

საქართველოს ახალგაზრდა იურისტთა ასოციაცია GEORGIAN YOUNG LAWYERS' ASSOCIATION



GYLA Calls on Parliament to Improve Draft on Competition

The Government of Georgia plans to reform the field of competition. Therefore, Parliament of Georgia is currently considering the new [draft law](#). Yesterday, on November 29, Georgian Young Lawyers' Association submitted to parliament [its legal opinion on the draft law](#). Earlier, on November 1, GYLA's opinions were provided to the Government of Georgia in a written form. Comments of the Association focus on institutional independence of the State Procurement Agency and the procedures for considering appeals.

At this stage of legal drafting, it is of vital importance to create sound guarantees for independence and objectivity of the agency responsible for enforcement of new procedures of competition. On the one hand, the noted institute should be free from any influence from the authorities, as it supervises state assistance; on the other hand, it should remain impartial towards entrepreneurial entities.

According to the draft, Chairperson of the Agency is appointed and dismissed by the Prime Minister. The noted provision promotes instability of the work of the chairperson. In consideration of the fact that the Agency examines lawfulness of assistance provided by the state, it is rather risky to delegate the noted power to the Prime Minister. Under the circumstances, all means of repression should be removed from the executive authority. We believe that the Chairperson should have more guarantees of immunity. To this end, the law should provide for the role of the parliament in appointment of the Chairperson and determine the term of his authority.

Another shortcoming of the draft is that it does not recognize collegial nature of the agency and this way, the draft fails to comply with overall vision laid out in the [comprehensive strategy of the competition policy](#). According to the strategy, the State Agency for Procurement and Competition is a collegial agency; however, the draft does not provide for such composition of the Agency and it does not contain any indication of the commission and commissioners.

As for the work of the agency, it is noteworthy that according to the draft law the Agency starts examining the case only when there is a corresponding application or a complaint. It does not have the right to start examination at its own initiative, based on media reports for instance, which constitutes a weak point of the Agency. Grounds for refusal to start examination of the case are problematic as well. According to the draft, examination will not be launched if application and/or complaint submitted do not correspond to the priority directions of the Agency approved by the government. The noted provision puts unreasonable restrictions on the rights of an applicant/claimant. Substantiated application/complaint may not be left outside legal proceedings only because the issues raised in the complaint are not viewed as priority issues by the government. Filtering complaints according to priorities questions independence of the agency, as opportunities and frames of responding to violations are determined by the government by adopting priorities, as opposed to the Agency itself.

The draft law also provides for an obligation to pay a fee for submitting an application or a complaint. At the same time, the Agency does not provide any final service to the applicant/claimant (e.g. registration of rights, preparation of an extract, etc.) in exchange for the payment. Clearly, the obligation to pay fees obstructs applicants that have not suffered damage personally but can provide interesting information to the Agency with their application. It will have a negative impact on the overall effectiveness of the Agency itself. The draft provides for a rather lengthy term for examining applications and claims by the Agency, which should also be viewed as one of its shortcomings.

With regard to the state assistance that contradicts to the law on competition, final decision of the Agency is provided in the form of a recommendation. Unlike disputes between economic agents, the Agency does not apply to court for further actions. According to the draft, the recommendation adopted by the Agency concerning state assistance is not legally binding. The noted stipulation will disable the Agency to act on state assistance. At the same time, the draft fails to ensure that the Agency is provided with information on the status of implementation of recommendation, which should be necessarily envisaged.

GYLA calls on parliament to ensure formation of the State Competition and Procurement Agency as an independent and impartial entity, and to create conditions

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for the effectiveness of its activities.