



United States Mission to the OSCE

RULE OF LAW, INDEPENDENCE OF THE JUDICIARY, AND THE RIGHT TO A FAIR TRIAL

**Statement of Mr. Frank Gaffney
U.S. Delegation to the OSCE Implementation Meeting
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Mr. Moderator, citizens should be able to expect that their grievances against the state or other individuals or against organizations will be addressed impartially in a professionally competent judicial system. This is a bedrock principle of democracy. In the absence of rule of law and an independent judiciary, democracy cannot take root or flourish. All the guarantees of a constitution are set aside when citizens cannot be assured of the right to a fair and impartial trial.

Since the breakup of the USSR, some progress has been made in reforming and developing judicial systems. Judicial independence is a crucial part of this reform process. Georgia's Constitutional Court demonstrated just such independence in August when it resisted high-level government pressure to influence its ruling on lowering electricity prices.

In the extreme, when the rule of law is violated, murderers can act with impunity. In Ukraine, the murder of prominent investigative journalist Heorhiy Gongadze - who disappeared in September 2000 - remains unsolved. Recordings of conversation, if authentic, appear to suggest that President Kutchma and some associates may have been involved in this disappearance. A credible and transparent investigation of this case by Ukrainian authorities is long overdue and the perpetrators - no matter who they may be - need to be brought to justice. Most recently, a figure involved in the case, Ihor Honcharov, died under suspicious circumstances in August while in police custody.

In too many OSCE States, courts remain vulnerable to influence from the executive branch. This can result in limiting the power of the political opposition, as well as public cynicism. There are many examples of such structural shortcomings and the abuses they generate. One of the most glaring cases is that of Felix Kulov, leader of the Ar-Namys party in Kyrgyzstan, and one of the country's most prominent opposition leaders. His case appears to have been politically motivated and has been characterized by apparent procedural violations from the beginning. Despite his acquittal in August 2000 on charges of abuse of power and forgery when he served as Minister of National Security, he was tried again in January 2001, this time by a closed military court, and found guilty. In May 2002, a district court in Bishkek added another ten years to Kulov's sentence, after convicting him of embezzlement during the period of 1993-97, when he was the governor of Chui Province. On August 15, 2003, Kyrgyzstan's Supreme Court rejected an appeal to release Kulov. Many human rights organizations consider him a political prisoner. Though Kulov plans an appeal to the Kyrgyz Constitutional Court, he has little apparent reason to hope for a fair outcome. We urge Kyrgyz officials to ensure that he receives a fair trial.

In Kazakhstan, journalist and human rights activist Sergei Duvanov - who, shortly before attending this meeting last year, was beaten by assailants for writing articles critical of government officials - was convicted in January of allegedly raping a minor. Dutch experts working under OSCE auspices

have concluded that, in addition to serious procedural problems in his trial, there is good reason to suspect a political motive behind the case. Mr. Duvanov's appeals to higher judicial authorities have been turned down, and he remains in prison.

Related to rule of law concerns is the practice in too many OSCE participating States of withholding information about prisoners from family members. Turkmenistan has blocked access to many political prisoners, making it impossible for relatives to know anything of the welfare and whereabouts of their loved ones. In Uzbekistan, where information regarding the carrying out of death sentences is deemed a "state secret," relatives are not even told about prisoners' deaths, to say nothing of receiving the body for burial. We call on the Uzbek government to notify families of all prison deaths.

Another source of serious concern is the refusal by Georgian authorities to try and seek conviction of Basil Mkalavishvili, a defrocked priest, who since 1999 has been leading violent mobs that beat or intimidate members of non-traditional faiths, especially Jehovah's Witnesses. Despite an overwhelming body of evidence, including televised broadcasts of his participation in assaults, his trial has never been concluded, having been interrupted continuously. Even after a warrant for his arrest was issued, he remained at large, although the media appeared to find him easily.

In closing, Mr. Moderator, the U.S. appreciates the work ODIHR and our OSCE field missions are doing to help OSCE participating States make needed changes to their judicial systems and to ensure respect for the rule of law. We urge participating States to see OSCE's expertise as beneficial and encourage them to take full advantage of the assistance available.