



# THE HIGH COUNCIL OF JUSTICE TRIES TO APPOINT FOR LIFE TWO JUDGES BASED ON THE UNCONSTITUTIONAL PROVISION OF THE LAW

The HCOJ is reviewing the issue of lifetime appointment of Judges Levan Murusidze and Maia Sulkhaniashvili before the expiry of their three-year probationary period and without any evaluation.

According to the Council, the discussion of the issue on lifetime appointment of two

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judges before their probationary period expires is based on the so-called Third Wave of legislative amendments of February 2017 according to which the probationary period shall no longer apply to the appointment of the judges who have experience of working in the Supreme or the Constitutional Courts of Georgia. **The interpretation of this issue by the majority of the HCOJ members following the adoption of the decision by the Constitutional Court of Georgia is the disregard to the decision of the Constitutional Court. The decision of the Constitutional Court was made very soon after the implementation of the third wave of legislative amendments through which amendments are required to be introduced to the regulation for appointment of judges for a probationary period.**

On February 2, 2017, the Parliament of Georgia after overriding the President's veto, adopted the law on the Third Wave of judicial reforms. These amendments provided that the probation period shall not apply to the judges who have experience in working in the Supreme and Constitutional Courts of Georgia. Soon after the adoption of the law, on February 15, 2017, the Constitutional Court of Georgia made a decision on the case of the citizen of Georgia Omar Jorbenadze versus the Parliament of Georgia, under which the appointment of the judges who have experience in the judicial system was deemed unconstitutional.

The adjudication of the Constitutional Court has created a different reality: the normative provision of the Organic Law of Georgia on General Courts on the basis of which the High Council of Justice intends to assign two judges for the office indefinitely in a hastened manner and with no appropriate evaluation has been considered as unconstitutional; in addition, the Constitutional Court's decision explicitly notes that the termination of the probationary period for certain judges shall not mean their automatic lifetime appointment without evaluation and the judges of this category shall be assessed based on their previous judicial experience; the second section, paragraph 44 of the Decision on Omar Jorbenadze's case can be read as follows:

"There are judicial candidates who have three years of judicial experience and their past activities as a judiciary **provide an opportunity to objectively examine their individual characteristics.** The defendant's party could not present any arguments which would substantiate the blanket application of the norm to all judges, especially in cases where it comes to any current judge who has at least 3 years of judicial

experience and the evaluation of the judge's activities is not associated with difficulties. In this case, the purpose of appointment of a person as a judge for a fixed term is unclear. Within the case in question, the defendant could not submit any reasonable arguments **to prove why the judicial activities carried out for the last three years before the appointment of the judge cannot be evaluated , and in this way to determine the compliance of the candidate with the highest standards of the judge's office.**

Thus, the Constitutional Court, in spite of the cancellation of a three-year probation period concerning the persons with experience in the judiciary, **retained in force the requirement for the individual assessment of their judicial activities and lifetime appointment only on the basis of such evaluation results.**

There are no laws regulating the new reality (namely, the experience which may release a judge from the probation period, the procedure to be applied to evaluate the judge who has been released from the probationary term and who participates in the competition to obtain a permanent appointment for the office etc.). These issues should be regulated by the law until the court decision enters into force on July 1, 2017. **Until the legislative amendments are implemented by the Parliament, there is no foreseeable law based on which the High Council of Justice may adopt a decision on the release of judges from a probation period. The authority to regulate the issue should be vested in the legislature body of the country and not the High Council of Justice.**

It is noteworthy that the office term of the majority of the Council members expires in June 2017. There is an impression that the majority of the HCOJ members within the current composition are trying to appoint a number of judges indefinitely thus disregarding the unconstitutional and vague legislation.

The High Council of Justice of Georgia:

- Should not adopt the decisions on automatic lifetime appointment of the judges assigned for a probationary period without a proper evaluation until the legislation becomes compliant with the decision of the Constitutional Court of Georgia.

The Government and Parliament of Georgia:

- Should with no further delay make accessible to the public the information about the

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status of enforcement of the decisions adopted by the Constitutional Court, publish the drafted legislative amendments and ensure the implementation of legislative amendments within the timeframes established by the courts with the involvement of all interested parties.