

საქართველოს ახალგაზრდა იურისტთა ასოციაცია GEORGIAN YOUNG LAWYERS' ASSOCIATION



Draft of Public Service Law Should be Improved

Initiated by the Government of Georgia, on February 18, 2011 draft law on “amendments to certain legislative acts of Georgia” was submitted to the parliament of Georgia. Under the draft prepared by the Ministry of Justice and the Ministry of Correction and Legal Assistance of Georgia envisages use of public service as a non-imprisonment form of a punishment and its enforcement in a new manner.

The Georgian Young Lawyers’ Association welcomes the initiative of the government that aims at putting the non-imprisonment punishments into full effect. Currently

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applicable procedures regulating public service fail to ensure efficiency of the mechanism, which was the key argument in the explanatory note. Apart from certain positive aspects, the initiated draft contains notable flaws, including incomplete definition of public service, lack of opportunity for realization of fundamental rights of convicts, the National Agency of Probation taking benefit of gratuitous work, absence of opportunity to appeal and aggravation of a convict's condition by calculation of terms when punishments are substituted. In consideration of the Committee of Ministers of the European Council, in its legal opinion submitted to the parliament, GYLA noted that the law shall necessarily define the meaning of public service and its use for profit by any enterprise should be prohibited.

Furthermore, it is necessary to ensure convicts' involvement in the process of selection of the kind of public service to be performed. The draft should provide for an opportunity for appealing the decision of or failure to make such decision by an agency engaged in the process of enforcement. When substituting a punishment, the procedure for calculating a term offered by the draft aggravates the convicts' condition, which contradicts the process of liberalization of criminal justice policy in the country. We remain hopeful that authors and initiators of the draft will share GYLA's opinion and harmonize the draft with relevant international standards.