



Coalition for an Independent and Transparent Judiciary

**To Mr. Davit Usupashvili
Chairman of Parliament of Georgia**

Mr. Usupashvili,

The Coalition for an Independent and Transparent Judiciary addresses this open letter to you, regarding a draft law drawn up by the Ministry of Justice to regulate the hearing of criminal cases of high public interest by juries.

According to the draft law initiated in the parliament, high public interest arouses in connection with the status of a defendant; in particular, the interest exists when a defendant is any of the public officials listed in Article 2 of the Law of Georgia on the Conflict of Interests and Corruption in Public Service, who has held or holds a corresponding position, as well as a person accused of committing a crime together with any of those public officials.

The Coalition views this initiative jointly with the draft law which is now being prepared by the Ministry of Justice, providing for a new procedure for the refusal by a defendant to have his/her case heard by jury. In particular, according to this initiative, a defendant can, based on a substantiated motion, request the hearing of his/her case without the involvement of jurors. However, whether a court grants or denies such a motion directly depends on the position of a prosecutor. If a prosecutor disagrees with the motion of a defendant, the judge will refuse to grant the motion and the case will be heard by jurors. It is worth noting that in contrast to a defendant's obligation to substantiate a motion, the proposed draft law does not require any substantiation of a position by a prosecutor; thus, despite a substantiated refusal of jury trial by the defendant, the case will still be heard by juror in case of unsubstantiated refusal on the part of the prosecutor.

The Coalition believes that two aforementioned draft laws must be seen as closely interrelated legal norms and must be assessed in view of those risks which are associated with the hearing of such cases by juries. The public opinion and attitude have already been

somewhat formed towards those criminal cases which involve former senior public officials. Bearing that in mind, we believe that application of jury trial to such cases poses serious risks to a proper administration of justice. A safeguard against these risks is the right of a defendant to refuse, through a substantiated motion, the involvement of jurors in the hearing of his/her case.

Moreover, the Coalition deems it unjustifiable to expand the jury trial jurisdiction to include complex economic crimes such as, for example, legalization of illegal revenues. The Coalition believes that broadening the scope of jury trial, even more so making the jury trial obligatory, should better be based on the analysis of practice existing in Georgia. However, given that such an analysis is virtually impossible because of very scarce practice, the application of jury trial to each and every article of the Criminal Code may harm the interests of justice.

Considering the foregoing, the Coalition believes that in the circumstances when public opinion can be formed in advance on a massive scale, the process of selection of jurors cannot compensate for a restricted right of a defendant to refuse. The Coalition, therefore, believes that the application of jury trial to cases of high public interests, including pending cases of former senior public officials, may only be acceptable if a defendant retains the right to refuse, based on substantiated motion, the jury trial. Otherwise, the Coalition sees the risks in proper administration of justice towards those persons.

Finally, we hope that the expedience of adoption of the mentioned draft law will become a topic of broad discussion and express our willingness to participate in such a discussion.

Davit Asatiani,

Chairman of Coalition for an Independent and Transparent Judiciary

Kakha Kozhoridze

Deputy Chairman of Coalition for an Independent and Transparent Judiciary

Coalition Member Organizations:

Article 42 of the Constitution

Multinational Georgia

Solidarity to Illegal Prisoners

Georgia Small and Medium Business Association

Civil Integration Foundation

Georgian Lawyers for Independent Profession

Business and Economic Center

Liberal

Center for Protection of Constitutional Rights

International Society for Fair Elections and Democracy

Association Green Wave

The Union “21st Century”

Georgian Young Lawyer’s Association

Human Right Center

Transparency International Georgia

Union of Meskhetian Democrats

Liberty Institute

Georgia Bar Association

Civil Development Agency

United Nations Association of Georgia

The European Law Students’ Association

Civil Society Institute

Open Society Georgia Foundation

Institute of Democracy

American Chamber of Commerce

Association of Civic Initiatives and Employees Defense

Eurasia Partnership Foundation

Institute of Development of Freedom of Information

Human Rights Priority

Tbilisi Media Club