



The Coalition's Opinion on the Revised Version of the Draft Law on the Prosecutor's Office

The Ministry of Justice has recently revised the draft law on the Prosecutor's Office based on the Venice Commission's recommendations. It needs to be noted that the Venice Commission considered the Coalition's opinion on this issue in its extensive comments and suggested to significantly revise the draft. The opinion criticized several initiatives of the authors of the draft law.

The Government considered the Venice Commission's certain recommendations in the revised draft law. Despite this fact, the spirit and direction of the draft law have not been essentially changed. Therefore, the Coalition believes that the system of the Prosecutor's Office still faces several institutional challenges on its way to complete depolitization.

-The draft law has been significantly changed with respect to the membership of the Prosecutorial Council and the way it is composed. The membership is increased up to 15 members (Minister of Justice, 8 prosecutors, 2 judges, 2 members of the Parliament, and 2 non-prosecutor members elected by the Parliament). The draft law establishes the quota for the parliamentary minority. The Parliament still elects two non-prosecutor members of the Council based on membership majority vote;

-The Minister of Justice still has the right of initial nomination of a candidate. However, instead of a single candidate she/he nominates at least three candidates. Prior to the nomination she is obliged to consult with professional circles on this issue. However, procedures, terms and principles based on which these consultations have to be carried out are not defined in this version of the draft law; it has not considered the

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Venice Commission [] recommendation to establish objective criteria for the selection of a candidate, which is essential for establishing a high professional standard for an office of an utmost importance for the country and ensuring depolitization of the process of selection of Chief Prosecutor.

-A member of the Prosecutorial Council is entitled to initiate appointment of an Ad hoc Prosecutor. The decision is made by a simple majority instead of 2/3 of the Council [] membership. The Government is not involved any more in the discussions of the dismissal of the Chief Prosecutor. Unfortunately, the judiciary still does not take part in this process. This weakens the guarantees for the protection of Chief Prosecutor.

The Coalition believes that the proposed amendments only serve the purpose of technically improving the document, and do not address the main weakness of the draft [] the risk of retaining political influence on the prosecution system. The main recommendations of the Venice Commission [] weakening the political power influences on the process of appointing the Chief Prosecutor and weakening/balancing the dominant role of the Minister of Justice in the Prosecutorial Council; defining the institutional status of the Prosecutorial Council so that it is not a constituting part of the Ministry of Justice system - are not heeded. Hence, the newly proposed amendments do not ensure that the objectives declared by the government at the early stages of the process are met. These would require implementation of systemic and fundamental institutional changes.

The obligations that Georgia undertook based on the Association agenda with the European Union must be considered. These include an obligation to define an appropriate constitutional arrangement for the prosecution system . The need for a final and appropriate Constitutional arrangement is also emphasized in Thomas Hammarberg's report .

The Coalition was also stressing the need for Constitutional changes in the process of prosecution system reform , which, unfortunately, has not become a subject of rational discussion from the government [] side. The government [] only argument against the Constitutional changes was the insufficient number of votes in the legislature to ensure this change. At this stage, it is already known that opposition fractions in the Parliament have expressed readiness to support Constitutional amendments regarding the Chief Prosecutor [] selection and appointment. This points

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to a real chance for reaching a political consensus, given the government clear political will .

Once again, the Coalition would like attract the government attention to the fundamental problem of the prosecutorial system its weak institutional and functional independence, which creates grounds for possible political influences on its work. Under these circumstances, the Coalition underlines the importance of a real systemic reform. Changes of the Constitutional framework and the government expressed readiness towards this, along with considering the Venice Commission recommendations, would create a solid basis for such a reform.