



კოალიცია

დამოუკიდებელი და გამჭვირვალე
მართლმსაჯულებისთვის

Coalition for an Independent and Transparent Judiciary Reacts to the Venice Commission Opinion

On March 14, 2023, the Venice Commission published its opinion^[1] on draft amendments to the Organic Law of Georgia "On Common Courts." According to the ruling party, the initiated changes aim at fulfilling the European Commission^[2] recommendations related to the judiciary. The Venice Commission systematically assesses the challenges facing the judiciary. The Commission points out that the proposed amendments are not comprehensive, do not involve the fundamental reform of the High Council of Justice, and do not consider the Venice Commission^[3] earlier recommendations.

In its conclusion, the Commission reiterates that persistent and widespread allegations of corporatism and vested interests made against the Council undermine public trust in the judiciary and must be taken seriously by the authorities.^[4] The document states that corporatism, which promotes the interests of one group of judges to the detriment of other judges, is impermissible.^[5] Public trust in the justice system will be damaged if the Council is perceived as a body acting based on self-interest and cronyism.^[6]

The Coalition for an Independent and Transparent Judiciary has been vocal for years about the increasing concentration of power in the justice system

and the need for fundamental reforms. The focal point of the criticism is the harmful practice of corporatism and clan-based governance in the High Council of Justice. Despite this criticism, the initiated amendments once again confirm that the ruling political team is not ready for the real reform of the judiciary and insists on implementing only superficial changes.

The Coalition welcomes the Venice Commission [7] endorsement of key challenges identified by the civil sector. In particular, it notes that one group should not hold the decision-making lever in a body composed of two distinct groups; [7] the idea of [8] implies not only the presence of non-judge members in the Council but also allowing the non-judge members to play an important role in the decision-making process. Accordingly, it is necessary not only to fill the positions in the High Council of Justice but also to provide guarantees for non-judge members [9] effective participation in the Council. [8] In addition, the Commission notes that the Parliament should reconsider the decision-making process in the Council and ensure a balance between non-judge and judge members. [9]

In its opinion, the Venice Commission also critically evaluates issues such as the qualifications of Supreme Court judges, nomination of Supreme Court judicial candidates, transfers of judges, grounds for disciplinary liability, procedures for initiation of disciplinary proceedings, and others.

It is unfortunate that the changes and the vision proposed by the ruling party completely ignore the main problems in the justice system, the concentration of power, and informal, clan-based influences. Moreover, the amendments, without any justification, consider mechanisms that would make the High Council of Justice more inclusive and distribute some of its powers to other parts of the justice system (for example, the principle of vote by double 2/3 in the Council and the election of court chairpersons by the judges of the respective courts) unconstitutional.

To date, the positions of five non-judge members of the Council are vacant. This further reduces the external control and transparency of the Council's activities. It is critically important to appoint independent and impartial candidates as non-judge members. Their presence, together with the decision-making rule of double 2/3, would improve the existing balance of power in the Council. The need for fundamental changes is especially critical in light of the ongoing processes of European integration, as justice reform is one of the main prerequisites for the success of this process.

We call on the Parliament of Georgia to recognize the existing problems in the judiciary and, by taking into account the recommendations of the Venice Commission, to promptly start the fundamental reform of the judicial system, which will contribute to the fulfillment of the European Commission's twelve recommendations.

[1] CDL-AD(2023)006-e, Georgia - Follow-up Opinion to four previous opinions concerning the Organic Law on Common Courts, (Venice, 10-11 March 2023), <https://cutt.ly/x4xO9NR>. Retrieved:21.03.2023.

[2] BRIEFING BY ANRI OKHANASHVILI ON CHANGES TO LAW ON COMMON COURTS, 4 November 2002, <https://bit.ly/40sHGT0>. Retrieved:21.03.2023.

[3] CDL-AD(2023)006-e, Georgia - Follow-up Opinion to four previous opinions concerning the Organic Law on Common Courts, para. 12. Available at: <https://cutt.ly/84zgMcd>. Retrieved:21.03.2023.

[4] Ibid. para. 15.

[5] Ibid. para. 17.

[6] Ibid.

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[7] Ibid. para. 19-20.

[8] Ibid.

[9] CDL-AD(2023)006-e, Georgia - Follow-up Opinion to four previous opinions concerning the Organic Law on Common Courts, para. 20. Available at: <https://cutt.ly/84zgMcd>. Retrived:20.03.2023.