



კოალიცია

დამოუკიდებელი და გამჭვირვალე
მართლმსაჯულებისათვის

The Coalition's Opinion on the Proposed Amendments to the Organic Law on Common Courts

On June 12, 2019 the bill known as the fourth wave of judicial reforms was submitted to the Parliament. The Coalition for an Independent and Transparent Judiciary considers that, among the changes, the specification of grounds for disciplinary responsibility of judges and separation of the selection of listeners of the High School of Justice (HSJ) from the functions of the High Council of Justice (HCJ) is to be commended. At the same time, the bill introduces several innovations that the Coalition is critical of.

- **Appointment of Court Chairs**

According to the Organic Law on Common Courts, **the High Council of Justice appoints the chairs and deputy chairs[1] of the Appeals Courts and the Chairs of the District (City) Courts[2].**

The Coalition has repeatedly stated its position regarding the appointment of chairs and deputy chairs[3]. The problem is that this power is an additional tool for the HCOJ to control the judicial system and is directed against independence of individual judges. The proposal does not substantively address the existing problem, but only sets an obligatory consultation with the judges of the court, where a chair is to be appointed, with no obligation to heed their opinions.[4] The Coalition has repeatedly noted[5] that it supports the model where judges themselves select the court chair.

- **Authority of the High Council of Justice in the process of appointing the HSOJ's Independent Board's Chair**

According to the proposed bill, the Chair of the Independent Board is elected by the HCOJ.[6] **The Coalition considers that to support the Independent Board's organizational independence, it would be best if the Board itself has this function.**

- **Disciplinary Responsibility of Judges**

According to the draft, a 2/3 majority of the HCOJ members makes a substantiated decision on starting disciplinary proceedings against a judge.[7] When deciding not to start disciplinary proceedings, the HCOJ does not have an obligation to substantiate the decision. The Coalition considers, that the principle of accountability obliges the HCOJ to substantiate all of its decision, which must be reflected in the law.

- **Judicial Ethics Council**

According to the draft, a new body, Ethics Council, is created. The Ethics Council “adopts rules of judicial ethics, upon the proposals from the HCOJ, approves the bylaws of the Judicial Ethics Council ... selects members of the Judicial Ethics Council”

. The draft has no other information regarding the Council. **It is unclear what are the functions of this new body are, how its members are selected, etc. The Coalition believes that this part of the amendments should be suspended until these outstanding issues are specified.**

- **Publicity of the HCOJ sessions**

The proposed bill does not have a clear indication regarding the openness and transparency of HCOJ sessions, and only refers to publishing information on the web page and availability of audio recordings.[\[9\]](#) **The Coalition believes that the HCOJ sessions should be open, including, during the interviews with first and second instance court judges. Also, it is important that the HCOJ sessions are transmitted via live-stream, allowing any interested party to observe the process.**[\[10\]](#) **The Coalition considers that both of these issues must be directly regulated by the law.**

- **Grounds for Dismissing an HCOJ Member**

According to the draft, **unsatisfactory fulfillment of responsibility** remains one of the grounds for dismissing an HCOJ member.[\[11\]](#) **This formulation can be interpreted extremely widely and will, in sum, affect the degree of independence of the HCOJ members, and should be abolished.**

At the same time, the legislation has other known problems, that are unsddressed. These include: ambiguity of the criteria for admitting listeners to the High School of Justice,[12] evaluation of judicial activities based on the cases they have decided and decisions of lifetime appointment;[13] appointment of judges on probation;[14] ordering judges to hear cases in a different specialization chamber of the same court; [15] appointment of judges without a competition;[16] High Council of Justice membership of court chairs and deputy chairs;[17] availability of Independent Inspector's decisions;[18] evaluation and promotion of judges[19], etc. Another outstanding issue pertains to the majority required for appointing the Independent Inspector, which does not require a consensus between judge and non-judge members of the HCOJ.[20]

The Coalition calls on the Parliament to consider the above deficiencies regarding the proposed amendments and to prepare amendments addressing the problems that impede improvements in the judicial sphere.

[1] Article 12.6 of the Organic Law on Common Courts

[2] Article 32.1 of the Organic Law on Common Courts

[3] Additionally on this issue please see *Considerations of the Coalition on the "Third Wave" of Judicial Reform* available at:

http://coalition.ge/index.php?article_id=69&clang=1

[4] Amendment to the Organic Law on Common Courts, Art.23.6 and 32.1, available at <https://info.parliament.ge/file/1/BillReviewContent/231767?>

[5] Additionally on this issue please see *The Coalition's Legislative Proposal to Reform the Institution of High School of Justice and Institute of Court Chairs*, available at:

http://coalition.ge/index.php?article_id=184&clang=1

[6] Amendments to the Organic Law on Common Courts, Art. 66³.5

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[7] Amendments to the Organic Law on Common Courts, Art. 75⁸

[8] Amendments to the Organic Law on Common Courts, Art. 65.1 - e

[9] Amendments to the Organic Law on Common Courts, Art. 49.4

[10] GYLA, TI (2019) *High Council of Justice Monitoring Report #7*, available at:

<https://gyla.ge/files/news/%E1%83%A4%E1%83%9D%E1%83%9C%E1%83%93%E1%83%98/>

[11] Organic Law on Common Courts, Art. 48.1-e

[12] GYLA, TI (2019) p. 7

[13] *Considerations of the Coalition on the "Third Wave" of Judicial Reform* available at: http://coalition.ge/index.php?article_id=69&clang=1

[14] *ibid*

[15] *ibid*

[16] *ibid*

[17] GYLA, TI (2019) p. 78

[18] *ibid* p.51

[19] *Considerations of the Coalition on the "Third Wave" of Judicial Reform* available at: http://coalition.ge/index.php?article_id=69&clang=1

[20] GYLA, TI (2019) p. 50