The Coalition calls on the High Council of Justice not to appoint Court Chairs using opaque processes

The High Council of Justice (HCOJ) is hearing the issue of appointing Court Chairs. This means that the current corps of the HCOJ, in the final days of its mandate, may appoint the Chairs for five-year terms[1].

The broad discretionary mandate of Court/Chamber/Collegium Chairs and the opaque

practices of their appointment have long been serious problems for the judicial system. To date there are no criteria or procedures set in the legislation for selecting the chairs. The experience of the judicial system shows that the chairs are a group of the most influential judges, and their formal and informal roles and status create possibilities for exerting control over individual judges. Because of this the chairs have for years been considered “bosses” by the judges and are the main mechanism for “managing” the judicial system.

The result is that ideas for reforming this institution have always been met with severe and irrational criticism by the influential groups within the system. For example, although the initial draft of the “Third Wave” judicial reforms package had provisions for the court chairs to be elected by the judges of respective courts and this was commended by the Venice Commission report in 2014, this provision was removed from the final draft of the legislation, likely because of the demands of this influential group. Also, the provision introducing court chair election rules was changed due to the demands of the majority of the HCOJ members in the final stages of the long-term judicial strategy development.

In the Coalition’s view, the improvement of the Chairs must start with changes in their selection rules. We believe that respective courts must be given the opportunity to elect the chairs themselves so that the HCOJ no longer retains the power to dispatch their own representative as a chair to control the courts.

The fact that the HCOJ is hearing appointment of court chairs for five-year terms while the mandates of the majority of its members' are expiring in early June raises concern that the HCOJ's current membership is trying to ensure that the important administrative positions are filled with their desired personnel. These questions are further strengthened by the Tbilisi Appeals Court Chair's unexpected resignation on May 25, allowing the HCOJ to appoint its desired candidate to this position. It is worth noting that the Tbilisi Appeals Court Chair's term was ending in four months, further strengthening the suspicion of a possible informal agreement.

The Coalition considers that in this situation if the HCOJ fills the chair vacancies using the opaque process and ignoring merit, this will further significantly undermine public trust in the judiciary, boost the informal influences within the judicial system, and the independence of individual judges will come under significant doubt.

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[1] It's worth noting that the judiciary has such an experience when after the 2012 Parliamentary elections the previous corps of the HCOJ appointed their desired chairs for five years hastily, in a closed session.