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ZIGZAGS OF THE JUDICIAL REFORM IN GEORGIA

(FOREWORD)

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I extend warm greetings to everybody – speakers, foreign guests and especially inspiring persons and initiators of the conference. Wish you the best of luck; I have no doubts with this regard considering the successful presentation of the program and the flow of the procedure. Herewith, given that the conference is devoted to Topical issues of Justice, which primarily represents the current concern, I feel the need to have a very general outline of an early period of the reform, lack of which it might make difficult to perceive, estimate and further transform the present circumstances. This is equally related to beneficial and suitable, as well as, loss-making and hazardous salient factors.

A Little Bit of Retrospection

Transformation and further development of judicial system in Georgia had been put into effect in special conditions. The process started in 90s of the past century and was determined so that by the end of the Soviet political system Georgia was neither “an old democracy”, nor – “a new democracy”. We may call it a rudiment, founded on the European principles, yet “premature” (lasted for only several months) in the system modification process based on Marxist ideology (so called “dictatorship of the proletariat” conception), wearing a veil of the „Police state“, in which almost everything was maintained, except for the following two notions: “Soviet” and “Socialist”. This was first and foremost true with regard to the Constitution of Georgia, without amending of which any reformation would be senseless. However, how that should have been done? In case of keeping the old one, being absolutely inconsistent with the new political system, it would totally exclude Georgia from the list of the world’s democratic nations. On the contrary, having decided to establish a new one, a lot of resources, as well as, time would be required. Consequently, it was decided to restore the old and the “premature”, yet rather the progressive system. Nevertheless, after more than 70 years, modification and restoration of the system

were accompanied by certain difficulties. Thus, the only hope should have been the principle of gradually moving forward. Before setting up a new Constitution of 1995, Georgia declared general principles of the Constitution of 1921 and in accordance with its provisions passed a special law "On State power", which functioned as an interim basic law until adoption of the Constitution of 1995. With this regard, the most important Articles were Article 3, Article 8 and Article 32, being the most evident sign of restoration and acknowledgement of fundamental features of constitutional state, such as the independent judiciary, rule of law and priority of human rights and fundamental freedoms. Eventually, everything was finalized by the Constitution of 1995 and we can boldly say: on the one hand, the Constitution was capable to selectively preserve the basic principles of the Constitution of 1921; and on the other hand – to establish generally recognized norms and principles of the contemporary legal system.

It seemed that everything went in a natural and an ordinary way. Adoption of the new, modern type of Constitution led to establishment of the large number of legislative flows. Following this process there were created the State Commission of Legal Reforms, State Commissions for setting up substantive and procedural laws; legislative process launched effectively (up to 500 legislative acts were issued), even though they lacked strong and clear conceptual basis. This was particularly obvious concerning procedural codes within the same (single) system, where significant, sometimes even insuperable difficulties arose.

Nevertheless, the process was more or less coming to the end, especially, when an appropriate institutional scheme emerged (e.g. Council of Justice and others). Of course, judicial system in Georgia was still far away from the final goal, though it was rather progressive in comparison with the other former Soviet Republics. Success and final victory of the justice system seemed to become an irreversible process1, however, evil intentions of some made everything upside down. Due to the leadership of the so called "young wing" of the Union of Citizens of Georgia, judicial reform was directed to the wrong course. Particularly, the primary, moreover, the only aim of the "young wing" was to remove judges from office and to introduce the new judicial corps amateurishly through expressively and gravely violating rights of the former judges, protected by the international law, furthermore, by means of uncertain procedures. Thus, hundreds of inexperienced judges were appointed, certainly for political purposes. It was a preparation of a very safe ground for the rapid growing and already strong political party to win in any battles, inter alia – in upcoming parliamentary and presidential elections.

Happened, that had to be happened. The final consequence was the so called "Rose Revolution" and the beginning of new governance. Although, the new judicial system contributed its share, but, first of all, it was characterized by slightly awkward methods; secondly, it was required to fulfill new, much more diverse and complicated political assignments that the inexperienced judicial corps was unable to perform

1 See Journal "Herald of Justice". 1998. #2-3. "At the Edge of Judicial Reforms". p. 2-3.

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due to the lack of knowledge, professional experience, civic immaturity and general unfeasibility. Therefore, judicial corps should have been “thinned out” and transformed by more “skilled” forces. Since the following renewed campaign developed through the pretty refined procedure, based on the “confidence principle”, the new judicial corps had turned out to be much more solid; so “firm”, that the number of them had successfully reached until today. Meanwhile, two elections were held one after the other – bringing the new government in 2012 and elections in 2016. Moreover, some of the judges were appointed as lifetime judges in the system.

Although, judicial reform had been announced initially and accomplished more or less successfully, with the name of three achieved and the fourth newly started “wave”, confirmed officially by the foreign competent bodies, it was also noticeable that the process went on with great difficulty, not without essential and expected losses. Responsibility should not be placed on the initiators of the reforms for these losses due to the fact that everything was administered and carried out by the poor political will, or merely by wrongness of the governing system of the field. It is worth recalling even the fact that the eloquent program promising on restoring justice, establishing and executing the proper instruments (institutional procedures) was denied as a matter of principle. It seems that the situation significantly determined the essence of the judicial reform in Georgia, its direction and rate. This is the reason that it will remain as an indelible mark in the most recent history of the Georgian state building process.

Truth, credibility and success of today’s conference speeches almost entirely depend upon the question, whether the aforementioned retrospective plot will be courageously and completely considered, especially on the basis of the altered programs and incoherent fluctuations of the continually “darned” legislation.

Best wishes for a successful conference!