

Prague, 16 June 2006
Ms. Tamara Laliashvili,
Judge of the Supreme Court of Georgia

Judiciary in Georgia

Dear ladies and gentlemen,

First of all, please let me express my gratitude for your interest in the judiciary in Georgia. I do believe that MEDEL can play an important role for the democracy and rule of law in our country. It is a crucial moment for any further democratic development in Georgia, and in the entire region. Since the collapse of the Soviet Union European countries and the USA have been involved in our efforts to build-up a state. Today, critical and constructive support by European experts is even more crucial than any financial support. Today, two years after the so-called rose revolution in Georgia we reached a turning point where we realize that many of our positive results from the last decade are jeopardized.

While Georgia was celebrated as a positive model in terms of judiciary reform by the international community in 2001, we have nowadays a judiciary that is weak, dependent and ready to follow any instructions given by the executive branch. Pretending to reform the judiciary and fight against corruption the new government weakened the judicial branch and strengthened the Presidential power through constitutional and legislative changes and replaced independent and professional judges with new judges who are either young and inexperienced or close allies to the government, in any case easy political tools to ensure total control over the judicial branch.

I will now tell you in a more detailed way what has happened since the so-called rose revolution which is less but still celebrated as a success story in particular by some Western states, in particular the Unites States.

The new government has planned to carry out judicial reform in two directions: Structural reorganization of the courts and changes in the composition of the courts. Thereby, the government has stated openly its political will to replace all old judges with new ones.

While the official reason for the replacement of judges was to get rid of corrupt judges there are several indications that the main aim of the replacement was to get rid of independent and professional judges who could not easily be used as political tools to express the State policy interest.

How could the government remove old judges and appoint new judges?

According to the law, judges of first and second instance courts of Georgia are appointed by the President of Georgia for 10 years and they can be removed either through disciplinary or criminal prosecution or through reorganization or liquidation of courts.

In the first stage, the government has declared the reorganization or liquidation of courts and has removed half of all acting judges from their positions. Thus, through this method the government got rid off more than one hundred and fifty judges of first and second instance courts.

Some but not all of these judges have been replaced by young judges, who are often inexperienced easily to use for political purposes. Many posts are still vacant resulting in a poorly functioning judiciary. This has not only huge negative impact regarding democratic state building but also regarding violations of basic rights of individuals, in particular regarding an increasing number of pre-trial detainees in inhuman detention conditions and without any hope to get a fair trial in the nearest future.

Due to the special constitutional protection it is much more difficult to remove Supreme Court judges. The Supreme Court judge is appointed by the Parliament of Georgia for ten years and can be removed exclusively either through criminal or disciplinary prosecution, or through voluntarily resignation. The government started with the second option and put pressure on judges to resign. In order to ease this path, the Parliament adopted a law according to which a Supreme Court judge, who resigned before January 2006, would receive full compensation of his salary until the end of his term. The result of this policy was that 21 Supreme Court judges out of 37 judges resigned by the end of 2005.

As to the remaining judges, who refused signing their resignation disciplinary proceedings were initiated immediately after their refusal. There is only one remarkable exception: one judge who is widely known for taking bribes kept his job. It might be no coincidence that this judge is a close relative of the wife of the chairman of the Supreme Court.

I am one of the six judges that decided not to resign and stay in the office, because we were confident that our efforts to build up an independent judiciary during the last eight years could not be destroyed easily. Considering that we have always acted purely in accordance with the Constitution and Georgian laws, and that we have never taken bribes and never followed external interests neither from the government nor from any other parties we are convinced that it is our duty to continue protecting rights of citizens, in particular through defending the independent judiciary.

We also believed that our constitution would protect us from any unreasonable and illegal prosecution. Therefore, we openly rejected the government demand to resign and leave the office.

But unfortunately our hopes went in vein:

In September of 2005, the High Council of Justice, a presidential body, has started disciplinary prosecution against judges who refused to leave the office.

We were reiterately offered other jobs in the university or even grants for researching abroad due to our “high professionalism” as governmental representatives argued. Our questions why we should resign from our posts if we are considered as being so highly professional remained without response.

On 25 December 2005, when all international observers were on Christmas holiday, the High Council of Justice suspended me and 4 other Supreme Court judges from the office. One judge received admonition as disciplinary punishment. The Parliament of Georgia consisting of 80 % MPs from the governmental party has approved this decision.

Now our cases are pending in the Disciplinary Chamber of the Supreme Court and we are ready to defend our rights up to the very end, including the application to the European Court of Human Rights.

Why did they punish us, what were the charges?

There were two charges made formulated by the Disciplinary Council. The first charge was that we violated the law while hearing a criminal case of murder. The case involved killing of 45 year old man by his own brother. The defendant was convicted and sentenced by the court to 3 years of deprivation of liberty.

According to the Georgian law, the victim of the crime has the right to appeal the court sentence. If the victim of the crime is dead, then this right is given to his close relative – including his wife. In this case the right to appeal was used by the common law wife of her dead husband. This wife had children with her husband and was considered as a normal wife, although they did not register their marriage – a common practice in Georgia where couples often choose to marry only in the church without being registered according to the civil law.

The appeal court decided that unregistered wife of the victim could be considered as “wife”, therefore, granted the right to appeal to the victim’s common law wife.

In our decision, we agreed to the court of appeal and decided that common law wife could also be victim of the crime. Our interpretation of the law was based on standards of the European Convention of Human Rights and other international standards defining the rights of the victim. In all civilized countries, the judge (and especially Supreme Court Judge) has the power to interpret the law.

Secondly, the High Council of Justice stated that we did not review cases against those defendants who did not appeal against their decisions.

Indeed, the Georgian criminal procedure legislation obliges under certain circumstances the court of appeal and the court of cassation to review cases even when defendants did not appeal themselves. Whenever we reversed or modified decision of lower courts with regard to non complaining defendants, we always wrote it in Supreme Court decision. However it was common and recognized practice not to mention the fact of non complaining defendants if the lower court decision was not changed by us.

The Disciplinary Council decided that this common practice was wrong and we had to mention non complaining defendants in all written decisions.

Thus, the recognition of a common law wife as a victim of a crime and this alleged mistake in judicial decision writing, which the Disciplinary Council himself considers as minor mistake, we 4 judges of the Supreme Court were fired from office.

Just let me also briefly mention that the composition of the Council of Justice was against the Georgian law. Close friends of the president of Georgia were included in the Council who did not fulfil the minimal requirements of the law. (In particular art. 75 of the law on Disciplinary Liability of Judges)

Our case received a wide publicity throughout Georgia. Media called us “rebel” judges and received wide support from NGO sector and Georgian public, who is interested in having an independent judiciary protecting their rights and not the interests of government.

In order to save judicial independence and oppose governmental abuses of power, Media and NGO sector has created a coalition: “*Civil Society for Democratic Georgia*”. This coalition mobilizes public awareness to ongoing processes and reflects the public interest in saving judiciary as an independent branch of the government. The coalition reflects the interests and objectives of the Georgian population to develop a democratic and rule-of-law based society in Georgia that will become a real part of the European family.

However, we have serious doubts that this Georgian government can develop a democratic and rule of law based society through dismissing independent and professional judges without legally based reason and through using judges as political tools and interfering into any ongoing judiciary cases as it is practice nowadays in Georgia.

Given that there are no real independent branches in the Georgian state anymore, that the civil society and the media has been seriously weakened since the so-called rose revolution Georgia needs critical and constructive support from Europe in order to become a democratic and rule of law based state.

For this reason I do believe that it is of utmost importance for our region that you invited us to this conference. Thank you very much again!

