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The Draft Decree Regulating the Process of Selection of Supreme Court Judicial Candidates by the High Council of Justice is Problematic

The Coalition is reacting to the draft decree, which was published on the High Council of Justice webpage on December 1, 2020. The decree is supposed to regulate the process of selection of Supreme Court judges by the High Council of Justice. The Coalition believes that the proposed rules do not ensure an open and transparent process. They also considerably limit the ability of the Council members to actively engage in interviews and pose questions to candidates at their own discretion.

Also, as it became apparent later, the draft was developed by a member of the High Council of Justice who is taking part in the competition for the selection of Supreme Court judges. Correspondingly, a candidate who is the member of the High Council of Justice and is required by the law to distance himself from the process of selection, is developing rules, which will be later applied to him in the capacity of a candidate.

For several years the Coalition has been expressing concerns about the extraordinary situation created in the court system, where all administrative levers are concentrated in the hands of a small group of individuals who make decisions behind closed doors, while official procedures only serve the purpose of giving these decisions an official status. This tendency has been confirmed by several decisions related to the judicial corps. Accordingly, we believe that all regulatory changes concerning the court system are superficial.

The Coalition believes that the proposed procedure is flawed and the following provisions must be revised:

Article 3, Paragraph 4 says that video and photo recording by mass media is allowed

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only at the beginning of public hearings. However, there is no direct indication about live airing of hearings. We believe that the regulation should include such an obligation to meet the requirements concerning the publicity of the process established in the organic law. Live airing will allow the public to directly watch public hearings, observe candidates and receive information about them. Otherwise, in the absence of live broadcasting, publicity will not be ensured, due to the current epidemiological situation and related restrictions.

Article 4, Paragraph 10 of the draft Decree obliges members of the Council to limit their interviews to 30 minutes. The time can be extended based on a substantiated request for another 15 minutes. We understand that this provision intends to set a reasonable limit on public hearings, but this time limit should bear the character of a recommendation rather than an obligation. If a member of the Council still has questions, he should not be restricted in time, but be allowed to ask all desired questions.

Article 4, Paragraph 12 also deserves attention. It restricts a Council member's ability to pose questions on any issues of interest. The content of a question has to comply with the framework of Article 34¹ of the Organic Law. We think that this kind of restriction concerning the content of questions is unreasonable and goes against the interest of the public to receive information, not only about a candidate's knowledge, but also his worldview and values. In general, the existence of a preliminarily developed standard questionnaire for candidates is reasonable. However, a member of the Council should not be restricted in his right to pose any question to study a candidate's fitness for the position. There is a concern that this provision aims to relieve candidates loyal to the clan from unpleasant questions related to the existence of informal influences in the court system and the general state of the justice system.

We call on the High Council of Justice to reflect these recommendations in the draft Decree to ensure an open, transparent and fair selection procedure, which will increase public trust in the process, as well as in the selected candidates.

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