

Statement on another Postponement of Enactment of the new Procedures for Witness Examination

“The Coalition for an Independent and Transparent Judiciary” voices its position on the December 20, 2013 initiative of the Georgian government, which envisages yet another postponement of the enactment date of the new procedure for witness examination at the stage of investigation, for the period of two years until December 31, 2015. The Coalition considers that the initiated amendment will have adverse effect on the development of the criminal justice and calls on the initiators of the draft to withdraw the document from the Parliament.

Since, it is not the first case of postponement of the enactment date, [the Coalition has already voiced its substantiated position on the issue](#). This time, however, we would like to focus on the vital issues which will be prejudiced in case the old procedure for witness examination is maintained.

As opposed to the old procedures, the new procedures for witness examination guarantee:

- Genuine equality of arms and the adversary process, which is the principle enshrined in Article 84 of the Constitution. With a view to attain equality of arms, it is important to abolish unjustified privileges granted to the prosecution. In particular, unreasoned advantage of the prosecution to examine witness in the course of investigation, implying witness’s obligation to appear and testify. In contrast, a witness is not subject to the same obligation in favor of the defense.
- Control of the judiciary over the process with witness interaction, which will decrease pressure on the witness and the risk of false evidences given under duress. Such

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guarantee is expected to improve the attitude of society towards providing assistance to justice under the witness status.

Regretfully, since 2009 Georgian government has applied the postponement mechanism to delay the enactment of the norm several times. In view of this, we would like to remind the initiators of the draft, as well as the legislative branch, interpretation of the Constitutional Court, according to which: “though, the legislator is entitled to suspend application of the normative act for different circumstances, it should not be permanent ... With such attitude we prejudice not only realization of the right, but existence of the rights itself. In such conditions, the rights become fictitious and meaningless ... Endless, unsubstantiated postponement of the enactment of any law undermines the rule of law principle and introduces chaos in the society .”

The Coalition reiterates that the postponement of the new rule of interrogating witnesses is a clearly negative fact and runs counter to the position of the Constitutional Court of Georgia as well the requirements of the Constitution of Georgia to ensure the equality of parties. Moreover, this initiative will not contribute to the improvement of society’s attitude towards the system of the status of witness.

In view of above, the Coalition calls on the Parliament of Georgia to reject the submitted initiative. The Coalition also urges the initiators of this bill to call off the document from the parliament and to ensure the full enactment of the new rule of interrogating witnesses.