



კოალიცია

დამოუკიდებელი და გამჭვირვალე
მართლმსაჯულებისათვის

The Coalition Calls on the Government to Start Substantial Reforms in the Court System

In the recent Rustavi 2 case, the quality of the court's handling of the case, the procedural problems and questions raised at each stage of the case, and the suspension of enforcement of the Supreme Court's decision by the European Court of Human Rights all confirmed the existence of systemic problems in the justice sector which have been actively pointed out by [local](#) and [international](#) organizations. At none of the stages of the Rustavi 2 case have the questions arising from the political context of the case been rebutted. Once more, public trust in the court system has been shaken. **The Coalition believes that in these circumstances the Government should acknowledge that systemic problems exist in the court system and get determined to ensure judicial independence by commencing substantial reforms in the court system.**

After the Parliamentary elections in 2012, the new Government declared that it was determined to restore justice, free the judiciary from political influences and ensure judicial independence. Important reforms were announced to achieve this objective. However, the process of implementing the reforms has demonstrated that the Government did not have a strong political will to carry out real and coherent changes in the court system. It is clear that the political system has not fully given up levers in its hands. Moreover, before the 2016 parliamentary elections the Third Wave legal reform package included an amendment that substituted the election of one member of the High Council of Justice by a qualified majority with a simple majority election rule. Thus, the chances of the parliamentary minority participating in the composition of the High Council have been excluded. Correspondingly, the court system has confronted the following problems:

- There are valid doubts concerning political influence in several high profile cases. Despite the fact that since 2012 the number of court decisions in favor of the State has significantly decreased in criminal as well as other types of cases, and although major changes have been implemented in the area of transparency of court hearings, judicial independence still remains problematic. These challenges are particularly evident in the proceedings of cases with political context (e.g. so called “Case of Cables”, Rustavi 2 case).

- There is a deficit of dissent in the judiciary. Cronyism is strengthened. Following the “First Wave” of judicial reforms, the Government has yielded to dominant and influential groups in the judiciary, *inter alia*, prior to the elections. In parallel with this process, confrontation between the judge and non-judge members of the High Council of Justice has gradually disappeared. Their opinions became synchronized, and decisions were reached without substantial arguments based on preliminary agreements. This kind of interaction between the dominant group of judges and the Government has strengthened cronyism and silenced dissenting opinions (an illustration of this trend is the case of the Tbilisi City Court Chair who was dismissed shortly after making critical statements). Thus, the internal independence of the court system has been challenged. The basis of judicial independence has also

been shaken by the expiration of office terms for a significant number of judges, leading to the vulnerability of a large group of acting judges.

- **Political will for thoroughly reforming judicial system so as to guarantee judicial independence is lacking.** Despite the “three waves” of judicial reform since 2012, real judicial independence has not been achieved either in the legislation or practice. During the reform processes the government failed to demonstrate the political will to end the probation period for judges, despite criticism from the Venice Commission and local experts. Also the “third wave” of reforms, which was unduly and suspiciously protracted, failed to eradicate some long standing problems. Hence, scores of judges have been selected and appointed through opaque procedures and without any justification; disciplinary proceedings were conducted obscurely and were possibly used as means for influencing judges. To date, Court chairs are appointed without any justification and they retain important levers of influence over judges. The introduction of an electronic case distribution system has been delayed and needlessly postponed several times.

- **The High Council of Justice cannot fulfill the function of guaranteeing independence of the judicial system.** According to the current legislation, the High Council of Justice is responsible for ensuring judicial independence. The monitoring of the High Council has for years demonstrated that important decisions are made with prior agreement, without substantiation and transparency. The High Council fails to fulfill its primary function of protecting judicial independence and addressing the public’s questions regarding independence of judges and the judicial system.

It needs to be noted that the process of elaborating judicial reform and strategy, an obligation under the EU-Georgia Association Agreement, is underway. The Coalition is engaged and actively participating in this process.

We call on the government to:

- **admit the existence of systemic problems in the judiciary, analyze their causes, and continue working on the long term strategy and action plan for judicial reform precisely so to address the problems outlined.**

- **immediately start substantive reform of the judicial system and implement the changes that local and international organizations have requested**

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Among them: introduction of temporary rules for case distribution, curtailing the unrestricted discretionary powers of the Court chairs until the electronic distribution system is fully functional; establishing criteria and rules for appointment of Court chairs; fully moving towards a points-based assessment system for judicial candidates and abolishing secret votes; refining the judicial disciplinary legislation so as to ensure the foreseeability and transparency of the proceedings; refinement of the legislation governing the High Council of Justice's work so as to ensure foreseeability and substantiation, etc. **The above would significantly improve the human rights situation in the country, increase the public trust towards the judicial system, and aid Georgia's democratic development.**

The Coalition will in the nearest future publish a detailed research analyzing the situation in the judicial system, which may become the basis for the needed judicial reforms. The Coalition is ready to submit specific suggestions and actively participate in the process of substantive and systemic reform of the judiciary.