GYLA voices its position on the initiated draft aiming to impose certain obligations on lawyers

Amendments to the ”Law of Georgia Promoting Prevention of Legalization of Illegal Incomes” and to the Law of Georgia on Attorneys were initiated in the Parliament of Georgia. The draft aims to bring Georgian legislation in line with recommendations of the “Financial Actions Task Force” (FATF). To our regret, the process of draft preparation was not transparent enough. It was implemented without lawyers’ participation, consideration of their arguments and detailed examination of the

document. This week, the Parliament of Georgia plans to adopt the draft in the second reading. GYLA opines that Parliamentary discussions should be prolonged and adoption of the law at the second reading be postponed.

With a view to prevent legalization of illegal incomes, lawyers are considered to be monitoring entities in certain transactions (such as: procurement-sale of real property, administration of funds, securities or other property, administrations of banking accounts, security accounts or deposits, organization of contributions for setting up legal entity, for its operation or management, establishment of legal entity or joint activity partnership, its operation or management, procurement-alienation of legal entity (share)). Lawyers will undertake the following obligations in terms of these transactions: identification of the party to the transaction, recording information about transaction, systematization and submitting it to the Financial Monitoring Service according to the rules envisaged by the law and the relevant by-laws. In addition, the draft provides that the lawyer submits the reporting form to the financial monitoring service only if such conduct does not infringe the trade secret principle.

According to domestic legislation trade secret of a lawyer is wide-ranging. The obligation of confidentiality applies to any information which: 1) became known to the lawyer from a client or any individual willing to receive legal aid; 2) was submitted by a lawyer to a client or 3) the lawyer became aware of this from other source in terms of a client or his/her activities. In view of this, issues left beyond the scope of professional secret in terms of which lawyers will bear reporting obligation are unclear. Authors of the draft (the Ministry of Justice of Georgia, Financial Monitoring Service) have no concrete response. The provision according to which trade secret protects lawyer only from sending the reporting form also seems problematic. One important issue is determined, amendment will be introduced to Article 7 of the Law of Georgia on Attorneys (trade secret) and paragraph 3 will be added thereto envisaging obligation to inform Financial Monitoring Service according to the rules envisaged by law, on certain transactions. In addition, the law also contains some vague formulations.

Fulfillment of international organizations’ recommendations is vital, yet it is equally important to work out the relevant draft transparently, with involvement and consultation of professionals working in the field. Furthermore, while implementing international standards, it is important to consider local context, legislative basis and other specificities. To our regret, according to our observations, the process was not

carried out adequately and specificities of lawyers' profession in Georgia were not taken into account. We should note that the legal committee of the Parliament did not uphold the draft at the first and the second readings. The draft, however, was adopted at the plenary session by the first reading and there is high probability of adopting it in the second reading as well.

We call on the Parliament of Georgia to refrain from making hasty decisions and to prolong parliamentary discussions with a view to cooperate actively within that period with lawyers for introducing clear and specific formulation and for ensuring inviolability of the trade secret.