



Strasbourg, 9 May 2014

CDL-JU(2014)004  
Engl. only

**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**CONFERENCE ON**  
**PRELIMINARY REQUESTS BEFORE**  
**CONSTITUTIONAL COURTS**

**Tbilisi, Georgia**

**1-2 March 2014**

**REPORT BY**

**Ms Slavica Banić,**  
**Judge, Constitutional Court of Croatia,**  
**Substitute Member of the Venice Commission**

Under the host of the Ministry of Justice of Georgia, the Conference was organized by the GIZ, EUCJR, CoE Venice Commission, USAID/JILEP, UK Embassy to Georgia.

In the beginning it should be noted that just before the conference I was informed that the Constitution was amended in a way that it introduced a life time appointment of judges with three year probation period. This was confirmed during the Conference by the statement of the Minister of Justice who asked from the participants to accept the present legal situation.

During the preparation of the presentation I tried to find out the valid information on the Constitutional amendments but I did not succeed. All I found was the statement of the Conference of Judges who expressed their non-agreement with the probation period. This statement was repeated by the President of the Supreme Court in his speech on the conference. However from that statement it was not quite clear whether the probation period was legally approved or not.

The introductory speakers, like Ms Brink from US Embassy and Ms Winter from EUCJR reminded the participants on the approach of the Venice Commission with regard to the independence of judiciary. Catarina Bolognese from the Council of Europe was very expressive about the role of the Venice Commission.

Presentations that were given by the British, American, Austrian, German and Polish speakers on the first day showed the different approaches to the probation period, its monitoring and appraisal system as well as the legal framework on it in their countries.

I observed the following:

The major issue in Georgia is how to achieve the independence of judiciary. So, I got the conviction that the probation period, among other goals, has been introduced in order to develop mechanisms for that.

The judiciary among themselves are divided to those who support the probation period and to those who are against it.

Namely, the President of the Supreme Court who was supporting introduction of the probation period at certain legislative phase, suddenly changed his mind and now has been supporting a life term appointment without probation period. The Minister of Justice informed the participant of that fact and in a way expressed her wonderment on this change of the opinion.

Also, the situation within the High Council of Justice seems to be problematic. Their non-judge members seem to be against the "politics" of the Supreme Court's president. These are, of course, my personal impressions I got from some comments subsequently presented.

Between the lines, it could be understood that one part of the judiciary for some reason is opposing to the ministry's efforts in the reform regardless of whether life term or probation period is at stake.

During the discussion there were interesting and cooperative comments from Georgian judges which were, though, from time to time shadowed by a strong opposition of the "followers" of the President of the Supreme Court.

I must say I would not know who the followers would be, if this has not been said the next day. However, it was obvious that some commentators supported the views of the President of the Supreme Court.

For example, one Supreme Court judge (Administrative Chamber) was very sharp in comment about the non-readiness of Georgia to approach to changes because of failures from the past, legal culture, state of mind and very negative public image of judges. She literally said: "*Georgian people don't like us and it is for reason!*"

I would say that some of the participants do not believe to changes because of too long oppression to which they were exposed and lack of confidence in themselves.

However, the Minister tried to be constructive and positive. After the pause, the President of the Supreme Court left. It was interesting because, the Minister asked him before the lunch pause to stay until the end of the working day. After the pause she commented his departure.

The German presentation was very good and left a good impression on the participants on the way how the probation period is carried out in Germany.

The next day, I presented the position of the Venice Commission with regard to the evaluation system. The presentation is attached to this report, cleared only in parts which were used for addressing to the participants.

I rearranged my speech because of two reasons. Some parts were already expressed in the introductory remarks and I had to clarify them additionally.

However, the major reason for the speech I gave as it is is because I realized from the comments during the first day of the conference, as well as from the conversations on the margins of the conference, that a great problem of the judiciary in Georgia is the aspect of the "internal independence".

So, I adjusted it, literally by doubling the Venice Commission statements on purpose in order to be heard well and hopefully remembered. I thought it was necessary because I was said that some higher judicial authorities misused their positions for instructing the lower courts or expecting from them to adjudicate in a certain way. One judge openly asked the experts what kind of relationship should exist toward the president of the court. The German speaker gave a very good example on how the German courts deal with the issue of internal independence so I used it and repeated it in my presentation.

I should add here that criteria I gave as qualitative were taken from the German, French and Austrian models. With regard to the evaluation procedure I used the parts from the articles referring to the British, French and USA model of JPE (Judicial Performance Evaluation). Also, I expressed the opinion that before the Georgian authorities will be the question how to proceed with the probation period of the judges who have already served 10 year term or longer.

As agreed, I used a part of the time given to say several words about the Croatian experience. I thought it was necessary because of the confusion and lack of self-confidence I felt among judges about reforms.

As it can be seen from the presentation (not all parts were spoken out because of the lack of time, but later during the discussion I succeeded to present them partly) I felt it was necessary to encourage them in direction of accepting the changes.

I hope I will not be subjective if I say that the VC presentation was well accepted. Possibly because of clear summary on what could be counted as qualitative criteria and what is approach of Venice Commission toward the quantitative criteria. Also, I think it gave them the basic features on the evaluation procedure so they got the idea in what direction to go.

It must be also said, that one non-judge member of the High Council of Justice used the floor to

say how the President of the Supreme Court and his followers hide themselves behind the recommendations of the Venice Commission with regard to the probation period and that his behaviour the day before when he left showed his attitude toward the reforms. He said that he and his followers use the recommendations of the Venice Commission as a shield to oppose the changes.

I did not comment this because Ms Winter, who was the moderator of the session, strongly objected him and commented on it instead.

I was given the possibility to say some words at the end and I repeated the internal and external aspect of judicial independence and aspect of the objective criteria in cases of non-permanentisation of the probationary period.

At the end, the Chairman of the Parliamentary Committee on Legal Issues asked for cooperation and doubling efforts to "sink" into that work and do the best in producing the legislation which will answer the best to the needs of Georgian judiciary at the moment. However, he was open in saying that there are judges who were not conducting their service properly and that they do not deserve to be among judges.

The minister of justice asked for continuation of cooperation and dialogue and asked the speakers to review the legislation that will be drafted upon the raised issues on the conference.

From all of this I conclude that the situation on judiciary in Georgia is very difficult. It seems that all actors of political and public life are not happy with their judiciary. And as it was heard in the conference, they are quite direct in their statements about it. However, a real problem is that even judiciary itself is not happy about themselves.

I could not find out how well is judiciary organized in the context of professional associations and how unified they are in the approach to the government.

The role of the High Council of Justice will have to be clarified. At the moment they seem to be those who will evaluate the judges. From some of the expressed comments there are also unclear issues with regard to the disciplinary .

That is why I clearly pointed out how judiciary in Croatia is *the main actor* in all processes of recruitment, appointment and career issues. However, I said in oral comment that the evaluation has been carried out solely by the judiciary and had nothing to do with the State Judicial Council which deals with the disciplinary issues.

I hope I succeeded to give you a picture on how the conference went on.