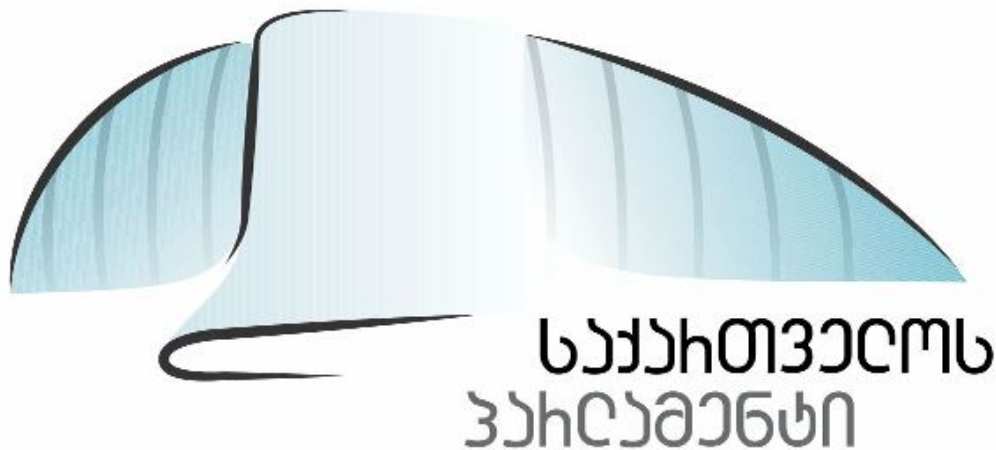




GYLA's opinions on the draft law "Social Entrepreneurship" to Parliament of Georgia

Georgian Young Lawyers' Association presented the opinions regarding the draft bill "Social Entrepreneurship" to Parliament of Georgia. [1] GYLA welcomes the proposal of the members of Parliament of Georgia on the necessity to provide a uniform legislative regulation for social entrepreneurship issues, which should provide legal and financial guarantees for social enterprises, support social enterprises in the country and promote new enterprises with social goals. **GYLA considers that the initiated bill needs substantial improvement in order to ensure the compliance of a legislative regulation with international and EU standards in the field of social entrepreneurship.**

GYLA's opinions refer to the following issues brought in the draft law: the essence of social entrepreneurship and limitation of activity fields, the rule granting the status of a social enterprise, the state support of social entrepreneurship, the absence of a mechanism monitoring the activities of social enterprises and the

necessity to establish a regulatory body.

1. The essence of social entrepreneurship and limited fields of activity -

Article 3 of the legislative proposal allows for a social enterprise to be created only in the fields of education, culture, health care, sports, and environment. We believe that a limited choice of the fields for starting social enterprises contradicts the right and freedom to labour guaranteed under Constitution of Georgia and the principle of equality before the law, as interested parties may not have the opportunity, despite having social goals, to set up a social enterprise in other areas and enjoy the guarantees. The limitation of the fields reduces the chances of introduction of innovations and technologies in social entrepreneurship. There are a range of social enterprises across the world in the field of transport, infrastructure, agriculture and other areas. Besides, this restriction deprives other non-commercial legal entities already operating in other areas of the possibility to transform into social enterprises, which may significantly worsen their situation.^[2] In addition, the Georgian legislation does not provide for the definition of "vulnerable groups" and it is important to define who will be considered a vulnerable group for the purpose of a social enterprise.

2. Status of the social enterprise and the rule for its granting - Article 4 of the draft law envisages the requirements which a social enterprise shall meet. However, the majority of the requirements is vague and requires additional explanation. First of all, it should be defined what is meant under "direct and indirect connection and subordination to the state" in order to prevent any conflict of interest between state or local self-governing bodies. In addition, the bill envisages a five-year term for the abolition of the status of the social enterprise, which is unreasonable considering the fact that even after the expiration of the 5-year term an enterprise may fail to meet the requirements of the social enterprise. Thus, the draft law should have a mechanism for removing the social status.

According to the draft bill, in case of cancelation of the registration of the status of the social enterprise, if the assets of an enterprise are not sufficient, partners and shareholders of the enterprise shall be liable to return the assets (cash and / or property), which the enterprise, partners, shareholders have received as allowance from the state based on the status of the enterprise. ^ა We believe that this contradicts the requirements of paragraph 4, Article 3 of the Law of Georgia ^ბ Entrepreneurs"

which states that "Limited partners of a liability partnership, partners of joint-stock companies or cooperative shall not be liable to creditors for the obligations of the company."

According to paragraphs 6 and 7 of Article 6 of the draft law, "A non-entrepreneurial (non-commercial) legal entity registered in Georgia, which is involved in entrepreneurial activities in the areas provided for in Article 3 of this Law ..." "shall have the right to request the registration of the status of the social enterprise. In this case, the requirements and limitations envisaged for enterprises under this Article shall not apply to it." The draft law should not include such exceptions, and the status of the social enterprise should only be granted to those enterprises that meet the requirements of the law."

3. State support of social entrepreneurship - Article 8 of the draft law envisages the measures for promoting social entrepreneurship by the state, but their content is of declaratory nature and does not specify any mechanisms for implementing the proposed measures in practice. The draft law should clearly define how the measures indicated in the draft law will be implemented. It is important to draft clearly and in details according to which standard the state should give priority to product and services produced by social enterprises in case of equal conditions.

4. Absence of the mechanism monitoring social enterprises / regulatory body - Although the draft law aims to create a regulatory framework for monitoring activities of social enterprises, it does not contain any relevant provisions and does not determine which body and in what manner will perform the above function. The draft law must specifically define a body for implementation of state monitoring, the procedure and mechanisms of monitoring, as well as the source of funding of this body in order to prevent any dishonest use of the status of the social enterprise and allowances. Social enterprises can be monitored by a sub-division or an independent agency of the Ministry of Economy.

The draft law on "Social Entrepreneurship" will be discussed at the spring session of Parliament of Georgia and the Sector Economy and Economic Policy Committee is the leading committee.

საქართველოს ახალგაზრდა იურისტთა ასოციაცია GEORGIAN YOUNG LAWYERS' ASSOCIATION



[1] Authors of the legislative initiative are the MPs Merab Kvaraia, Paata Mkheidze, Goga Gulordava, Koba Lursmanishvili, Zakaria Kutsnashvili, Rati Ionatashvili, Giorgi Mosidze, Giorgi Kopadze, Dimitri Mkheidze, Tsotne Zurabiani. Available at: <https://info.parliament.ge/#law-drafting/16647>

[2] For example, there is a social taxi in Georgia: <http://segeorgia.org/exmore.php?NID=179>