BLC Law Office

MUCH ADO ABOUT NOTHING OR A REAL BATTLE FOR THE CONSTITUTIONAL COURT

Headline news in Georgia recently start with the breaking news of purported attacks on independence of our Constitutional Court. Politicians, experts, NGOs and everyone who may or may not have an informed opinion are wondering if the President will use his right to veto this law and if the Parliament will overcome it with the same ease as it has done before.

Nine judges of the Constitutional Court appointed by the Parliament, President and the Supreme Court stand to protect constitutional order and rights in Georgia.

The judges in the Constitutional Court may be appointed only for one – 10-year term, interestingly, the term of three current judges, two President's appointees, one Parliamentary and one Supreme Court appointee is expiring at the end of September.

While the first few amendments to the law are aimed to specify the procedure applicable to the appointing the Chairman of the Constitutional Court, procedure of substituting the judges, etc. the first controversy begins from Article 18 of the Organic Law on Constitutional Court of Georgia. The law previously stated that after the expiry of their tenure judges could still handle cases under their initial review. The new law limits the right of the judge whose term is expiring in 3 months to review cases related to the election, referendum, etc. but other pending cases, such as the review of constitutionality of the normative acts shall wait until the new judges are appointed. Consequently, starting from July 2016 four judges of the Constitutional Court shall be dismissed from all cases related to the constitutionality of any normative act.

Another controversy is in Article 21, now allowing one member of the constitutional panel, instead of the entire panel to bring the cases to the plenum of 9 judges. Therefore, any case, even if does not fall under the competence of the Plenum may end up there at the decision of one judge.

The quorum of the Plenum has been increased from 6 to 7 members, whereas the decisions now may be rendered at the consent of 6 attending judges, instead of 4.

Thus, the talks on the possible political motivations may continue whereas our job is to only bring the facts to the reader, reflected by the independent lawyers of BLC.

DEFAULT JUDGMENTS MAY NOT MAKE SENSE ON THE LEVEL OF APPEALS

With its decision rendered on March 17, 2016, the Grand Chamber of the Supreme Court overruled the default judgment rendered by the Court of Appeals stating that the failure to submit the written response to an appeal must not serve as a basis for rendering default judgment by the appellate court (Case #as-121-117-2016). Supreme Court based its arguments on the principle of adversary trial. The judgment states however, that the failure of the party to appear in the oral hearings will, yet trigger the threat of the default judgments.

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