



1. Legal News Georgia Feb 2020

1.1. Budget

In the center of attention for the relevant period were the budget acts - the State Budget of Georgia, and Budgets of the Autonomous Republic of Abkhazia and Autonomous Republic of Adjara (adopted in 10.12.2019, 14.01.2020 and 12.12.2019 respectively). Documents contain substantial information regarding state incomes and expenses of 2019, and priorities and plans for 2020.

1.2. Banking and Finances

Apart from that, the law on Financial Pledge, Netting and Derivatives was passed on December 20, 2019. It defines the meaning of derivatives in Georgian legal system, and aims to encourage derivative market and create legal framework for such contracts. According to the explanatory note, development of financial markets create new risks that never existed before, affecting both investors and policy makers. Existence of derivatives makes management of those risks easier – change of prices calls for the necessity of derivative market.

Definitions for new terms, such as derivatives, netting and financial pledge were clarified, including the types of derivatives. Law determines the mandatory elements of derivatives, and the transactions that should not be regarded as derivative contracts. It also defines, who can act as a party in derivative agreements, and their obligations in this regard.

Derivative agreement can be done in both written and oral form, however, in case of oral agreement, law demands written or audio evidence containing information regarding its contents.

Article 4 regulates the netting agreements and certain guarantees - e.g. the law on Insolvency Proceedings has certain limitations, such agreements cannot be annulled, etc.

National Bank of Georgia has vast authority in this field, including a right to create additional regulations for the agreements and supervision derivative agreements and is allowed to demand information (including information considered confidential by contractors) from respective parties. Derivative agreements do not require registration (other than an exception provided by the Law).

Moreover, there was a massive amendment in the law on Commercial Bank Activities, focusing, mostly, on the regime of resolution of a commercial bank and its liquidation. The law now regulates the regime of resolution, rights a bank has during procedures, its results (including liquidation), and the power of the National Bank of Georgia during resolution phase of the commercial bank.

1.3. ADR

Recently adopted law on Mediation already saw some changes, as the amendment of 11th of December has narrowed the scope of its application and excluded specific types of mediation (e.g. notarial mediation) from its regulations. Other changes defined the issues of conflict of interests of a mediator more accurately.



1.4. Energy Industry

Energy industry was majorly affected by legislation adopted in December. New laws introduced in this sector were the Law on Energy Labeling, the Law on Energetics and Water Supply, and the law on Encouragement of Energy Production from Renewable Sources and its Usage. Moreover, Law of Water User Organizations was passed on 19th of December, regulating certain issues of irrigation.

1.5. Others

Numerous other amendments of law were mostly echoes of new laws that served to deliver certain regulations to different acts, and create redirection mechanisms (e.g. Law on International Private Law now directly specify, that scope of the article 10 does not contain regulations from the law on Financial Pledge, Netting and Derivatives, and thus the issue of applicable law is decided by the new act itself. Law on National Bank of Georgia now includes the new powers granted in regards of new financial instruments and commercial bank regulations. etc.). According to the explanatory note, changes in the Tax Code aim to create a policy on taxation of new financial instruments included in the law on Financial Pledge, Netting and Derivatives. Apart from to adding new terms and definitions to the Code, the change also widened the scope of dividend and percent now to include income from certain instruments of the new law.

2. Supreme Court decisions

2.1. Case № 16-1535-2019, 19 December 2019 (civil):

Appellant argued, that the decision made by the Court of Appeals regarding the period of appellation was contradicting law. Court of Appeals decided, that since the City Court has announced the decision on 1st of May 2019, and because the appellant was present at announcement, the period of the time limit for appealing was commenced at June 1st, and was expired on June 14th. The appellant disputed, that court did not have the decision ready in the period of 30 days, and during this time, he/she demanded the decision to be handed to them multiple times, and based on this fact, the time limitation calculation presented by the court was inaccurate. Supreme Court agreed to the appellant and decided that the belated delivery of the decision occurred because of the court and not the party, therefore the time limit calculation presented by the appellant was accurate. Supreme Court clarified, that the regulation of the article 259¹ of the Georgian Civil Procedure Code not only establishes party's obligation to appear in court and receive decision, but also the Court's obligation to have decision ready by relevant date. Therefore, if party does not appear in court, presumption is that the decision is ready, but when it is evident that the decision is not ready to be handed to the party yet, presumption ceases to exist and the time limit for appellation commences from the date of actual delivery. Hence, according to the article 369, and since the decision was not delivered to the appellant in due time, he/she cannot be held liable for not-receiving the document. Thus the Supreme Court reversed the judgement and referred the case back to the court of appeals.

2.2. Case № 16-1535-2019, 19 December 2019 (civil):

Supreme Court made an interesting clarification regarding article 31.3 of the Labour Code. The appellant argued that the labour contract termination act by the employer was invalid, based on the decisions by the City Court and the Court of Appeals. In addition to the compensation for the period he/she did not receive any salary (which was granted to him/her by both the City Court and the Court of Appeals), the



claimant also demanded additional 0.07 percent of whole sum, which, as they claimed, was for the delay for each day of compensation. The Supreme Court upheld the decision of the Court of Appeals, rejecting the appellant's request. Court ruled that despite the invalidity of the termination act (that deemed the labour contract to be valid for the full duration), article 31.3 has a different scope that does not contain the case at hand. Specifically, the right to demand fine only when the contract between parties has not been terminated, namely, the scenario when the contract is in force and employer does not fulfill its obligation to pay remunerations. However, the disputed case, where employer terminated the contract and ceased to pay salary to the ex-employee does not fall under the scope of article 31.3 of the Labour Code of Georgia (comp. Supreme Court case 30/09/2013, სს-285-271-2013).