



Statement of the Young Lawyers' Association Concerning the Decision of the High Council of Justice

Georgian Young Lawyers' Association releases this statement in reaction to the meeting of the High Council of Justice yesterday on September 28, when the Council discussed filling of 68 vacant positions in general courts of Georgia by judicial appointments/transfers, amongst other important matters.

The decision made by the HCoJ as well as the process leading up to the decision, clearly shows that the work of the Council is ineffective. With its ineffectiveness, the Council furtheracerbates challenges and problems that exist in the court system that it tries to address by its fragmented, unsubstantiated and subjective decisions with questionable motives, as opposed to systemic, well-thought out and well-reasoned approach.

In particular, during the September 28 meeting, discussions focused on filling 10 vacant positions in Tbilisi Appellate Court by transferring judges from first instance courts (which essentially amounts to a promotion), based on Article 37 of the Organic Law of Georgia on General Courts. In addition, HCoJ members believe that remaining 58 vacant positions must be filled by a competition. 11 members of the Council, including some of the non-judge members, supported the decision while the HCoJ Chairperson voted against it.

With respect to the decision and the process that led up to it, Georgian Young Lawyers' Association would like to publicly voice its opinion and highlight the following facts:

- Article 37 of the Organic Law on General Courts is a special norm that envisages appointment or promotion of a judge without a competition. However, the law does not provide for explicit rules or procedures for such judicial appointments/promotions, which essentially delegates the HCoJ members with unlimited discretion in these matters and provides room for subjective, unfounded decisions about judicial promotions. Not only does this provide a theoretical possibility to use law against the interests of justice, but it also promotes the malpractice that civil society representatives have been speaking out strongly against over the last few years. However, legislators have not yet

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amended the foregoing Article; neither has the HCoJ introduced any additional regulations to curb the unlimited discretion at its disposal. Absence of criteria for judicial promotions raises valid questions about how the Council will choose individual judges to appoint in Tbilisi Appellate Court without a competition. This poses an obvious threat to independence of these judges.

- HCoJ members resorted to Article 37 against recommendations of civil society, judges and public defender's representatives who attended the meeting. In addition, in face of the grave allegations made by several non-judge members who openly stated that judge-members of the Council already had a list of individuals to be appointed under Article 37, we believe that members of the Council who supported the decision had even bigger responsibility to substantiate their position by clear arguments based on law and the interests of justice. However, arguments that they put forward in support of the decision clearly lack credibility. In addition, the fact that several non-judge members of the Council supported appointment of judges without a competition while a few minutes before they had voted for filling of the vacancies by competition (but the decision to announce a competition was not approved because it did not receive enough votes) is suspicious.
- Notably, the decision adopted by the HCoJ – artificial categorization of vacant positions within the system and use of two essentially different rules for filling these vacancies – has no normative grounds whatsoever. Moreover, supporters of the decision did not offer any such evidence as analysis of the situation in certain courts and their needs or any empirical material or objective data to validate their stance. Even though members of the Council themselves stated that that number of vacancies in the Appellate Court was over 10, they requested application of non-competitive promotion procedures for 10 vacancies only and later agreed to reduce this number to 7, which suggests that the HCoJ has made an arbitrary and unsubstantiated decision. All of the above calls actual motives of the decision into question.

In addition, judge-members of the Council have stated that overloaded Appellate Court and high number of cases pending before the Court requires immediate filling of these vacancies from judges transferred (promoted) from the City Court, which is not a valid argument. They explained that announcement of a competition to fill these positions requires some time, while problems in the Appellate Court need immediate fixing. Furthermore, to address the problem of lack of judges in the system the Council recently filled vacancies in both first instance and appellate courts using a competition. Therefore, we can't fathom how transfer of judges to a different court (by promotion) will address the problem of lack of judges in general courts and why solving this problem for the Appellate Court is a priority.

The problem of case overload is a serious challenge not only for the Appellate Court but first and foremost for first instance courts, which is why we believe that the Council should start with courts of first instance to address the problem.

The problem of case overload has long existed in the court system and the Council was well-aware of it. However, throughout this time the Council failed to fulfill its obligation – ensure effectiveness of the court system – and elaborate a long-term systemic vision to address the problem, based on objective and transparent criteria as opposed to ambiguous procedures delegating unlimited discretion.

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The fact that the Council has been working to determine optimal number of judges in a court but has not yet delivered any publicly available research document or decision also proves its ineffectiveness. In addition, for years the Council has failed to elaborate the system of evaluation-based judicial promotions, which falls within the scope of its legal competencies and obligations.

Lastly, Georgian Young Lawyers' Association is especially concerned by the fact that during the September 28 meeting of the HCoJ, judge-members stated several times that if members of the Council agreed to resort to Article 37 for filling vacant positions in the Appellate Court, their approach towards filling remaining other vacancies in general courts would be more constructive; [please, note that under applicable law, appointment of a judge based on a competition requires 10 votes from HCoJ members, meaning that neither the judge-members nor the non-judge members alone can secure the required number of votes]. By making such statements, judge-members of the Council essentially offered a deal to non-judge members. Such approach towards judicial appointments/promotions is absolutely unacceptable and alarming. This is an unfair way of selecting individuals who are set to take over the reins of justice and engage in impartial and independent public service.

The confrontational tone and forms that some members of the Council used to express their opinions and address their colleagues is also unacceptable and clearly falls short of high standards of a judge and a member of the HCoJ.

We urge the members of the High Council of Justice to:

- Elaborate rules and procedures for discharging powers envisaged by Article 37 of the Organic Law in a way that reduces the risk of subjective decisions to minimum and serves the interests of justice. These rules and procedures must be elaborated with involvement of experts and civil society representatives, and as soon as possible. It must refrain from using Article 37 until such regulations are put in place;
- Unequivocally abide by legal requirements and the interests of justice in decision-making; provide valid substantiation for decisions made;
- In its next meeting deliver a decision allowing full coverage of HCoJ meetings by media. We believe that increased public access and control will be essential for preventing unhealthy processes within the Council;
- Deliver a decision that ensures access of audio and video recordings of each HCoJ meeting not only for the corps of judges but for all interested parties, through the HCoJ website;
- Maintain constructive ethical approach towards their colleagues and ensure that meetings of the HCoJ are held in a peaceful business-like environment.

We urge media and international society to:

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- Pay close attention to activities of the Council and help promote effective, transparent and accountable work of the Council within their competencies.