

## **Overview of Draft Laws Elaborated by the Department of Legal Drafting of the Ministry of Justice of Georgia in the Second Half of 2005**

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In the second half of 2005, the Department of Legal Drafting of the Ministry of Justice of Georgia elaborated the following draft laws and blocks of legislative amendments:

1. Block of legislative amendments which includes: the draft Law on Arbitrage, on Making Changes and Amendments to the Civil Procedure Code of Georgia, on Making Changes to the Law of Georgia on Enforcement Proceedings, on Making an Amendment to the Law of Georgia on International Private Law and on Making a Change to the Organic Law of Georgia on the Court of General Jurisdiction.

The Department of Legal Drafting of the Ministry of Justice of Georgia developed the draft Law on Arbitrage which is approximated to the Model Law on the International Commercial Arbitration adopted by the United Nations Commission on International Trade Law (UNCITRAL). The draft Law is compatible with the New York Convention on the Acknowledgement and Enforcement of Foreign Arbitration Awards (31 December 1958) which was enacted in Georgia by virtue of the Decision of 3 February 1994 of the Parliament of Georgia and takes account of the experience of advanced European countries (the United Kingdom, Germany, Italy, Sweden, Portugal, Netherlands, etc.)

The development of the draft Law on Arbitrage was conditioned by the necessity of harmonisation of the Georgian legislation with that of the EU and by the popularisation of the institute of arbitration. The current Law on Arbitrage does not meet the requirements assigned to modern arbitration; that is, an alternative means of settling private law disputes.

According to the draft Law, a permanent arbitration establishment is a legal person which, personally or through its structural subdivisions, is engaged in the organisation and conduct of arbitration proceedings and other related thereto procedures and is entitled to consider property disputes of a private nature which may be settled between the parties. The provisions of the draft Law are simplified and they enhance the timely consideration and resolution of cases. According to these provisions the ongoing court proceedings (on the jurisdiction of a dispute or on the challenge of an arbitrator) do not obstruct the consideration of a case and delivering an award through arbitration.

The novelty of the draft law is the provision by virtue of which the parties to arbitration proceedings are entitled to assign the right to make a decision, granted to them by the law, to a third

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person. The draft Law also provides for the cases of surrogating rights in legal relations. In this case a surrogate person becomes a party to an arbitration agreement and participates in arbitration proceedings unless otherwise provided for by the agreement between the parties.

The draft Law provides for the additional mechanism of protection of a consumer; that is, a party to a private law dispute. An arbitration agreement regarding the case to which a consumer is a party, must be made as a separate document, signed by the parties and duly handed over to each side. Consequently, an arbitration agreement may not be made in terms of an arbitration clause of the agreement with respect to a legal dispute to which the consumer is a party.

Under the draft Law, the arbitration considering a dispute shall be entitled to examine whether or not a legal dispute falls within its terms of reference assigned to them under an arbitration agreement and to decide on their own terms of reference; namely, to examine the issue of existence and validity of an arbitration agreement and to consider and decide on the application of a party concerning the excess of the terms of reference of the arbitration.

The novelty of the draft Law is the authorisation of the arbitration to make decisions on security measures for an arbitration suit on the grounds of the solicitation of a party. Further, before the commencement of arbitration proceedings or at any of its stages, a party of the arbitration, under the solicitation of a party, shall be entitled to apply to the court concerning the measures of security of an arbitration suit provided this is not controversial to the arbitration agreement.

The draft Law regulates the deficiency of the current arbitration related to the language of arbitration proceedings. It is envisaged that parties shall be entitled to provide for the language(s) of arbitration proceedings. In the case of the absence of such an agreement, the language(s) of arbitration proceedings shall be determined by arbitration through taking account of all the relevant circumstances including the due consideration of the language of the agreement. The arbitration shall be entitled to stipulate that each of the documentary evidences must be supplemented with a translation thereof into the language(s) of arbitration proceedings.

Given the private law nature of the arbitration, we consider important the conduct of arbitration proceedings by the parties thereto and only a minimum participation of the court. The imperative provision of the draft Law stipulates that any interference into the process of arbitration proceeding by the court shall be inadmissible except for the cases directly provided for by the law. The draft Law of Georgia on Arbitration explicitly provides for such cases when the court may participate in the relations related to the consideration of an arbitration dispute.

The draft Law provides for the detailed regulation of the institute of appealing against an arbitrate award which is considered a step forward as compared with a too general and unclear provision of the current Law on Private Arbitration. Namely, it explicitly lists the cases when the court is entitled to overrule the arbitration award under the motivation of violation of the rules provided for by the parties in the agreement by the court. Further, the court shall be entitled to overrule the arbitration award in cases when there is no arbitration

agreement or when it is void or invalidated, when a dispute may not become the subject matter of arbitration proceedings or when an arbitration award is against the public order. The time frames, as well, for appealing against an arbitration award are specified (90 days following the serving of the award to the parties).

The adoption of this draft Law will promote the development of the institute of arbitration and its wider implementation in private law relations and the approximation and harmonisation of the Georgian arbitration legislation with that of the more advanced countries of Europe and the world. The work on the draft Law commenced at the beginning of 2004 with the presentation of the draft law arranged in March of that year and with the participation of representatives of interested agencies and Georgian and foreign experts. The representatives of interested agencies expressed the comments and proposals with respect to the draft Law. The latter was revised in accordance with these comments and proposals and, for the time being, it is submitted to the Parliament of Georgia.

2. Block of legislative amendments which includes the draft Laws of Georgia on Making an Amendment to the Law of Georgia on Consumer Protection, on Making Changes and an Amendment to the Law of Georgia on Tourism and Resorts and Making an Amendment to the Law of Georgia on Employment.

Pursuant to Paragraph 2.2 of the Action Plan Approved by the Ordinance No. 623 of the President of Georgia on the Approval of the Action Plan of Fighting against Trade in Humans (Trafficking) for 2005-2006, dated 29 December 2004, the Ministry of Justice of Georgia was assigned with the obligation to develop changes and amendments to legal acts regulating consumer protection with a view to securing the guarantees for the protection of the rights and security of consumers in offering employment, acquaintance, tourism, study and intermediary services by various companies. With a view to the fulfilment of this assignment, the Ministry of Justice of Georgia developed this block of legislative amendments.

The draft Laws aim at introducing efficient legal mechanisms for the protection of the rights of tourists, in the capacity of consumers, and for securing their full awareness. The subjects of tourist services, for example, are obliged to provide tourists with objective, accurate and comprehensive information concerning those conditions and options which tour-operators and tour-agents offer the consumer during their voyage or temporary stay as concerns possible hazards and including preventive measures which may be implemented for the prevention of possible hazards. According to the proposed changes, a tourist must be informed about the producer of the tourist product and the hotel (address, contact telephone numbers), which is provided for by the package of tourist service, and including further the contact telephone numbers of the diplomatic representations or consular establishments, police of the recipient country, primary medical aid and other respective establishments which, in the case of need, will secure the protection of the rights of tourists and their security.

Concurrently, the respective changes are to be made to the Law of Georgia on Employment which obliges private agencies to secure the persons seeking employment abroad with the information provided for by the draft Law of Georgia on Making Changes and an Amendment to the Law of Georgia on Tourism and Resorts. These issues are reflected in the Law of Georgia on Consumer Protection.

The block of legislative amendments was furnished to interested agencies for agreement and, for the time being, the revision of the drafts is under way for due consideration of the received comments and proposals.

3. The block of legislative amendments which includes the draft Laws of Georgia on Making Changes and Amendments to the Law of Georgia on State Register, on Making Changes to the Law of Georgia on State Levy, on Making Changes to the Law of Georgia Temporary Exit from and Entry into Georgia for Georgian Citizens, on Making a Change to the Law of Georgia on the Procedure of Registration of the Citizens of Georgia and Foreigners Residing in Georgia, Issuing of Identity (Residence) Cards and Passports of the Citizens of Georgia, on Making Changes to the Law of Georgia on Emigration, on Making a Change to the Law of Georgia on the Legal Status of Foreigners, on Making a Change to the Law of Georgia on Immigration, on Making Changes to the Law of Georgia on the Registration of Civil Acts, on Making a Change to the Civil Code of Georgia, on the Payment for Services Rendered by the Civil Register Agency and a draft Organic Law of Georgia on Making a Change to the Organic Law of Georgia on the Citizenship of Georgia.

The block of legislative amendments provides for the establishment of a public law legal person – a Civil Register Agency with a view to efficient performance of the functions – assigned to the territorial bodies operating the State Register of the Ministry of Justice of Georgia.

This legal person is created within the framework of the Ministry of Justice of Georgia and will be supervised by the latter.

The territorial offices of the Civil Register Agency will be engaged in the provision of such services such as: registration of birth, death, marriage, divorce, affiliation, adoption, change of name, patrimonial and family name; citizenship; alteration, change, restitution or cancellation of civil acts; issuance of repeated certificates and records on the registration of civil acts; creation, stock-taking and storage of the archive fund on civil acts; registration of natural persons according to their residence and striking off the register; issuance of respective identity and residence cards; issuance of passports of Georgian nationals and their change; withdrawal of respective identity cards of foreign nationals and stateless persons in the case of permanent departure from Georgia; issuance of references to Georgian nationals for marrying abroad regarding the absence of circumstances obstructing their marriage and validation (legalisation) of the documents on the registration of civil acts issued in Georgia for foreign usage.

One of the purposes of assignment of these functions to a public law legal person is the attraction of its own sources of income. Namely, it is envisaged to introduce the payment for services rendered by the Civil Register Agency which will be explicitly regulated by a legal act. This, in its part, will minimise corruption hazards to a maximum extent which is often conditioned by and resulting from the low remuneration of the employees of these bodies. Revenues from rendered services will secure the increase of the degree of their independence and remuneration.

The draft law was revised according to the comments and proposals received from interested agencies and is submitted to the Parliament of Georgia.

#### 4. Draft Law on Making Changes and Amendments to the Law of Georgia on Imprisonment.

According to Article 26 I (a)-(e) of the Law of Georgia on Imprisonment (22 July 1999), a convicted person is entitled to the receipt and sending of postal packets and parcels under the control of administration.

The exercise of this right often becomes an impeding factor for the efficient operation of the penitentiary system. Despite severe control over the exercise of this right, exerted by the administration of penitentiaries, there are cases when prohibited articles penetrate into penitentiaries by means of various secret methods and which cause numerous problems within the establishments. Together with the increase of the control over this issue, the risk of corruption increases as well which has a negative impact on the image of the penitentiary system of Georgia.

One of the purposes of the reforms ongoing in the Ministry of Justice of Georgia is the implementation of the European standards in the penitentiary system of Georgia. As a result of intensive efforts in this field, penitentiary establishments conforming to international standards were built in the cities of Kutaisi and Rustavi where it will be necessary to implement the new rules in order to remove once and for all the legacy of problems of the past system.

We consider it reasonable to introduce the respective changes to the Law of Georgia on Imprisonment in the light of the implementation of the new systems of control in the above institutions as concerns the fight against corruption and insecurity.

According to the draft Law, the Minister of Justice of Georgia is to identify the establishments where the receipt and sending of postal packets and parcels under the control of administration will be allowed and the establishments where this right will be restricted based on the situation in the establishment concerned.

In the establishment where the receipt or sending of postal packets and parcels under the control of administration will be prohibited on the grounds of the order of the Minister of Justice, the new mechanism of receipt of aid by convicted persons will be implemented which will find painless and civil methods of overcoming this problem; namely, a mini-market will be

opened in the establishment where such prohibition will be introduced with its goods and services available for purchase through payments made from bank accounts. A person, for example, who wanted to send a postal packet or a parcel to a convict, will now be able to transfer the threshold amount to the letter via a bank transfer. The convict will be entitled to expend this amount in the above mentioned market in accordance with the established thresholds.

Based on the aforementioned, the draft Law provides for respective changes to be made to Articles 26, 36 and 92 of the Law of Georgia on Imprisonment under which the prisoners and convicts will be prohibited from the receipt of postal packets and parcels in those penitentiary establishments which will be identified by the Minister of Justice of Georgia.

The novelty of the draft Law is the change under which the convicts will be entitled to use their personal money for the purchase of food products without the consent of the director of the penitentiary establishment. The adoption of the draft Law will be a step forward in the reformation of the penitentiary system. The draft Law was adopted by the Parliament of Georgia through all three hearings.