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და გამჭვირვალე
მართლმსაჯულებისთვის
Coalition for
an Independent and
Transparent Judiciary

The Coalition responds to the veto on draft amendments on Constitutional Court

The Coalition for an Independent and Transparent Judiciary considers it important to comment on President's act, which returned legislative changes on Constitutional Court to the legislature with objections.

Firstly, we want to emphasize that the hasty and unprepared decisions of the authors of the drafts and some members of Parliament have endangered effective functioning of **constitutional justice in the country; this is confirmed by the Venice Commission preliminary opinion.**

Unfortunately, the document published on May 31 by the President, only partially and incompletely describe the problematic issues of the legislative changes, including the opinions of the Venice Commission. For instance, the objections omit the crucial issue of suspension of the norm only by the Court Plenum.

Moreover, despite the local organizations' and Venice Commission's concurring criticism, the alternative draft law presented by the President still maintains the norms restricting the authority of the Constitutional Court's board and increasing quorum requirement of the Plenum and decision-making by the qualified majority.

Considering the fact, that the rejection of Constitutional claims is the most desirable result for the government, achieving this result with the Court's minority vote encourages influences over the Court. Finally, making decisions by qualified majority not only leads to ineffectiveness of the Court, but also encourages government branches to control the Court's minority in order to get desired results thereby undermining the Court's independence.

In the current situation, even if the Parliament accepts the President's motivated objections, the following problematic areas still remain in the draft law:

Quorum of the Plenum - the President's objections call for the change of the Plenum's quorum. However, in contrast with the current rules, majority of the full Plenum bench, rather than majority of attendees will be needed for a decision, increasing the required number of judges by one.

The high quorum set by the changes will remain intact **(At least 7 judges have to be in attendance, and decision must be made by the minimum of 6 members i.e. 2/3)** in some cases, including the disputes regarding the constitutionality of organic laws.

We believe that deciding the constitutionality of an organic law with increased quorum is inconsistent with the Constitution, rendering constitutional control ineffective.

Venice Commission's opinion also notes this issue as problematic, stating that **"the requirement of a minimum of six votes for the taking of decisions in the plenary session should be lowered."** It is important to note that the Venice Commission's opinion considers high quorum and decision making by qualified majority as equally problematic in all cases, irrespective of the appealed normative act's standing in the normative hierarchy.

Referring a case to the Plenum – any member of the Constitutional Court board will be able to refer a case to the Plenum at any stage of the hearing and decision making process. Venice Commission opinion states that the purpose of giving such authority to a single judge is unclear and it would be reasonable for the majority of the board to have such authority. Additionally, the Plenum needs 5 judges to vote for the rejection of such appeal. This is already a significant procedural hurdle hindering effective functioning of the Court.

This mechanism allows the minority members of the board, to prevent satisfaction of the claim (given the need for the Plenum's qualified majority for reaching a decision) by referring a case to the Plenum. Giving such power to an individual judge encourages political authorities to influence individual members of the Constitutional Court, due to the fact that actions of a single member of the board may delay satisfaction of politically important Constitutional claims.

Suspension of a norm - the President's objections still leave the decision making process on this issue to the Plenum; however, to suspend a norm, the required number of votes is reduced from 6 judges to 5.

On the other hand, Venice Commission indicates that **"it is not logical that an interlocutory decision which is urgent by its very nature should be taken in a more complicated procedure, which includes a transfer of the case from the board to the plenary session and then back to the board for the decision on the merits."** It also remains unclear why the board that can render a final decision on unconstitutionality of a norm should not be allowed to suspend it.

In the light of the above arguments, we consider that even if the President's suggestions are accepted, number of problems still remain, which substantially damage constitutional order and diminish Constitutional Court's effective functioning.

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It is unfortunate, that despite the assessments from local organizations, experts, and the Venice Commission, political actors were not able to neutralize the risks.

Accordingly, if the law is enforced in the current form, the Coalition plans to address the Constitutional Court, in order for the Court to assess whether new regulations are in line with human rights and principles enshrined in the Constitution.