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და გამჭვირვალე
მართლმსაჯულებისთვის
Coalition for
an Independent and
Transparent Judiciary

Statement On Yet Another Postponement of Enactment of New Rule of Interrogating Witnesses

The Coalition for an Independent and Transparent Judiciary would like to react to the initiative of the government of Georgia, dated December 20, 2013, which envisages yet another rescheduling of the enactment of new rule of interrogating witnesses during investigation process, for the period of two years – to December 31, 2015. The Coalition believes that the initiated change will adversely affect the development of criminal law justice and therefore, urges the initiators to withdraw the draft law from the parliament.

Bearing in mind that this is not the first instance of rescheduling the enactment of the rule, the Coalition has already expressed its stance on this issue.¹ This time, however, we would like to underscore those issues of vital importance which, in our belief, will be harmed should the old rule of interrogating witnesses be kept on.

In contrast to the old rule, the new rule of interrogating witnesses ensures:

- Genuine equality of parties and adversarial nature of the proceedings which is a principle guaranteed under Article 85 of the Constitution of Georgia. To achieve the equality of parties, it is necessary to abolish those unfair advantages which the prosecution enjoys to date. In particular, a groundless advantage of the prosecution to oblige a witness to provide testimony on the stage of investigation whereas the defense lacks such a right. In contrast, the defense does not participate in the process of the prosecution interrogating a witness;
- The control of courts on the interaction with witnesses, which will decrease risks of exerting pressure on witnesses and obtaining incorrect and coerced testimonies from them. Such a guarantee is expected to improve the attitude of society towards providing assistance to the delivery of justice in the capacity of witnesses.

It is very regrettable that since 2009 to date, the Georgian government has repeatedly used the postponement mechanism to delay the enactment of this norm. Bearing this in mind, we would like to remind both the initiators of the draft law and the legislature of the explanation provided by the Constitutional Court, which says: “It is true that lawmakers, taking

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
The Union “21 Century”
Georgian Young Lawyer’s
Association Human Right
Center
Transparency International
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
Human Rights Education and
Monitoring Centre
Foundation for the Support of
Legal Education

¹ See the statement of the Coalition: <http://www.coalition.org.ge/en/article184>

into account various circumstances, have the right to suspend the operation of a normative act; however, this must not develop into a permanent exercise... Such attitude questions not only the realization of the right but also the existence of this very right. In such conditions, the rights are rendered fictional and devoid of content.... Constant unjustified suspension and/or postponement of operation of any law undermine the principle of the rule of law and gives rise to a sense of lawlessness among society.”²

The Coalition reiterates that the postponement of the new rule of interrogating witnesses is a clearly negative fact and runs counter to the position of the Constitutional Court of Georgia as well the requirements of the Constitution of Georgia to ensure the equality of parties. Moreover, this initiative will not contribute to the improvement of society’s attitude towards the system of the status of witness.

Proceeding from the above said, the Coalition calls on the Parliament of Georgia to reject the submitted initiative. The Coalition also urges the initiators of this bill to call off the document from the parliament and to ensure the full enactment of the new rule of interrogating witnesses.

² http://www.constcourt.ge/index.php?lang_id=GEO&sec_id=22&id=220&action=show