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PROMOTING THE INDEPENDENCE OF JUDGES IN THE NEW DEMOCRACIES

Dear ladies and gentlemen,

Allow me to thank the organizers of the conference for the opportunity to participate in such an important meeting. The significance of such meetings cannot be overestimated, especially for the heads of courts in countries that have accepted democratic values and view their rebirth in connection with them.

Azerbaijan, the country which I represent, is living through tragic moments of its history (20% of its territory is annexed, the number of refugees has reached 1 million people). Nevertheless, we live with hopes of peace and reconstruction, and the latter is impossible without a fair and unbiased court.

It has to be noted that the principle of independence of judges had been declared not once in the past in the Constitution and laws of the Republic. But in reality the conditions of the judges' activities allowed numerous opportunities for ignoring this legal proposition. It was caused by the absence of a system of guarantees--political, ideological, economic, organizational. The political, economic and ideological changes, that took place in connection with certain events in the countries of the former Soviet Union, allowed us to institutionalize the guarantees of judges' independence. Not accidentally did the Supreme Court of the Republic of Azerbaijan, during its first plenary meeting after the announcement of state independence, adopt a decision that the substance of the principle of judges' independence is expressed in "The Main Principles Related to the Independence of the Judiciary Bodies," the document approved by the UN General Assembly resolution of December 13, 1985. It is understood that the activities of the courts of the Republic of Azerbaijan have to be based not only on the acting legislation, but on the Main Principles of the Independence of Courts as well.

The Supreme Court, supporting the independence of judges and using its constitutional right of legislative initiative, presented in the Parliament the Law on the Status of Judges and amendments to the legislation in effect with regard to civil and criminal litigation. These amendments provide for the expansion of the possibility of individual consideration of cases, establishment of judiciary control of the arrest of a citizen, strengthening the material guarantees of the independence of judges. The Supreme Court elaborated the concept of legal and judiciary reform in the Republic of Azerbaijan, which has as its main principle the creation of guarantees against authoritarianism, arbitrary rule of those in power. The creation of those guarantees is possible only with a competent, independent and impartial court.

At the same time, while analyzing the first results of judicial reform, it has to be noted that first of all the constitutional guarantees for such basic principles of independence of judges are needed, such as judges' irremovability and inviolability. At last the judges should be able to base their activities directly on the constitutional norms and the norms of international law that are recognized by the Republic. There is no doubt that the irremovability of judges responds to the necessity of providing their impartiality and is the guarantee of independence of justice. The problem is to make sure that only deserving citizens would be judges for a lifetime.

To our mind, during the period of establishing the judiciary power in such countries as ours, election of judges for a specified length of time makes them more dependent. Therefore, the legal community is broadly discussing the issue of improving the mechanism of election and appointment of judges.

Today the society which decided that the law has to be above the power, has the right to expect this formula to be realized. There is no doubt that it can be done only by a judge who is capable of withstanding the possible pressure from officials and certain groups of the population that sometimes reflect the interests of not very law-obedient citizens. But the judge is also a regular citizen, and his social rights and inviolability demand good protection. Court punishment for disrespect to the court is an important means of strengthening the independence of judges. The Supreme Court is working out a legislative package directed against any intervention in the justice process: premature publication about the process, negotiations with members of the court, pressure on the parties and witnesses, impermissible behavior in court, non-compliance with the court orders, etc.--all of which represent disrespect to the court and should be punished by law. The work is carried out to strengthen in the national legislation the provision that the person who intervenes in the justice process should be subject to legal responsibility, no matter whether he did or did not pursue the goal of such intervention.

Of course, we have a lot of problems. But we are fully convinced that the court reform which bears so many hopes must move our justice to a new quality level, elevate the prestige of the court, strengthen the independence of the judges and provide for the dependable protection of citizens. Azerbaijan is an interesting and original country, and its people who have suffered a lot through its history deserve to have a gracious and independent court.