

საქართველოს ახალგაზრდა იურისტთა ასოციაცია GEORGIAN YOUNG LAWYERS' ASSOCIATION



GYLA's Assessment of Government Resolution on Determining Bonuses

We would like to comment on the resolution adopted by the Government for determining the amount of bonuses. First, it must be noted that the process of elaborating the document lacked transparency. GYLA has been working on the issue for over the years and we believe that based on the analysis of national or international practice we could have provided the government with valuable recommendations. However, we must note that the government's attempt to resolve the issue is a positive step forward. We would like to also highlight the following:

Resolution of the government covers issues pertinent to the amount of bonuses and it

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does not regulate another issue in public service – the so-called “supplements envisaged by law”. Therefore, it is likely that problems related to provision of bonuses will be replaced by “supplements envisaged by law. We remain hopeful that this will not be the case. However, analysis of the existing practice over the years suggests that legal frameworks are necessary and leaving this matter up to the honesty of officials does not bring about desired results.

GYLA permanently noted that for the purpose of improving applicable regulations and the system of compensation in public service in general, amendments need to be made and issuing a normative bylaw (the government’s resolution in this case) is insufficient. Resolution of the government will not be binding for the following agencies: local self-government authorities, the parliament of Georgia, the president’s administration, common courts of Georgia, constitutional court, the Central Election Commission of Georgia, governments of Adjara and Abkhazia Autonomous Republics, etc. GYLA believes that all of the agencies that are funded from the state, autonomous or local self-government budget must be subject to similar standards as much as possible. This requires making appropriate amendments to the law.

We would like to focus on the entry from the resolution about grounds for providing a bonus, which are two – assessment of the works completed and substantiation. Under the resolution, bonus is provided based on the assessment of works completed, if there is a system of evaluating works completed in a public agency concerned. However, considering the lack of information about the type of systems in public agencies and whether they have any such systems at all, the government should have determined the minimum standard to be met by an agency when providing a bonus based on the assessment of works completed.

Providing a bonus requires substantiation, which entails the following – “the amount of bonus to be provided, what percentage is the bonus of the salary of the person concerned and information about bonuses provided to the person concerned for the year-to-date.” We believe that such type of information is statistical in nature and does not constitute substantiation.

The resolution broadly covers the information about who may provide a bonus. Notably, the regulation does not apply to provision of a bonus to a member of the

government but rather, it is separately regulated by the Prime Minister's decree. GYLA believes that such approach to members of the government may considerably reduce transparency of decision-making, while it will fail to ensure stability of regulation for providing bonuses to members of the government.

The resolution stipulates that a single sum of bonus may not exceed salary of the person concerned and a bonus can only be provided on a quarterly basis. Notably, the resolution does not expressly stipulate the meaning of a single sum. In particular, it does not indicate that the amount of a bonus may not exceed the amount of salary for the period of one month. This way, ambiguity of the resolution in light of the vicious practice does not rule out the probability of wrongful or dishonest interpretation of the norm. In particular, the amount of salary can be determined at a quarterly (as opposed to monthly) amount.

In addition of providing a bonus on a quarterly basis, it can be provided no more than three times a year, in relation to holidays determined by the Labor Code. The resolution does not mandate substantiation and assessment for providing such bonuses. Linking bonus to holidays contravenes the notion of bonus determined by the very resolution, according to which a bonus provided to an employee of a public organization is a remuneration for labor provided for thorough and excellent performance, long-term and honest service and/or for completing a particularly difficult or important task. This way, a public organization has the right to provide bonuses three times in a year, in compliance with the regulation of a maximum amount and taking into account the nature of bonus reflected in the definition of bonus, quality and volume of works completed.

Further, the resolution allows provision of a bonus with rate and amount different from those determined by the regulation. The resolution allows an exception, stipulating that a bonus can be provided on the basis of a motivated request of an official managing a public organization to a higher official. However, the resolution does not determine the number of times the exception can be allowed, for how many persons within one organization at once and what the "motivated request" entails.

GYLA believes that to a certain extent, the resolution is a step forward for determining and providing the amount of bonus by the government of Georgia; however, it fails to address challenges related to provision of bonus in public service, which clearly

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suggests that other types of new legal regulations must be adopted to expressly define a consistent rule for providing a bonus in all public agencies funded from state, autonomous or local budget.