is not ideal; it is not independent as it is expected by the society. We fully understand that a judicial

independence is essential to the rule of law and is a fundamental guarantee of a fair trial. Judges are charged with the ultimate decision over life, freedoms, rights, duties and property of citizens (as it is written in UN basic principles, echoed in Beijing declaration; and Articles 5 and 6 of the European Convention on Human Rights). Their independence is in the interests of the rule of law and of those seeking and expecting justice. There is room for concern that the work of the judiciary institutions is not highly effective due to insufficient resources working in a very complex and often turbulent political, social and economic situation. The real problem of the lack of independence partly derives from the Soviet time, and also from the violation of the principle of irremovability of judges which exists in the legislations of many European states. Since October 1999 national referendum introduced an amendment to article 71 of the Constitution. According to the amendment judges have been appointed by a Parliament for a term of five years based on President's nominations. This occurred mainly because of low legal culture of people and the majority of the population voted for decreasing of independence of judges. This speaks about the importance of raising legal awareness in order to avoid such things. The judicial society and independent Abkhaz experts as well as the representatives of civil society perceived negatively this infringement regarding this principle and strictly criticized it. There is a threat that an uncertain tenure of judges may encourage corruption and bribery. These factors unfortunately undermine the independence of judiciary and are among matters of concern of Abkhaz civil society.

A considerable impact into the reform of a judicial system was made by the adoption of a new procedural legislation, since 1 of June 2008 a new Criminal Procedural Code came into force and since 1 November 2008 a new Civil Procedural Code of the Republic of Abkhazia. New procedural legislation gives a new interpretation of the tasks of criminal and civil legislation in the centre of which are human rights.

There is no Constitutional Court in Abkhazia yet. The Parliament has not adopted the law on the Constitutional Court. The creation of such a body is necessary for a constitutional lawfulness in the Republic of Abkhazia. A legal state can not exist without such a body, which provides balance and restrictions of authorities in the constitutional frames, protection of constitutional rights and freedoms of citizens, interpretation of constitutional laws and the estimation of the constitutionality of the legislation of the Republic of Abkhazia. The Supreme Court investigates all cases regarding the compliance to the Constitution of any of President's decisions, as well as the Parliament's and other state bodies including local self-government. But the Supreme Court functioning as a Constitutional, must have the right to interpret the Constitution, while currently this function is performed by the Parliament.

One of the democratic achievements is to be considered in the creation of the position of a Commissioner for Human Rights in 2008 though not fully independent as the position is under the President. It is a completely new kind of state institution throughout post-Soviet countries, not only in Abkhazia, and has no historical, political or cultural roots. It was modeled on existing institutions in Western Europe. The main function of the Commissioner for Human Rights is to defend and promote human rights and freedoms as well as to promote government activity in protecting human rights. The legal framework of the Commissioner for human rights is to be in line with international standards as given in the project of the Law on the Commissioner for Human Rights presented to the Abkhaz Parliament. The adoption of this law will be a serious stride on the way towards achieving a true and just situation in the human rights field.

Today the office of the Human Rights Commissioner in Abkhazia accepts and investigates complaints of human rights violations or abuses of authority by any public authority in Abkhazia. Citizens may submit complaints against actions or omissions by public authorities to the Commissioner for human rights, who shall assess them without the power to take decisions and shall send the competent bodies such recommendations as may be necessary in order to prevent or make good any injustices.

Civil organizations in Abkhazia play a vital role in defending basic and democratic values and are a considerable and visible force in the society actively supporting the creation of independent national human rights structures. For instance, certain NGOs involved in the drafting of legislation; civic oversight over fundamental freedoms, human rights, and civil society policy; and civil society participation in the debates over the changes to the Constitution. Prominent and widely known NGO have public consultations which provides legal advice free of payment and are accessible for the most vulnerable groups and dedicated to the realization of equal access to justice for all. A very useful analytical report was produced in 2008 by the Abkhaz NGO the Centre for Humanitarian Programmes. The report gives a characteristics of the state of a judicial system of the Republic of Abkhazia, based on a thorough monitoring of courts and revealed problems in the legislation and practical activities of legal bodies which influences on the administration of justice and provided recommendations to raise effectiveness of a legal protection of human rights and freedoms in the Republic of Abkhazia.

Eventually I'd like to bring to your attention that just a few days ago the Council of Judges of Abkhazia adopted a statement to make reformatations in the judicial system.

