



# Coalition for Independent and Transparent Judiciary rejoins the ongoing discussion of the witness interrogation rules

In July 2015, Ministry of Justice proposed draft legislation on reforming the rules of witness interrogation. The draft is based on the opinions of the special group created under the Legal Affairs Committee of the Parliament of Georgia. The group was created given the multiple postponements of enforcing the new rules of witness interrogation adopted in 2009 and its objective was to identify the model of witness interrogation that is in compliance with international human rights obligations. However, the government has at no stage provided reasoning as to why and in what way do the postponed rules conflict with the international best practice. It must be highlighted, that the proposed draft is the government's first attempt to resolve the issue. While until now the 2009 rules of witness interrogation were simply postponed, currently the government is trying to propose a compromise.

The attempts of compromise and start of discussion procedures are to be acknowledged. However, the Coalition believes that the proposed draft is inconsistent with the existing criminal justice system in Georgia and also, broadly, with the interests of effective justice. The proposed draft does not fully cover the problems associated with the current rules of witness interrogation that need to be addressed.

The Coalition would like to emphasize several problematic issues:

The draft conflicts with the spirit of the Criminal Procedure Code and the current

system of criminal justice. Specifically, the MoJ amendments contradict with the adversarial principle based on equality of arms principle. In this situation the right to cross-examine witnesses becomes fictional and equality of arms becomes unattainable. Also, the main hearing of the case and examining witness reliability lose any value, since the witness has already delivered a mandatory testimony, changing of which is related to certain legal consequences;

A completely alien notion is introduced in adversarial system, which is a version of involuntary interrogation of witness during the investigation, a clear characteristic of an inquisitorial system. This is especially true in the situation that Article 114, para 1, (e) creates a real opportunity for making provisions for exceptional circumstances a generally applied rule;

The proposed draft still defines witness testimony and cooperation as an obligation. The draft does not consider the need and use for cooperation with witnesses and acquiring their consent by the parties. This is especially problematic in regards with the prosecution. In this situation witness interviewing becomes ineffective and nominal, questioning the use of the entire system of investigative activities and does not contribute to developing the skills and will for law enforcement bodies to establish good relations with the citizens;

According to the draft, witnesses can be questioned separately by both parties in front of a magistrate judge. On the one hand, this creates an additional procedural stage (witness questioning), which will not be an exceptional case. At this stage witnesses will be questioned, which is effectively a matter of merit hearing. Additionally, in this case, the resources of the judicial system can be unreasonably constrained, which is unacceptable, given the current realities and the principles of effective use of public funds. The proposed draft not only does not limit, but does not even define the number of witnesses that can be questioned in front of a magistrate judge. Questioning unlimited number of witnesses by both parties may paralyze the entire judicial system. Additionally, as already stated, the proposed model fully disfigures the system, by introducing elements of merit hearings when questioning witnesses in front of a magistrate judge;

In June 2015 the sitting Parliament supported enactment of new rules of witness interrogation in relation to juveniles. According to the Juvenile Justice Code from

January 1, 2016 interrogation of juvenile witnesses must only be conducted in front of a judge. Accordingly, they can only be interviewed voluntarily during the investigative stage. If the state in general believes it possible to enact new rules of witness interrogation in relation to juveniles, it remains unclear why there is no such possibility for other cases;

The government, especially the law enforcement bodies, cannot demonstrate what, if any, systemic flaws are there in the witness interrogation model of the 2009 Code. To date, all statements of law enforcement bodies suggest that their opposition to enforcement of new rules is motivated by the imminent   of investigation   which is of course not a systemic argument. The inadequate speed of preparation by the investigative bodies and lack of human or qualified resources cannot be considered as relevant arguments when discussing creation of fair trial guarantees.

The Coalition for Independent and Transparent Judiciary calls on the executive and legislative branches of Georgia to support the witness interrogation rules as given in the 2009 Criminal Procedural Code, as the only reasonable model considering the current criminal justice system in Georgia and ensure its enforcement from January 1, 2016. Considering the current realities and in the case of substantiated need from the government   side, the Coalition is ready to cooperate with the government to produce the most appropriate plan for gradually transitioning into the new system. First of all, specific crimes must be identified, regarding which the new rules will be enforced. Then, the timeline for transition must be defined. In parallel to this, the effectiveness of the system must be controlled and monitored both by the state and non-governmental organizations.

The Coalition for Independent and Transparent Judiciary fully supports enforcement of the witness interrogation rules as given in the 2009 Criminal Procedural Code. Theoretical discussion of the possible flaws of the new system will be vain without its practical enforcement. It is noteworthy, that the postponed model has been assessed as streamlined and sound by international experts, while the draft proposed by MoJ was assessed as substantially flawed.

Georgia must enforce modern and sound rules of witness interrogation. This means cooperation with witnesses, convincing them to participate in the judicial process,

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protecting, respecting and supporting them. In parallel, investigative techniques and methods must be enhanced so as to ensure that information received from witnesses is not the only source and hope for the investigation and criminal investigations can progress using alternative methods.