

საქართველოს ახალგაზრდა იურისტთა ასოციაცია GEORGIAN YOUNG LAWYERS' ASSOCIATION



GYLA Responds to the Draft Law on Suspending Foreclosures and Submits its Legal Opinion to Parliament

Draft amendments to the Law of Georgia on Enforcement Proceedings and the civil Code of Georgia are currently pending before the parliament of Georgia for consideration. The draft has been proposed by MP Gedevan Popkhadze and sponsored by 49 MPs. The draft law envisages suspension till February 1, 2014 of foreclosure of private homes of individuals with defaulted mortgage loans.

Georgian Young Lawyers' Association believes that the state should not interfere in relations that arise under private law in a way that would curtail the right to property.

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Some cases may involve court's decisions that have already been enacted, enforcement of which would be suspended until February 1, 2014, under the proposed draft; other cases may involve sale of property through auctions, meaning that buyers of property concerned would no longer be able to use property that they own for at least six months as stipulated by the proposed draft (until February 1, 2014).

Georgian Young Lawyers' Association certainly does not oppose but rather welcomes the idea of strong social state policy in support of vulnerable members of the society; however, the state should not have to compromise interests of another group of citizens. Frequently lenders have fulfilled legal as well as contractual terms and therefore, proposed amendments would violate their rights while working in favor of individuals who may have violated both applicable law and contractual provisions. Furthermore, proposed amendments would also apply to third parties who have not been involved in contractual relations but have purchased property concerned through auctions.

Curtailing the right to use one's property is certainly harmful to owner. The fact that the law does not offer any mechanism for compensation equals to violation of the right to property, which under the Constitution of Georgia is prohibited. In light of the foregoing arguments, we believe that the draft pending before the parliament for consideration conflicts with para.2, Article 21 of the Constitution of Georgia. Notably, the draft law addresses the problem by postponing it, i.e. after the six-month term expires it will still be a problem.

Further, the parliament has decided to expedite consideration of the draft and all three hearings are expected to occur this week, which we deem unacceptable. The present draft attempts to regulate interest of parties to private relations and therefore, it is important that both parties are given an opportunity to present their view and a space for discussions is provide in the process of legal drafting. Further, what will happen beyond February 1, 2014 and what additional prohibitions will be places on owners is unclear. All aspects of the process must be brought before the parliament for its consideration and any future developments must be predictable.

We urge the parliament of Georgia to vote down the legal draft as it contradicts the essence of relations that arise out of private law, while any interference in legal relations that have already been concluded violates the principle of legal stability.

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Further, in view of the foregoing arguments, norms provisions of the draft may conflict with Article 21 of the Constitution of Georgia.