

საქართველოს ახალგაზრდა იურისტთა ასოციაცია GEORGIAN YOUNG LAWYERS' ASSOCIATION



GYLA reacts to changes in procedures for registration of property right

GYLA submitted its legal opinion about draft law of Georgia on Public Registry to the parliament of Georgia.

In GYLA's view, the draft puts adequate protection of constitutional right to property at risk and if adopted, it will be in contradiction with applicable national and international human rights laws.

The draft makes it possible to transfer into the state ownership all real estate properties with no official record of ownership in the Public Registry, without any case-by-case examination, due process, adequate proceedings, inviting of stakeholders and examining relevant facts on an individual basis. To balance the foregoing, the law delegates the National Agency for State Property with power [1] to object to transfer

of property into state ownership. The aim of the proposed new regulations is to help create a comprehensive real estate property database under the state ownership and by doing so, to promote development of real estate market. [2]

Currently there are numerous real estate properties throughout the country subject to different forms of legal ownership [3] but with no official record of ownership in the Public Registry due to various problems, including problem finding a document that establishes the right to ownership, errors in such document, relatively lengthy procedure for inheriting property based on factual ownership, ownership disputed on various grounds, applications pending before the Commission for Recognition of the Right to Ownership, considerable fees for registration of property, which many stakeholders are unable to afford, low level of legal culture, etc. The existing situation suggests that resolving the problem described above may take far more than a year for many reasons, while proposed regulations creates unfavorable conditions for individuals interested in registering property in the future. Disregarding the need of case-by-case examination and application of adequate procedures in addition to limited timeframe will leave stakeholders without any safeguards to protect their right to property and will make it possible to transfer a property into the state ownership by disregarding its rightful owners. Selling of such property will make it impossible to claim it back from a bona fide purchaser. It will also be extremely difficult to conduct proceedings against the state for damages.

Property with is a natural right essential for a democratic society to exist. It is not only a basic foundation for human existence but it also ensures human freedom, ability and opportunity for its adequate realization for responsible living. [4]

Property right is guaranteed and recognized by Article 21 of the Constitution of Georgia, which above all ensures equal protection of property right for everyone, notwithstanding the form of property right – **direct ownership of a physical object or the ownership of the right to request.** [5]

Property right is not absolute; rather, Constitution allows interference with the right to ownership within the scope of paragraphs 2 and 3 of Article 21. However, despite the nature of interference, it is naturally expected in a legal state that a fair and a reasonable balance will be struck between private and public interests – interests of a human and the authorities, while any restriction of the right to property will be initiated in view of its necessity, adequacy and benefit that the restriction will bring to public.

In addition, when public interests are realized by means of intense interference with private interests, in order to maintain a reasonable balance between public and private interests, **all legislative safeguards that allow full protection of the right in question** must be in place. **A legislator must provide owners with all necessary opportunities and adequate procedures for protecting their property right.** [6]

In light of the foregoing, clearly introducing the blanket approach in question contradicts substance of the Constitutional right to property and extremely increases the risks of unfair interference with the right to property and its abuse. Therefore, we believe that the parliament should vote down the government's initiative and hold discussions about alternative solutions of the problem that will allow to achieve the legitimate aim without jeopardizing realization of the right to property guaranteed by the constitution.

[1] Meaning that prohibition of disposal and transfer into use of a property under the state ownership will solely depend on the will of the administrative agency. The agency will be able to use the leverage and restrict right to dispose /transfer into use of a property for the term of one year or decide against applying such restriction and to immediately transfer into use/dispose of such property. Due to the broad discretion fate of property transferred into the state ownership is completely unpredictable;

[2] Explanatory note of the draft law;

[3] Cases subject to the law of Georgia on recognition of property right for land parcels under the ownership (in use) of natural persons and private legal entities, inheritance received on basis of factual ownership and others;

[4] Judgment no.1/2/384 of the Constitutional Court of Georgia, dated July 2, 2007, in Davit Jimsheleishvili, Taniel Gvenetadze and Neli Dalalishvili v the Parliament of Georgia;

[5] Judgment no.1/14/184,228 of the Constitutional Court of Georgia, dated July 28, 2005, in Sakgazi JSC and Anajgupi JSC (formerly known as Tbilgazoaparati) v the Parliament of Georgia

[6] Judgment no.1/2/384 of the Constitutional Court of Georgia, dated July 2, 2007, in

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