

BGI Law Brief

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Parliament adopts controversial rules for appointing Supreme Court judges

On May 1, the Parliament adopted a highly controversial package of legislation on selection and appointment of the Supreme Court judges.

At the moment, the Supreme Court houses only 11 judges, while according to the Constitution it should be composed of 28 judges. Judges for the remaining seats will be selected according to the newly established rules, which have been subjected to harsh criticism by local and international stakeholders alike, including the US, the EU, and leading NGOs as well as political parties other than the ruling party.

In particular, the newly adopted legislation does not define clear selection criteria for the candidates to be shortlisted by the High Council of Justice (the Council), through secret ballots, without a requirement for providing the reasons for the selection, thus opening doors for undue external influence in the selection process. This is especially important considering the lack of trust of civil society towards the Council. The final decision on appointment of judges is left to the Parliament.

Effectively, the Supreme Court will soon have an entirely new slate of judges, selected through a non-transparent procedure and appointed for life by the current parliamentary majority. As criticized by the Venice Commission, "this may be detrimental to the high level of public trust that an institution such as the Supreme Court must enjoy in a country".

The new procedure is currently in force and will apply to the selection process of Supreme Court judges as of May 1, 2019.

Special Enterprises can now register at the Revenue Service

Companies and individuals may now register as Special Enterprise, allowing them to carry out certain commercial activities on the occupied territories of Georgia.

The status of a Special Enterprise was first introduced under the Tax Code of Georgia in June 2018, whereby tax authorities may grant such status to persons carrying out commercial activities on the occupied territories of Georgia.

On April 5, 2019 the Government adopted specific regulations on registration of such persons, their supervision and the termination of the registration. According to these regulations, a person seeking the status of the Special Enterprise must address the Revenue Services of Georgia and provide information on intended activities. The application will be reviewed by a number of Governmental agencies, including State Security Services, however the final decision on granting the status will be adopted by the Government.

The status will be granted for a defined term and will be terminated upon its expiration. However, in certain cases the status may be revoked based on the Governmental decree. These cases may include provision of false information in the application, damaging the state interests, *etc.*

Postal service providers subject to unfair treatment, says Constitutional Court

On April 18, 2019, the Constitutional Court invalidated the provision of the Law of Georgia on State Procurement (the State Procurement Law), granting advantages to Georgian Post LLC in matters related to the state procurement.

The requirements of the State Procurement Law did not apply to procurement of postal services from Georgian Post, putting the latter in the advantageous position as compared to its peers from the private sector. The Constitutional Court was asked to examine the constitutionality of the relevant statutory provision in light of the right of freedom of enterprise guaranteed under Article 26 of the Constitution.

The Constitutional Court stated that excluding Georgian Post from the state procurement procedures indeed amounted to a restriction of the constitutional rights of other postal service providers, however it served a legitimate purpose. In particular, it aimed to ensure provision of affordable postal services throughout Georgia. Regardless, since Georgian legislation does not obligate Georgian Post to ensure provision of affordable postal services, does not establish objective and clear parameters for measuring the costs related to the same and could profiteer Georgian Post unfairly, the Court deemed unconstitutional the relevant provision of the State Procurement Law.

Please note however that in order to prevent any negative impact on postal service providers and their customers, the Constitutional Court postponed the date of repealing the unconstitutional provisions until May 1, 2020, thereby granting the Parliament time for necessary legal amendments with respect to the issue.

Compulsory auctions with starting price of GEL 0 declared unconstitutional

On May 28, 2019, the Constitutional Court struck down the provision of the Order of the Ministry of Justice on the Forms, Rules and Procedures of a Compulsory Auction whereby after two unsuccessful compulsory auctions, the debtor's property must be offered at the third auction with the starting price of GEL 0 (zero).

According to the Court, such auctions, which currently allow selling the debtor's property at a price considerably below the market value, must be preceded by reasonable attempts to sell the property at a higher price. The Court held that the current legislative framework offers inadequate preceding measures for selling the property at a higher price. Thus, the law fails to meet the requirements of the property rights under Article 19 of the Constitution and is therefore unconstitutional.

The Constitutional Court has postponed the date of repealing the unconstitutional provision until August 31, 2019.

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