

საქართველოს ახალგაზრდა იურისტთა ასოციაცია GEORGIAN YOUNG LAWYERS' ASSOCIATION



GYLA Chairperson Applies to the Speaker of the Parliament with an Open Letter

First of all, let me extend to you the assurances of my high consideration and refer to the cooperation between the Georgian Young Lawyers Association and the Parliament of Georgia for over the years. This time I would like to bring your attention to the fact of violation of the Regulations of the Parliament of Georgia by the Committee of Legal Issues, which, regrettably, is not the first time the Committee violated the Regulations.

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On December 3, 2010 the Committee of Legal Issues adopted the legal draft of Charter of Freedom initiated by the MP Giorgi Totladze in the second hearing. Basically the draft is a Georgian version of the U.S.A. Patriot Act adopted in 2001. First and foremost, I shall note that the adoption of the Patriot Act by the U.S. Government was strongly criticized due to the fact that the Act potentially allowed for human rights violations. Therefore, adoption of the Georgian version of the Act, which is below criticism due to its grammatical and legal defects, may not be considered as endorsement of the best U.S. practice.

When the legal draft was initiated, the Georgian Young Lawyers' Association consciously refused to submit written opinion on the Charter of Freedom simply due to the fact that it was impossible to perceive the text due to its multiple legal and grammatical defects. Despite multiple errors the Committee of Legal Issues adopted the legal draft in the first hearing.

As adoption of the draft in the second hearing was strongly criticized not only by the human rights non-governmental organizations but by the whole civil sector as well, there was a legitimate public expectation that the draft would be revised and improved following the public hearing and the interested parties would participate in it.

Contrary to the expectations, we were particularly concerned by the fact that the Committee adopted the Act in the first hearing, behind the closed door, in violation of the Regulations of the Parliament of Georgia. Pursuant to Article 48 of the Regulations of the Parliament of Georgia "the information about the committee sitting and its agenda are put on Parliament's web page not later than two days before the committee sitting", "committee sitting is public".

Despite the imperative stipulation of the Regulations, information about the committee sitting agenda was not posted on Parliament's web-page two days before the sitting. Furthermore, review of the Charter of Freedom was not even listed on the agenda that was posted on the Internet page later, on December 3, two hours before the sitting.

Therefore, we call for a corresponding response to the violation. Furthermore, we urge you to prevent adoption of the legal draft in the second hearing, as presented at the plenary session, due to the following circumstances:

1. Defects of the draft, both from legal point of view as well as content-wise, make it

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impossible to regulate specific relations, and the draft contains a considerable threat to human rights. Some provisions of the draft do not make sense at all and in some cases it is impossible to make out what the intentions of the author were.

For example, preamble of the Charter of Freedom does not include purpose and principles of the normative act that are necessary for a legal draft. Article 3 of the legal draft refers to the legal regime, which is impossible to comprehend due to multiple grammatical errors, etc.

Therefore, the draft fails to fulfill the principle of “legal definiteness” established by the case law of the European Court, which obligates each state to define possible limits to its authority in a precise and comprehensive manner.

2. The legal draft is set out to govern rather wide array of relations, while in fact it fails to adequately regulate any of them. Its provisions are rather scarce and they fail to ensure real mechanism for realizing wide array of objectives envisaged by the project.

Considering the aforementioned arguments, we deem it necessary to continue work and consultations for revising the text of the legal draft and eliminating potential threats. We express our readiness to continue intensive work for improving the legal draft.

Best regards,
Tamar Chugoshvili
Chairperson