



Coalition's Statement on the Appointment of Judges for a Probationary Period

The Coalition for an Independent and Transparent Judiciary welcomes the government's initiative to continue the judiciary reform, and expresses its readiness to actively cooperate with all the three branches of power for ensuring establishment and maintenance of an independent, fair and effective judiciary system in Georgia.

With this purpose, the Coalition makes this statement as a feedback to the draft organic law "On amendments to the organic law of Georgia 'On Common Courts'" initiated by Georgian MP Shalva Shavgulidze. As mentioned in its explanatory note, the purpose of the draft law is to harmonize the organic law 'On Common Courts' with amendments to the Constitution of Georgia that shall come to effect from the moment the president elected on 2013 presidential elections takes his oath.

Among other amendments, the draft law envisages appointment of judges for a probationary period, also criteria and procedures for judge monitoring and evaluation that feed decision-making for or against lifelong appointment of the judge.

It is noteworthy that the draft law stipulates intensive judge monitoring during the probation period (with three different members of the Council of Justice individually appraising the judge's performance one, two, and three years after his/her appointment). The monitoring implies "evaluation of the validity of judge's decisions, his/her professional and moral reputation, impartiality demonstrated at trials, and skills to effectively manage the court sittings". **This provision is especially alarming because evaluation of the validity and impartiality in practice means evaluation of the content of the judicial decision, which is unambiguously prohibited by the national legislation as well as international**

norms. Namely, pursuant to Article 84(3) of the Georgian Constitution, “No one has the right to make a judge accountable in a particular case”.

In the frames of the reform the State intends to further strengthen the above guarantees of the judicial independence, namely, by supplementing the organic law with a provision ensuring that no one has the right to put the judge under pressure to decide cases in a particular way. **Against this background, creation of such a monitoring system would challenge the consistency of the state policy. Even though the monitors would not directly ask for judge’s clarifications on a particular case decision or impose a decision to make, the monitoring might have an effect actually equal to that of demand for clarifications, in a situation when retention in judicial office depends on the content of the judge’s decision, which would have a detrimental effect for judicial independence and impartiality.**

In the same time the Coalition would like to clarify its position on the appointment of judges for a probationary period in general. Both OSCE and the Venice Commission share the opinion that appointment for probationary periods may seriously endanger the judicial independence. The Venice Commission provided its recommendations on this issue in 2010.

Appointment of judges for probationary periods was intended to serve the important purpose of ensuring adequate qualifications and ethical principles of the judiciary, especially in view of the life-long character of the judicial appointment. Yet the institute of probationary periods poses significant risks for judicial independence, and it would be unjustified to ignore the risks. In the existing context of Georgia, the risks are even more critical as the country does not have a long and solid tradition of respecting judicial independence.

It would be therefore better for the State, with the assistance and involvement of the civil society, to create a system posing minimum risks for judicial independence yet serving the aim of a fair and effective judiciary. In the opinion of the Coalition, at this stage suspension of the constitutional norm envisaging lifelong appointment of judges would be better than introduction of the three-year probationary period.

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The Coalition believes that appointment of judges with adequate qualifications, experience and morals could be ensured through a transparent judge selection system based on objective criteria and reasoned decisions. In the same time, both the national legislation and international legal norms allow for disciplinary liability of judges (including removal from office) in the presence of respective reasons. Proper selection and disciplinary liability mechanisms as well as full compliance with principles of the supremacy of law would ensure appointment of adequate judges to the judiciary and removal of those who fail the confidence shown to them during selection. This approach would be preferable to the methods weakening and endangering judicial independence.

Following from the above, we believe that **at the second stage of the judiciary reform the State should pay attention to and focus resources on improvement and advancement of the legal and institutional frameworks and of the practice of judge selection/appointment and disciplinary proceedings.**

We would also note that the Coalition keeps a close watch on legal initiatives and proposals elaborated at the second stage of the judiciary reform, and will be forwarding its ideas on related issues in writing to the government and the society in the nearest future.