



## **The Second Commission for Selecting the Georgian nominees for European Court of Human Rights Judgeship in 2017 again failed to ensure fair and transparent selection procedures**

*The list of candidates adopted with the majority of the Commission's support does not allow real choice for the Council of Europe Parliamentary Assembly*

The Coalition for Independent and Transparent Judiciary responds to the selection process of the Georgian candidate for the European Court of Human Rights. The

Coalition believes that the results of this competition were not fair, do not allow real choice and it should be made void for the following reasons:

- Due to the purposeful actions of government representatives, some highly competent and reputable candidates failed to make it to the list of top five and then top three candidates whereas candidates with questionable qualifications and reputation made the cut.
- The government used this competition as an instrument to send a message to the judicial system that obedient judges will be rewarded, while independent and competent cadre will be consistently blocked in their quest for higher judicial positions.

Due to the above we do not consider it appropriate for the Council of Europe to discuss the list which was put forward by the Commission and then by the state.

### **Composition and Objectives of the Commission**

The State Commission for selecting Georgian candidates for the European Court of Human Rights judgeship was convened anew in 2017 after the European Court of Human Rights rejected the submitted three-person list of candidates on the grounds that “not all candidates were sufficiently well- qualified”<sup>[1]</sup>. The Commission<sup>[2]</sup> was composed of:

- Minister of Justice of Georgia, the Chair of the Commission;
- Representative of the Ministry of Foreign Affairs of Georgia, deputy Chair of the Commission;
- Parliamentary Secretary of the Government of Georgia;
- Prosecutor representative of the Chief Prosecutor’s Office of Georgia;
- Judge representative of the Supreme Court of Georgia;
- Judge representative of Tbilisi Appeals Court;
- Judge representative of Kutaisi Appeals Court;

- Representative of the Parliamentary Committee of Human Rights and Civil Integration;
- Public Defender of Georgia or his representative;
- Representative of the Georgian Bar Association;
- Representative of the Association of Law Firms of Georgia;
- Dean of Law Faculty of Ivane Javakhishvili Tbilisi State University;
- Representative of the Coalition for Independent and Transparent Judiciary<sup>[3]</sup>.

According to the Resolution regulating the process, the Coalition for Independent and Transparent Judiciary was again represented in the State Commission. Engagement of the civil society in the Commission was nominal, since our vote did not have a deciding power, however given the importance of the issue, involvement of the civil society ensured that the process was open, transparent and that the questions interesting to the public were answered. Hence, the Coalition engaged in the work of the Commission.

According to the Resolution, the main objective of the Commission's work was to come up with the list of candidates for the EHCR judgeship that would give a possibility of **real choice** for the Government of Georgia and the Parliamentary Assembly of the Council of Europe, upon employing strict, fair and transparent selection procedures.

## The Coalition's Assessment

**The Coalition negatively assesses the work of new the selection commission composed after the rejection of the first three-person list, and considers that the Commission again failed to fulfill its mission.** As in the previous competition, the direct participation in the work of the judicial selection commission made it clear that **assessments of the representatives of various branches of government were based not on establishing whether the candidates met the qualification requirements in the decree, but rather aimed at unconditionally supporting the pre-determined candidates and ensuring that they were on the shortlist that was to be presented to the government.**

As soon as the results were made public both the Coalition representative[4] and the Public Defender[5] questioned objectivity of several members of the Commission and criticized leaving candidates with high integrity and competence out of the shortlist.

**The competition and exclusion of highly qualified contestants from the three-person shortlist due to the consistent and premeditated activities of representatives of the government aimed at populating the shortlist with such candidates that made one candidate practically uncontested.** While persons who made it to the shortlist received positive assessment from the Commission (including, from the representative of the Coalition, the Ombudsman, etc.), the substantive issue is that some **strong contestants were artificially and unfairly excluded from the list** due to the concerted actions of government members of the Commission. They received minimal scores from the members representing government while receiving very high scores from the non-governmental members of the Commission and they enjoy excellent reputation in the professional circles and the public.

For example, several representatives of the judiciary participated in the competition, however the prominent representatives of the judiciary (Nino Bakakuri[6], Ketevan Meskhishvili[7], Konstantine Vardzelashvili[8]) received the lowest assessment of the government representatives, while the judges with disputed competence and qualifications (Tamar Alania, Shota Getsadze[9]) received very high marks. The latter judges are also members of the High Council of Justice and in this capacity have made unlawful and arbitrary decisions that have caused the crisis in the Georgian judiciary and for this reason have been targets of fervent criticism of the civil society on numerous occasions.

Additionally, due to the purposeful actions of the government representatives, other lawyers of highest qualifications and reputation (e.g. Konstantine Korkelia[10], Besarion Bokhashvili[11]) have been left outside the five person shortlist. These lawyers have considerable experience working in the human rights sphere, including working directly on the European Court of Human Rights, and have highest academic achievements and other substantial merits.

## **The legislation regulating the selection competition and its deficiencies:**

The conducted competitions have shown that the rules for the Commission membership must be reviewed. It is not desirable to engage representatives of the executive branch in the Commission's work. Since the final selection of the candidate list that is sent to Strasbourg is the government's prerogative it is preferable that in the initial selection stage the Commission is primarily made up of the cadre independent from the government, rather than representatives of various branches of government.

It is remarkable that the Commission's statute did not regulate the issue of conflict of interests and did not envisage the mechanism for appealing the Commission's decisions.

Additionally, during both selection competitions there were instances of various candidates getting radically differing evaluation, raising questions regarding the objectivity of the Commission members.

As a summary, the Coalition considers that the second national competition did not meet the requirements of the Resolution on "Nomination of candidates and selection of judges to the European Court of Human Rights", requiring that politicization of the process must be avoided in selecting the judicial candidates.

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[1] During the competition announced in 2016, the Coalition drew attention of other members of the Commission, the Cabinet of Ministers and the wider public to the gaps and deficiencies in the candidate selection process by the Commission. The Coalition

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also shared this critique and opinions to the relevant bodies of the Council of Europe.

[2] <https://matsne.gov.ge/ka/document/view/3586117> Resolution #93, February 20, 2017 (in Georgian)

[3] *ibid.*

[4] Netgazeti (29.05.2017) - Natsvlishvili: very strong candidates for Strasbourg judgeship were left off the list of top five. <http://netgazeti.ge/news/197348/> - in Georgian.

[5] Netgazeti (29.05.2017) – Ombudsman does not rule out the rejection of Strasbourg judge candidate list again. <http://netgazeti.ge/news/197359/> - in Georgian

[6] Currently a Supreme Court justice, who was supported for appointment by the parliament several years ago. Judge Bakakuri has over 10 years of judicial experience, currently member of CEPEJ, ad hoc member of the CCJE, representative of Georgia, American Chamber of Commerce representative-member. She has passed New York State bar exam in the USA, with general specialization. Expert/trainer, author/co-author of numerous publications.

[7] Appeals Court Judge since 2010, with over ten years of judicial experience. Full professor in private law, expert/trainer, author/co-author of numerous publications.

[8] Deputy Chair of the Constitutional Court and chair of the first collegium in 2006-2016. 2012 – ad hoc judge at the European Court of Human Rights. 2012-2016 – member of the UN human rights committee, deputy chair. Author/co-author of numerous publications.

[9] Besides being known for controversial judicial decisions, also a member of the High Council of Justice. During his tenure there was participating in judicial promotion competition despite the conflict of interests. In this process, participated in the Council's discussions/deliberations and recused himself only after vigorous opposition of the civil society.

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[10] PhD in law, full professor of international law at Tbilisi State University, author of numerous publications on the European Court of Human Rights and its legal precedents, former Ambassador of Georgia to the Council of Europe, author of numerous trainings and teaching modules on human rights law for judges.

[11] National officer at the South Caucasus office of the UN High Commissioner for Human Rights, member of the consultative committee of the Council of Europe framework convention on national minorities, former chief of party of the EU project – support for the Public Defender's Office, former executive director of the Georgian Young Lawyers' Association, former representative of Georgia at the European Court of Human Rights, author of numerous trainings and courses on human rights law for judges.