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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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**THE JUDICIAL COUNCIL IN MOLDOVA:
GENUINE INDEPENDENCE MEANS ACCOUNTABILITY**



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Distinguished organizers, panelists and guests, dear colleagues,

I'm very pleased to take part in this discussion today, as I believe the topics that are raised are of significant importance to all of us. I am also pleased to notice that, alongside with "independence" of the judiciary and judicial councils, the term "accountability" is more and more often mentioned as a stringent necessity, as it seems that by insisting so much on independence, we have overlooked the effectiveness, transparency – in one word - accountability of the judiciary and judiciary councils, and this becomes more and more of a challenge to many European countries, including our host, today, as mentioned by Madam Minister Cartabia in her opening speech.

The Judicial Council in Moldova has been set up by the first Constitution of the country in 1994 after the fall of the Soviet Union. According to the Constitutional provisions at that time, the JC was composed of judges and professors at law, and three ex-officio members: Minister of Justice, Prosecutor General and the President of the Supreme Court of Justice. Its main competencies have also been enshrined into the Constitution, such as appointment, promotion, evaluation and disciplinary procedures. Judges of first and second tier were appointed by the President of the state, upon proposal from the JC, whereas those for the Supreme Court of Justice – by the Parliament. All in all, it looked good, on paper. Not in practice, unfortunately. And not because this model was designed poorly. It was, I tend to believe, implemented too early.

It is hard to imagine that judges raised and trained in communist times turn overnight into independent and responsible judicial managers, who are willing to put the good of the justice system before their own.

While ethical standards and respectful reputation of the judiciary may be higher in established democracies, it was not the case in Moldova. Leaving the judiciary unchecked by external actors has led to corruption and lack of accountability.

Behind the curtain of independence and self-administration, it finally led to a combination of insulation, i.e. protecting their own corporate interests, and captivity by political elites, who managed to capture justice using various methods, such as corruption, blackmail, etc.

Even though "telephone justice", "nepotism" were quite visible also in the early 2000, the period between 2012 to 2019 became a black period for Moldovan justice. More than 20 billion USD from Russia have been laundered through Moldova, with the direct involvement of judges, more than 8 years have passed since the "banking fraud" has been revealed and no-one has been sanctioned. Citizens trust in the judiciary has been 25% in 2001, 36% in 2009 and again 25% in 2019, worsening further in June 2021 with just 18%.*

It is interesting to observe that states in which trust in judiciary is highest in Europe (Denmark, Norway, Finland, Sweden having highest ranks), and perception of corruption amongst judges in these countries being the lowest[†] do not have a classical JC model, combining the competencies for appointment of judges between an appointments council and the executive.[‡]

* <http://bop.ipp.md/en>

† https://www.europeansocialsurvey.org/docs/findings/ESS5_toplines_issue_1_trust_in_justice.pdf

‡ <https://www.ency.eu/images/stories/pdf/Scoreboard/scoreboard2017-report.pdf>

I'm not saying that the JC model shall be held guilty for the status of the Moldovan judiciary. By contrary, 20 years back, giving the power of decision to politicians with regard to judges' career would have probably had even a more devastating impact. We have seen, in numerous instances, how the Parliament refused to nominate honest judges proposed by CSM, or how former country Presidents rejected judges lifetime appointment after the initial 5 year nomination term for doubtful reasons (although obviously they had not passed the "obedience" test in the initial term), as well as how the Parliament worked hand-in-hand with the judicial council in appointing highly compromised judges to the Supreme Court of Justice.

What I want to say is that before giving the judiciary the powers and competencies for full "self-administration", some prerequisites have to be in place. In the perfect scenario, the judiciary should have high ethical culture and standards already before. Integrity checks at entry and throughout the tenure, transparency of justice delivery and of decision-making, some check-and-balances system to avoid corporatization need to be instituted, as well as, of course, decent salaries, which are no panacea, but a minimal guarantee against corruption, which need to be ensured.

At the end of the day, the judiciary cannot be entirely separated from the rest of the society, and is, in a way, a reflection of the society as a whole.

It is only last year, for the first time, that Moldovan citizens have elected a governing party which is financed fully from transparent sources, with no media outlets owned, with grass-roots door-to-door campaigning and obviously no oligarchs or criminal groups standing behind it.

Now, having a majority of honest and well-intended politicians in the Parliament and Government, and having the old composition of the JC, steaming from captured state time, reshuffling the judiciary becomes really complicated. At the same time, if we manage to do so, and to ensure a strong and accountable JC, we have higher guarantees that the judiciary, once reset, will resist, even in case of a political backsliding in the future.

Last year, with the kind advice and assistance of the Venice Commission and of the Council of Europe, for which we are very grateful, we adopted a series of changes to the Constitution, amongst which - elimination of the 5-year initial appointment term for judges, unification of the procedure of appointment for judges of all courts – by the President upon proposal from JC. A series of changes addressed the organization of the judicial council. Thus, the constitution now provides for a fixed number of the JC members for a unique mandate of 6 years: 12, of which 6 judges elected by peers and 6 persons with high reputation and integrity, which do not represent the legislative, executive of judiciary and are not politically affiliated, nominated by the Parliament with a qualified majority vote (3/5). It also states clearly that these are selected on the basis of an open and transparent competition. To note that the ex-officio members have also been removed.

Given that the mandate of the current JC members is expiring, and a General Assembly shall be held later this spring to elect new judge members, we have decided to introduce a so-called pre-vetting procedure for candidates. Hence, an independent commission, composed half from foreign experts and half from national experts, will assess their integrity. Only those who pass the integrity check, can then be elected by their peers. We have also committed to do the same for non-judge with candidates to be nominated by the Parliament. This mechanism aims to ensure a new composition of the JC whereby no concerns on their integrity would arise. I would also like to mention that we have introduced rules on elections of judge members – so that they have time to actually campaign before their peers, as well as a better representation of courts in the JC: 1 judge from the Supreme Court of Justice level, 2 judges from Court of Appeals level, and 4 from first tier courts.

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In parallel, we are working on ensuring that the income and assets verification by the National Integrity Authority is efficient, and hence contributes further to maintaining an integrity climate within the judiciary.

We have to understand that as long as a large share of judges and prosecutors which have been used to issue unlawful decisions and commit corruption acts, have almost never been sanctioned, the independence of the judiciary has to go hand in hand with accountability. Thus, strengthening the independence of the judiciary is important in order to secure lack of any interference in the activity of the judiciary, but accountability mechanisms need to be set up and further strengthened.

Open questions remain, at this day: balancing powers between the Plenum of the JC and its specialized bodies. Who has the final say on the judges' career and who gets the public blame in case of failure?

Second – the issue of returning members – judge-members return to courts, alike lawyers – how to ensure they don't feel intimidated for decisions they take against their peers while JC members.

Last but not the least – accountability of JC members as such, both of the plenum as well as of the specialized boards. How to ensure accountability for decisions without limiting independence.

Thank you for your kind attention and I look forward to our discussions.