



კოალიცია

დამოუკიდებელი და გამჭვირვალე
მარლთმსაჯულებისათვის

Coalition Calls on Parliament to Consider President's Objections in Relation to the "Third Wave" Judicial Reform Bill

The President of Georgia [vetoed](#) the "Third Wave" Judicial Reform bill submitted to him on January 10, 2017. The Coalition for an Independent and Transparent Judiciary believes that the objections raised by the President are important for judicial independence and proper implementation of the reform.

On numerous occasions, the Coalition [reacted](#) to negative events associated with the Parliamentary considerations of the "Third Wave" legal drafts and has also [assessed](#) the bill. The Coalition believes that despite the fact that the bill does not envision reforms in several important areas, it still includes some positive changes.

Accordingly, Parliament has to immediately adopt the "Third Wave" bill after having

considered the President's objections.

The Presidential veto mainly concerns those changes which were included in the bill after the Venice Commission published its [opinion](#). These revisions were unexpected and did not undergo public discussion. The final version of the bill does not include amendments that were positively assessed by Venice Commission (e.g., the bill does not envisage election of Court Chairs by judges of respective courts). In addition, the bill includes changes that were not initially considered (e.g., it abolishes a restriction according to which Court Chairs are not eligible for High Council of Justice (HCOJ) membership).

Coalition's Opinion on the Issues Addressed by President's Objections

• Election of Chairs of Courts, Court Chambers, and Collegiums by Judges

The initial version of the Third Wave Bill envisaged election of court chairs by the judges of respective courts. The Venice Commission Opinion from 2014 positively assessed this change, which was also supported by the Coalition. However, the revisions made at a later stage preserved HCOJ's authority to appoint court chairs.

Maintaining HCOJ's right to appoint chairs of courts/chambers/collegiums provides unreasonable power to the Council and also contributes to the concentration of limitless authority in the hands of court/chamber/collegium chairs. Accordingly, the Coalition agrees with the President on the need to restore the draft amendment, which introduced the rule for election of court/chamber/collegium chairs.

• Distribution of functions of Court Chairs and Chamber or Collegium Chairs among Different Judges

According to President's objections, the bill has to abolish the right of a court chair to

simultaneously occupy the positions of a chamber or a collegium chair. Coalition supports this position, which by introducing a restriction frees a court chair from certain functions unrelated to judicial office. This change will also mitigate a risk of concentration of power in the hands of a court chair.

- **Election of a Court Chair, First Deputy Chair or a Deputy Chair as a HCOJ Member**

According to the Third Wave bill, court chairs, first deputy chairs, and deputy chairs are eligible for HCOJ membership. However, the total number of chairs and deputy chairs shall not exceed four. According to the 2013 Venice Commission [Opinion](#), in order to avoid the concentration of power in the hands of certain individuals, the law may include a provision according to which if a chair is elected as a HCOJ member, she/he must give up the chairmanship. The Coalition agrees with the President's suggestion according to which a chair, a first deputy chair, and a deputy chair will cede his/her authority if he/she is elected as a HCOJ member.

- **Abolishment of Probation**

The final version of the bill includes a provision according to which former and current judges with at least three years of work experience at the Constitutional or Supreme Courts are free from the requirement to undergo a three-year probation.

Venice Commission opinions from [2010](#) and [2014](#) emphasized the risks associated with probation for judges and negatively assessed the rule which introduced it. The President's objections envisage abolishment of the probationary period and lifetime appointment of judges, which should affect judges appointed after the "Third Wave" bill becomes effective. The Coalition supports abolishment of the rule which provides for the probationary appointment of judges.

- **Establishment of the Number of Supreme Court Judges**

The "Third Wave" bill establishes a minimum number of Supreme Court judges. The

საქართველოს ახალგაზრდა იურისტთა ასოციაცია GEORGIAN YOUNG LAWYERS' ASSOCIATION



right to establish the maximum number of judges is kept in the hands of the Supreme Court Plenum. **The President's objections suggest establishing a maximum number of the Supreme Court judges.**

The Coalition welcomes the proposal to regulate a probable number of judges in the law. The Venice Commission underlined the need to balance the power of government branches with respect to the establishment of the number of judges, judicial appointments, and allocation of resources needed for an increase in the number of judges. The powers have to be balanced in a way that will limit the Parliament's or President's undue influence on the increase of the number of judges. The President's objections confirm the need to establish a balance of power in line with the Venice Commission's opinion. In addition, the President proposes to the Parliament to regulate the issue of the number of judges after having considered better guarantees of judicial independence.