



# The Coalition for an Independent and Transparent Judiciary Calls on the Government to Select the New Chief Prosecutor through New, Reformed Rules

Recent developments in the country have again shown that the currently enforced model of prosecution and investigative system does not meet the criteria of independence, impartiality and professionalism and needs systemic reform. Despite recommendations of numerous domestic and international organizations, the government has until this time failed to ensure the full depoliticization and strengthening of the independence of the prosecution. This is reflected in the levels of public trust towards this institution.

# საქართველოს ახალგაზრდა იურისტთა ასოციაცია GEORGIAN YOUNG LAWYERS' ASSOCIATION



The member organizations of the Coalition believe that the current rules for selecting the Chief Prosecutor and composition of the Prosecutorial Council have significant shortcomings and fail to ensure protection of the institution and the Chief Prosecutor's selection process from undue political interests. Under the current system, the Prosecution is structurally dependent on the Ministry of Justice and the Minister of Justice. Therefore the Minister of Justice has a major role in selection of the Chief Prosecutor and also in directing the Prosecutorial Council.

Prime Minister Mamuka Bakhtadze decided to mostly present the acting Cabinet of Ministers<sup>[1]</sup> to Parliament for confirmation and major personnel changes are planned for a later date. Among others, Thea Tsulukiani retains the post of Justice Minister. The Coalition believes that having Thea Tsulukiani direct the process of selecting the Chief Prosecutor once again will not be free from political influence. Since 2012, not a single Chief Prosecutorial candidate nominated by Thea Tsulukiani – Archil Kbilashvili, Otar Partskhaladze, Giorgi Badashvili, Irakli Shotadze – politically neutral, casting doubt on the objectiveness and impartiality of the Chief Prosecutor. All of the above reinforce our belief that the Justice Minister's heading of the process for selecting the Chief Prosecutor will once again fail to deliver on the public demand for having an independent, impartial and effective manager in the position of the Chief Prosecutor. Additionally, back in 2015, the Venice Commission noted the dominance of political elements in the acting model for selection of the Chief Prosecutor and called for the reduction of the Justice Minister's role and the degree of political participation in this process.<sup>[2]</sup>

Along with criticizing the current system, we must also consider that with the Constitutional amendments that will enter force at the moment the next President of Georgia is sworn in, the Prosecution will be established as an entity separate from the Cabinet, including the Ministry of Justice. The reformed Prosecutorial Council will be charged with ensuring the Prosecution's independence. It is clear that from the moment of enactment of the new Constitution, political participation in the activities of the Prosecution and the Prosecutor General's selection process will be considerably diminished.

If changes are not made in the current rules for the Chief Prosecutor [1] selection now, by the moment of the new Constitution [1] entry into force, we will already have a Chief Prosecutor in place for a six-year term, selected under substantially flawed rules.

**The member organizations of the Coalition consider that selection of the new Chief Prosecutor using the current, deficient rules is wrong and will be detrimental to the process of transitioning to a substantially different prosecutorial system. Hence, the selection of the new Chief Prosecutor must be conducted using reformed rules in line with the new Constitutional standard.**

The ongoing prosecutorial reform and selection of the new Prosecutor General will largely determine whether the Prosecution becomes an apolitical institution based on the principles of rule of law or, instead, the reforms fail to deliver real results and the prosecution remains as a political will-implementing agency that enjoys dismal public trust.

The member organizations of the Coalition call on the Government of Georgia to:

- stop the selection of the Chief Prosecutor using the current rules;
- implement fundamental reform in the rules for selecting the Chief Prosecutor, which will ensure that the process is in line with the concept of an independent Prosecution;
- distance the Minister of Justice from the process. She should not be a member or chair of the Prosecutorial Council and should not have the authority to nominate the Chief Prosecutorial candidates.

American Chamber of Commerce is not a signatory to this statement

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[1] Ministers of Economy and Sustainable Development, Finance, and Foreign Affairs left their posts.

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[2] [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2015\)039-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2015)039-e)