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International Round Table
**SHAPING JUDICIAL COUNCILS
TO MEET CONTEMPORARY CHALLENGES**

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(Hybrid format)

PRESENTATION
by

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I am very pleased to be here today and share views about composition of the judicial councils on the basis of my previous experience in Georgia.

In 2017 the Parliament of Georgia elected me as a member of the High Council of Justice by 108 votes on the basis of the nomination of one of the civil society organizations for 4 years' term. It was the biggest support ever other members of the judicial council received in Georgia. After the election for the position, I started advocating for various changes in the judicial system, for instance, introduction of merit-based selection process of the supreme court judicial candidates, as well as many other issues related to the strengthening transparency, accountability, and efficiency of the justice system. Unfortunately, in the body composed of 15 members, my vote was never deciding, thus, during this period it was almost impossible to enjoy my rights adequately and accomplish objectives on the basis of the decisions of the Council. In spite of discussions on the open sessions in the High Council of Justice of Georgia attended by the media representatives and civil society, the judicial council was simply able to obtain appropriate decisions by the majority or 2/3 of the members concerning the judges' career, discipline, or other administrative issues.

Therefore, I consider that while speaking about the best model of the judicial council, it is always important to take into consideration the specific characteristics of the justice system of each country. Moreover, cultural issues and social aspects play a very significant role in the decision-making process in the Councils, especially with a focus on avoiding nepotism and cronyism related to judicial careers.

Unfortunately, the High Council of Justice of Georgia failed to establish an effective, accountable, and independent justice; no measures were implemented by the Council to prevent internal and external influence over the judicial system. Consequently, despite the judicial reforms in Georgia it is widely recognized that the Georgian judiciary lacks independence, effectiveness, and accountability. Mainly, the challenges are caused by the improper implementation of the law and the inadequately expanded power of the High Council of Justice of Georgia on the basis of amendments in the Constitution and Organic Law on Common Courts of Georgia. For this reason, we are facing that the High Council of Justice has the capability not only to administer the judicial system and fulfill the ordinary authority regulated by the law, it has all the power to fully control, guide isolation and minimize the accountability of the justice, and affect negatively on the independence and effectiveness of the judiciary.

Short overview of the High Council of Justice background in Georgia:

The Judicial Council of Georgia was established in 1997, it was a period when the Parliament adopted the Organic Law on Common Courts of Georgia. Currently, the judicial council is a constitutional body, its composition and authority, including competences of the secretary of the council, is established by the Constitution of Georgia and Organic Law on Common Courts. Initially, the composition of the council was determined by 12 members, where only 3 judges were presented. Later, the number of members, composition, proportions and quotas changed several times. Generally, it was altered between 9 to 19 members, composed by the executive body, legislature's *ex-officio* members, prosecutor's office and judiciary. But for many years, until 2013 there were no representatives from the civil society organizations, bar or universities in the High Council of Justice.

After the parliamentary elections in 2012, a government decided to amend the Organic Law on Common Courts of Georgia and introduce a new and more inclusive model of the judicial council. Hence, there was a hope that this composition of the High Council of Justice could ensure a more accountable, more effective and more independent judicial body.

The number of the council was determined by 15 members, among them chairperson of the supreme court of Georgia is an *ex-officio* member, 5 non-judge members are elected by the parliament on the base of nomination of civil society organizations (non-profit (non-commercial) legal entities), bar or universities; and 1 member appointed by the president on the base of nomination of the mentioned institutions.

As regards to the judges 8 members are elected by the conference of judges. Any judge present at the conference has the right to nominate the candidate of the High Council of Justice of Georgia. The voting process is secret, that guarantees the judges to make decisions without undue influence. However, as it is happening, usually there is a non-competitive environment at the conference, practically only 1 or 2 candidates are nominated, they do not share their visions about the current situation, achievements and challenges in the justice system, besides the candidates receive more than 200 votes from the conference.

Main competences of the judicial council in Georgia:

According to the law the council shall be created to ensure the independence of courts (judges) and the quality and effectiveness of justice, appoint, promote and dismiss judges, nominate supreme court judicial candidates, organize judicial qualification exams, formulate proposals towards implementing a judicial reform. In addition, the judicial council defines the number of the judges of a court of Appeals, district (city) courts, creates narrow specialization of judges, elects the independent inspector, assesses judges in a probation period and accomplishes other objectives, including administrative and financial issues.

According to the Organic Law on Common Courts of Georgia nomination, appointment and disciplinary liabilities of the judges must be decided by 10 members (2/3), it means that formally only judge members are not able to make this high-level decision. In spite of this standard, judge members were usually accompanied by 2 or 3 non-judge members having informal connections with them, a so-called influential group of judges. Thus, the rule to balance the power in the High Council of Justice through the composition was not properly implemented. Moreover, the problem of conflict of interest arose several times in the decision-making process of the Council concerning appointment of the judges and nomination of the Supreme Court judicial candidates. Therefore, we need more attempts and specific approaches to prevent the conflict of interest in the judicial council, as we experienced that fulfilling formal requirements of the law do not eliminate nepotism or cronyism in the High Council of Justice. For instance, there were the cases of the conflict of interests in the nomination process of the Supreme Court Judicial candidates. In particular, judge members were relatives of the judicial candidates, later on one of them was elected as a judge of the Supreme Court of Georgia, another person was appointed to the position of an independent inspector of the High Council of Justice. Further, the son of one of the non-judge members of the judicial council was appointed as a judge of the first instance Court.

To summarize, the main challenge for our justice system is the so-called "clan-based" governance, which is mainly facilitated by the current rules of composition, mandate, and decision-making process of the High Council of Justice. The observations show that an influential group of judges uses both shortcomings and even positive amendments to strengthen their power through the Council. The amendments in law as well as other regulations have failed to address challenges in the judicial system. The procedural transparency, the introduction of a liability of a justification of the decisions regarding judicial career, establishment of the independent inspector or initiation of many other new regulations in law did not manage to ensure the judicial independence, effectiveness and accountability.