



The Coalition for an Independent and Transparent Judiciary Assesses the Prosecution Reform Results

Procedural Issues of the Reform

The Parliament of Georgia adopted the Organic Law on Prosecution with the third reading on November 30. The reform was based on the Constitutional reform of 2017-2018, which put the organizational setup and functions of the prosecution system in a new framework. The objective of the Constitutional reform of the prosecution system was ensuring its independence and political neutrality.

In the process of harmonization with the Constitutional reform, the draft Organic Law on Prosecution was to create a legal mechanism for organizational setup, functioning and accountability that would be able to meet the objectives of the Constitutional reform and aid in creating an independent and politically neutral system.

A working group^[1] comprised of representatives of various interest groups was set up by Parliament's Legal Affairs Committee to work on the prosecution reform. Various interest groups and experts submitted their reports and legislative initiatives^[2] to the Parliament and public meetings^[3] were held.

Despite the involvement of the interest groups and exchange of opinions at the initial stages of the reform process, the Parliament initiated draft changes to the Organic Law that did not reflect a single one of the critically important suggestions that were essential for meeting the objectives of the Constitutional reform^[4]. Regrettably, subsequent stages of the reform were conducted in haste and behind closed doors. The Legal Affairs Committee heard the initiated draft on the second, and most important, hearing on October 31, without publishing a prior notice of the hearing, and hence without the participation of the interested public^[5]. The draft was heard in its third reading in Kutaisi in the period between plenary sessions, and the information regarding the planned Committee hearing was not published in the timeframe stipulated by the regulations.

Assessment of Specific Issues of the Law

Prosecutorial Council - Composition and Authority

One important aspect of the Constitutional reform is strengthening the Prosecutorial Council's role in the prosecution system. According to the new Constitution, the Prosecutorial Council is the body that should ensure the independence, transparency and effectiveness of the whole structure. With this provision, the Constitution fundamentally altered the existing role of the Prosecutorial Council and gave the main directions for a future detailed legislative regulation.

Defining the scope of the Prosecutorial Council's authority is largely dependent on the rules of its composition. The various proposals for the composition and appointment of the Council members made to Parliament by various interest groups at different times aimed at creating a politically neutral Council on the basis of consensus, which would then serve as a firm guarantee for the Prosecutor's Office's independence and openness.

Regarding the authority of the Prosecutorial Council, the Coalition member

organizations – main proposal aimed at replacing the unilateral decision-making role of the Prosecutor General regarding important systemic and organizations matters with decisions discussed and adopted by a collegial body.

The Parliament of Georgia did not adopt almost any of the major proposals and comments regarding the Prosecutorial Council – composition and authority made by interest groups. In the draft that was supported by the Parliament, the Council composition, rules for appointment and authority remain unchanged. With the final version of the law, political actors and the party quotas are maintained, which are considered undesirable by international recommendations^[6]. The mandate of the Minister of Justice^[7] is also maintained in the process of the Prosecutorial Council – composition. To ensure compliance with the Constitution, only a technical change was introduced according to which the Minister of Justice nominates one candidate to the Council, who is then appointed by the Parliament. In the circumstances of complete detachment of the prosecution service from the Ministry of Justice and the Cabinet, the participation of the Justice Minister in the composition of the Prosecutorial Council is completely unfounded.

The international experience and recommendations^[8] in this regard clearly point out that the main reason for Prosecutorial Council – establishment is ensuring politicization and autonomy^[9] of the prosecution service from all branches of government. This objective cannot be met with the current rules of the Council – composition.

Although the Parliament took into consideration some proposals regarding the Prosecutorial Council [10] functions, the adopted legislation does not significantly alter its authority. With the current model the Prosecutorial Council [10] main authority is still the selection of the Prosecutor General [10] candidacy. The Parliament did not entrust the Council with determining staffing and disciplinary policies, which are usually such Councils [10] direct function and in line with international experiences. The Parliament [10] argument in limiting the Council [10] functions is that administration and management of prosecution go beyond the competence of the Council, since the Prosecutor General is the person who is to ensure the system [10] effectiveness^[10]. With this argument the Parliament unequivocally negated the Prosecutorial Council [10] Constitutional function. The new Constitutional provision defines the Council [10] role by giving it three main spheres of authority, and directly states that the Prosecutorial Council is the body responsible for the Prosecution's effectiveness.

The law [10] finalized version allows for creation of another collegial consultative body in parallel with the Council. The Parliament shifted disciplinary and specific personnel issues into the sphere of this body [10] competence^[11]. However, this body, unlike the Prosecutorial Council, will be under the General Prosecutor [10] direct supervision. Such a consultative body already exists, but there are many legitimate questions regarding its independence.

The issues related to the selection of Prosecutor General

The final version of the law has not significantly altered the procedure for appointing the Prosecutor General. Under the adopted law, selection of the Prosecutor General is the Prosecutorial Council [10] major function. The reform missed an opportunity for comprehensive legislative changes that would create a regulation safeguarding the process of appointment of Prosecutor General from one-sided decisions. The final version of the law does not significantly differ from the provisions of the law that were in force prior to the Constitutional reform. That law was often criticized by various groups for creating a high risk of one-sided political decisions.

The Coalition member organizations [10] proposals were aimed at improving the procedure. In the final version of the law the Parliament included a requirement to justify decisions. However, the selection procedure is still ambiguous. The Parliament

did not consider the Coalition member organizations' recommendation to substitute consultations, an unclear procedure established in the law for the selection of a Prosecutor General with an open competition. The amendments require development of specific regulations for the selection of the Prosecutor General in the form of bylaws. It is not advisable or reasonable to regulate the selection of high-level public officials by means of a sub-statutory act. Also, contrary to international best practices and relevant recommendations, the law still allows multiple appointments of the same person as a Prosecutor General.^[12]

Accountability of Prosecutor General and other issues regulated in the law

The legal order existing in the country and relevant experiences suggest that the only effective mechanism for ensuring an external control of independent bodies is to develop clear rules of their accountability. To avoid a situation in which a Prosecutor's Office with the status of an independent body becomes fully alienated and uncontrolled by the society, an effective legislative mechanism should be put in place. The law should establish the reporting format and criteria to ensure accountability.

The final version of the law considered several components of accountability. More specifically, the law requires the Prosecutor General to present an annual report. It also defines the scope of the report. Under this regulation, the Prosecutor's Office is obliged to inform the Parliament and public about the criminal situation existing in the country, types of widespread crimes, trends and other issues.^[13]

The Parliament made a step forward by considering the stakeholders' attitudes to the criminal justice policy. After the enforcement of the law, the Parliament of Georgia will be directly responsible for defining the criminal justice policy.

Conclusion

The process of reforming the Prosecutor's Office was an important stage in the full-scale enactment of constitutional changes to create solid institutional guarantees for real independence of the Prosecutor's Office. Despite the initial openness and eagerness of the Parliament to cooperate, the process of reform demonstrated that the Parliament did not consider the essential and crucial proposals and postponed

discussions of these issues to a later stage. Hence, the adopted law does not address critical issues that create major challenges for the system. These issues are the politicization of the composition of the Prosecutorial Council and excessive authority of Prosecutor General.

The process or work on the organic law and its results has demonstrated that the Parliament is not ready for fundamental and radical changes. Correspondingly, the reform was confined to mostly technical and insufficient amendments. Such small-scale changes and revisions do not ensure harmonization of the law with the constitutional reform and do not correspond to its intention to ensure independence and effectiveness of the Prosecutor ☐ Office through a depoliticized collegial body, the Prosecutorial Council.

During the working process the Parliament made it clear that it will revisit the most important issues, such as the composition of the Prosecutorial Council and its authority after receiving the opinion of the Venice Commission. It is regrettable that the process did not ensure the Venice Commission ☐ involvement at an earlier stage to provide the Parliament and stakeholders with the Commission ☐ assessments prior to the adoption of the law.

The Coalition calls on the Parliament to revisit the fundamental reform of the Prosecutor ☐ Office during the Spring Session, and in the meanwhile to continue working on this topic in a working group with the involvement of stakeholders. The adopted amendments do not meet the objectives of the constitutional reform. Hence, further changes must ensure full compliance of the law with the Constitution. This requires essential revision of the composition and functions of the Council.

[1]<http://parliament.ge/ge/saparlamento-saqmianoba/komitetebi/iuridiul-sakitxta-komiteti-146/axali-ambebi-iuridiuli/iuridiul-sakitxta-komitetis-samushao-djgufma-prokuraturis-shesaxe-b-organul-kanonshi-shesatan-cvlilebebtan-dakavshirebit-warmodgenili-sakanonmdeblo-winadadebebi-ganixila.page>

[2] Reform of the Prosecution System, Human Rights Education and Monitoring Center

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(EMC) 2018. available at: <https://emc.org.ge/en/products/prokuraturis-sistemis-reforma>
; <https://info.parliament.ge/file/1/BillReviewContent/195024>

[3] <http://ewmi-prolog.org/en/news/1081-the-coalition-for-an-independent-and-transparent> ; <https://emc.org.ge/ka/events/mrgvali-magida-prokuraturis-reforma-sakonstitutsio-tsvlilebebis>

[4] <https://info.parliament.ge/file/1/BillReviewContent/201782>

[5] <https://emc.org.ge/ka/products/prokuraturis-reformis-shesakheb-mnishvnelovani-kanonproekti-iuridiulma-komitetma-sazogadoebis-informirebis-gareshe-ganikhila>

[6] Joint Opinion of the Venice Commission, the Consultative Council of European Prosecutors (CCPE) and OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), on the draft Amendments to the Law on the Prosecutor's Office of Georgia, endorsed by the Venice Commission at its 104th Plenary Session (Venice, 23-24 October 2015), Par:42-43
<https://www.venice.coe.int/webforms/documents/?opinion=811&year=all>

[7] The Parliament changed its approach regarding the candidate nominated by the Minister of Justice, upon interest groups' repeated requests. However this regulation does not still significantly change the situation envisaged by the initial draft. While in the initial draft the Minister of Justice directly nominated a member to the Council, according to the final approved version the Minister nominates the candidate to the Parliament, for approval.

[8] For detailed information please see Reform of the Prosecution System, Human Rights Education and Monitoring Center (EMC). 2018. available at: <https://emc.org.ge/en/products/prokuraturis-sistemis-reforma>

[9] Joint Opinion of the Venice Commission, the Consultative Council of European Prosecutors (CCPE) and OSCE Office for Democratic Institutions and Human Rights (OSCE/ODIHR), on the draft Amendments to the Law on the Prosecutor's Office of Georgia, endorsed by the Venice Commission at its 104th Plenary Session (Venice, 23-24 October 2015),
[https://www.venice.coe.int/webforms/documents/default.aspx?pdf=CDL-AD\(2015\)039-e&lang=fr](https://www.venice.coe.int/webforms/documents/default.aspx?pdf=CDL-AD(2015)039-e&lang=fr)

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[10] Notes to the draft law <https://info.parliament.ge/file/1/BillPackageContent/13968>

[11] Article 21 of the initiated Organic Law on the Prosecution
<https://info.parliament.ge/#law-drafting/16400>

[12] EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW (VENICE COMMISSION), REPORT ON

EUROPEAN STANDARDS AS REGARDS THE INDEPENDENCE OF THE JUDICIAL SYSTEM:
PART II – THE PROSECUTION SERVICE, p.8

[13] See Article 68 of the initiated Organic Law of Georgia on Prosecutor's Office,
accessible at <https://info.parliament.ge/#law-drafting/16400>