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Coalition for
an Independent and
Transparent Judiciary

Coalition views on the proposed amendments to witness interrogation rules

The Coalition believes that the draft proposed by the Ministry of Justice introduces principally incompatible elements into the current procedural system, considerably worsen the legal standing of the defense party and are overall threatening to the principles of adversarial proceedings and equality of arms. We believe enactment of the draft will in the future create numerous important legal and practical problems. Among them:

1. Violation of the principles of adversarial proceedings and party equality

Only the prosecution will have the right to interrogate a witness in front of a magistrate judge, and this will happen without the presence of the defense party. The defense party will not have effective mechanisms for checking witness reliability. The witness once thus interrogated will be tied by the statement, because changing it will result in criminal liability for giving a substantially contradictory or false testimony. Hence the obligatory interrogation of a witness in front of a magistrate judge effectively nullifies the purpose of cross-examination.

2. Violation of the purpose of immediacy

Any evidence must be studied and reviewed in front of the judge making the final decision on a case, with equal participation of prosecution and defense parties. Hence, all witnesses must be interrogated directly and cross-examined at the substantial hearing. There may be specific exceptions to this general principle, but these must be related to extreme and extraordinary circumstances. The proposed draft, however, establishes a broad and general rule allowing witness interrogation in front of the magistrate judge under simplest of grounds. Effective elimination of cross-examination will significantly damage the principle of immediacy.

3. Ignoring the role of Voluntary Interviewing

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The wide grounds for compulsory witness interrogation in front of the magistrate judge will effectively eliminate the motivation of law enforcement bodies to establish cooperation and trust-based relations with citizens and thus acquire the information voluntarily. The policemen will not be interested in improving their investigative skills, professionalism, since they know that in case of refusal to cooperate, they can easily use the compulsory interrogation mechanism.

Based on the above, the Coalition does not support enactment of Ministry of Justice draft and instead supports entry into force of the principles that have been postponed for the last several years.