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დამოუკიდებელი  
და გამჭვირვალე  
მართლმსაჯულებისთვის  
Coalition for  
an Independent and  
Transparent Judiciary

## Statement on Possible Postponement of Enactment of New Rule on Interrogating Witness

On 4 July 2013, the government of Georgia submitted a draft law on amendments to the Criminal Procedures Code to the parliament. The bill envisages the postponement of the enactment of new procedures of interrogating witnesses, set forth in the effective Criminal Procedures Code, to 1 December 2014, and until then, the application of those procedures which are provided in the 1998 Criminal Procedures Code.

We, first of all, want to note that over the past years, a segment of civil sector had to continuously argue with the government about the importance of immediate enactment of the new rule of interrogation of witnesses.<sup>1</sup> It is an unfortunate fact that this issue has been put on the agenda again. Even more unclear and unfortunate is the fact that several months ago, namely, on 18 January 2003, the incumbent parliament approved itself the amendment to the Article 332 of the Criminal Procedures Code, thereby rescheduling the enactment of the new rule of witness interrogation for as early as 1 September 2013. Considering the existing situation, we deem it necessary to explicitly express our unwavering position on this topic once again.

It is clear that the quality of criminal justice largely depends on the real equality of parties. Adversary nature of criminal proceeding is a principle acknowledged by the Constitution and a foundation for a number of provisions of the effective Criminal Procedures Code. However, to achieve the real equality, the parties need to be ensured with equal procedural conditions.

The current initiative of the Georgian government can only be assessed as a negative move in this direction because the postponement of the application of the new rule of interrogating witnesses is a serious blow delivered to the adversarial criminal proceeding. The effective rule of interrogating witnesses puts the defense in way more unequal conditions

<sup>1</sup> Opinion of the Georgian Young Lawyers' Association, dated 14 May 2012:

<http://qartuli.net/gyla.ge/legislature/upload/daskvna%20sisxli.pdf>;

Open letter of the Coalition for a Transparent and Independent Judiciary to the

Chairman of Parliament: <http://www.coalition.org.ge/ge/article173>

### Coalition Members:

Article 42 of the Constitution  
Multinational Georgia  
Solidarity to Illegal Prisoners  
Georgia Small and Medium  
Enterprise Association  
Civil Integration Foundation  
Georgian Lawyers for  
Independent Profession  
Liberal  
Center for Protection of  
Constitutional Rights  
International Society for Fair  
Elections and Democracy  
Association Green Wave  
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Georgian Young Lawyer's  
Association Human Right  
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Transparency International  
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Civil Development Agency  
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Georgia  
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American Chamber of  
Commerce  
Association of Civic Initiatives  
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Eurasia Partnership Foundation  
Institute of Development of  
Freedom of Information  
Human Rights Priority  
Tbilisi Media Club  
Human Rights Education and  
Monitoring Centre  
Foundation for the Support of  
Legal Education

compared to the prosecution and thus violates the principles of equality of parties and adversarial nature of proceeding.

Under the effective rule, the prosecution has the right to conduct an interrogation during the investigation phase, which implies an obligation of a witness to appear before the investigation and provide testimony. If a witness fails to fulfill this obligation he/she will be compelled to appear before investigative bodies whilst in case of refusal to give testimony, a witness will be subject to criminal liability. In contrast to that, a person is not obliged to give testimony to the defense, which enables a witness to decide whether to provide a defense lawyer with the needed information or not. It must also be taken into account that the advantage of the prosecution is not limited to the obligation of a witness to provide testimony. Interests of the defense are also harmed by the fact that the defense has no right to attend and participate in the process of interrogation of witnesses, which represents a significant procedural right.

In contrast to the effective rule, the new rule of interrogating witnesses, awaiting the enactment, ensures the conduct of the interrogation of witnesses with the involvement of both parties, thereby enabling the parties to participate in this process, exercise significant procedural rights and defend legitimate interests. The new rule of interrogating witnesses does not merely represent “a higher standard,” as this is noted in the explanatory note to the draft law, but it is also a very important procedural guarantee for the defense and an important mechanism for defending witnesses’ interests too.

Society is well aware of a number of high-profile cases showing that the prosecution can use an obligatory and stressful process of interrogation for influencing a witness in order to obtain a testimony favoring interests of the prosecution. At the same time, denying the testimony given to the investigation earlier and providing the testimony different from the one given at the stage of investigation during a court trial may give rise to a criminal liability towards a person who does so.

Unfortunately, it must also be noted that in the explanatory note to this draft law, the Georgian government points out that this draft law is aimed at strengthening the right of the defense of an accused person, which is absolutely incomprehensible. It is clear that the postponement of the enactment of the new rule of witness interrogation harms, first and foremost, an accused person and his/her right to defense and this draft law has nothing to do with the enhancement of the defense. As regards the argument that this change is necessary because law enforcement bodies are yet unprepared to implement the new provisions and that it is yet to be studied what type of interrogation rules must be enacted in future, this

argument is familiar to the civil sector. The identical argument has been used over the past years thus making it impossible to achieve the real equality of parties in the criminal justice.

A similar argument was used by the Georgian government as well when discussing the postponement of provisions for motions on search and seizure. Identically to the previous case, we declare this time around too that this argument is absolutely unacceptable. Equality of parties and adversarial nature, which constitute fundamental principles of the new proceedings, cannot wait for the unreasonably procrastinated process of preparation of the prosecutor's office or other state entities because this significantly harms the quality of the justice and the interests of the parties.

We would like to emphasize once again that the granting of an unjustified preference to the prosecution runs counter to those principles of equality of parties and adversarial nature of the proceedings, which are enshrined in the Constitution.<sup>2</sup>

Consequently, we call on the members of the Georgian Parliament to reject the initiated change and to facilitate the improvement of the criminal justice by, first and foremost, ensuring the real equality of parties. The enactment of the new rule of interrogation of witnesses is exactly one of such indispensable prerequisites for ensuring the equality of parties.

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<sup>2</sup> Constitution of Georgia, Article 85(3).

