



Coalition Opinion on the Prosecution Reform Concept

The Coalition is examining the Prosecution Reform Concept, put forward by the Criminal Justice Reform Inter-Agency Coordination Council on April 8, 2015, which proposes several amendments to the rules of appointing the chief prosecutor. According to the concept, the Prosecutorial Council becomes part of the process, and reviews the nominations by the Minister of Justice. The candidate supported by the Council is nominated to the government, and upon its consent, the parliament reviews the candidacy and makes a decision with a simple majority.

Considering that the Concept fits with the current constitutional reality, we maintain that Prosecution needs comprehensive reform to ensure strengthened institutional independence and distance from political influence. Realizing these objectives requires constitutional amendments. We believe that the proposed Concept that corresponds with the current Constitutional framework cannot ensure substantial changes in the prosecutorial system.

The current model for selecting and appointing the Chief Prosecutor, in which the Prime Minister appoints and dismisses the Chief Prosecutor, upon the Justice Minister's nomination, has three fundamental problems:

the appointment and dismissal processes are fully in executive competence, precluding open parliamentary discussion on the issue;

the selection of the Chief Prosecutor is completely devoid of professional criteria and is political in nature;

the process is fully in the hands of the political party in power and does not ensure even minimum involvement of the opposition.

The proposed Concept partially addresses the existing shortcomings, but it does not

fully tackle the abovementioned problems. Selection and appointment of the Chief Prosecutor based on professional, rather than political grounds, and involvement of the opposition political forces still remains an outstanding challenge. The proposed Concept is not oriented towards supporting real participation of different groups in the decision-making and the consensus building among political powers.

As for the specific issues proposed by the Concept:

Nomination of the Chief Prosecutorial Candidate

With the proposed model the selection and appointment of the Chief Prosecutor is not sufficiently protected from politization and participation of the political leadership is still high. According to the Concept, Minister of Justice still retains the right to nominate the Chief Prosecutor candidate. We believe that keeping the initial nomination of the candidate in the hands of a political official is inappropriate. The nomination by the Minister, then the governmental discussion and approval, preserve the political nature to the issue.

Instead of nominating the candidates, the candidacy must be selected in open competition, considering professional criteria. To ensure this it is essential to have clear selection criteria and have a professional and non-political process in place.

Composition of the Prosecutorial Council

Creation of the Prosecutorial Council is one of the major novelties of the Concept. However the current Concept does not clearly determine the nature of the Prosecutorial Council – whether it is an independent body administering the Prosecution, or a Justice Ministry's support body in relation to the Prosecution.

However, even by considering only the functions of the Council, it is clear that the rules for its composition are flawed. With the proposed model, the Justice Minister her/himself is the member and chair of the Council. Additionally, two parliamentary committee chairs are also members. Political actors' participation in the work of the Council to such a degree points to the political nature of the body. Justice Minister's membership of the Council, which reviews the candidate nominated by her/him, is also flawed. It is clear, that with this composition the Council will not be oriented towards professional selection of the candidates.

As for the participation of civic and professional organizations in the work of the Prosecutorial Council, according to the Concept, the Parliament selects 2 members among them, by a simple majority. It is clear that with this procedure the composition of the Prosecutorial Council is exclusively in the hands of the parliamentary majority.

Final Decision-making in Parliament

Giving the final decision-making authority for appointment of the Chief Prosecutor to the Parliament is an important step. However the proposed Concept still leaves the process in the hands of the governing political party, which will have adverse effects institutionally on the level of independence and trust towards the Chief Prosecutor.

It is important that the reform vision is oriented towards supporting participation of various groups in the decision-making process and consensus-building among the political forces. This could be achieved through various means, including through the composition of the Prosecutorial Council and/or increased opportunity for opposition participation in the process of reviewing the Chief Prosecutor candidates, conciliation commission or other system, that would ensure a participatory and timely process.

Accountability of the Prosecution

According to the Concept, the Chief Prosecutor reports to the Prosecutorial Council every six months. Accurate regulation of the accountability issues is an important precondition for the genuine independence of the prosecution service. In the view of the proposed formation of the Prosecutorial Council, we believe that Chief Prosecutor's accountability towards it must be critically re-assessed. We believe, that during the ongoing reform of the prosecution, special emphasis must be placed on

strengthening the parliamentary accountability mechanisms and establishing the prosecutorial accountability system towards the legislative body.

Besides the selection and appointment of the Chief Prosecutor, the issue of his dismissal is equally important. It must be fully distanced from political influence and interests. The model proposed by the Concept needs more clarity, including, what mechanisms and standards do the special prosecutors use to study cases, how does the Prosecutorial Council review the conclusion or on what other grounds could the Chief Prosecutor leave office and with what procedure.

In view of these opinions, we believe that the proposed Concept needs significant review so as to ensure the prosecutorial service □□ independence from the political leadership. Also, it is important to clearly define the role of the established Constitutional Commission, in the process of reforming the issues of Chief Prosecutor's selection and appointment.

Given the importance of the matter, it is essential for the Interagency Council to discuss alternative models and not decide the matter hastily. The Coalition for an Independent and Transparent Judiciary is ready to participate in the discussion of the prosecutorial reform issues and to present its own vision of reform directions.