

LEGAL NEWSLETTER

- *Issue N4, 08.09.04*
- **Mgaloblishvili, Kipiani,
Dzidziguri (MKD) Law Firm**

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Laws

- Following **Amendments to the Law of Georgia on Structure, Authority and Activities of the Executive Power**, dated 24 June 2004, the following is the list of Georgian ministries: (1) the Ministry of Education and Science, (2) the Ministry of Environmental Protection and Natural Resources, (3) the Ministry of Economic Development, (4) the Ministry of Energy, (5) the Ministry of Defense, (6) the Ministry of Justice, (7) the Ministry of Culture, Protection of Monuments and Sport, (8) the Ministry of IDP and Resettlement, (9) the Ministry of Foreign Affairs, (10) the Ministry of State Security, (11) the Ministry of Agriculture, (12) the Ministry of Finance, (13) the Ministry of Internal Affairs, (14) the Ministry of Labor, Health and Social Protection.
 - effective.
 - In addition to the above said, and, under **Amendments to the Civil Code of Georgia**, dated 24 June 2004, effective from 1 March 2005, registration of non-commercial entities, which are associations (unions) and foundations, as well as their branches (representative offices) shall be carried by territorial bodies of the State Register at the Ministry of Justice of Georgia. Such registration shall take place within fifteen days from filing a respective application. And, if the registration body fails to perform registration, then, like in case with enterprises registered pursuant to the Civil Procedure Code of Georgia, the registration of non-commercial entity (or, its branch) is presumed to be effective.
 - According to **Amendments into the Law of Georgia on Legal Status of Foreign Nationals**, dated 24 June 2004, foreign nationals staying in Georgia for more than *three* months, shall be deemed as temporarily residing in Georgian, and, therefore, be subject to registration by territorial body of
- **Amendments to the Civil Procedure Code of Georgia**, dated 24 June 2004, stress that the time frames for registering an enterprise under laws of Georgia shall be not more than *five* days. If the court fails to register an enterprise within the said time frames, the registration is presumed to be

Laws & Secondary Legislation

- the State Register at the Ministry of Justice of Georgia.
- Under **Amendments to the Law of Georgia on State Transport and Regulation in Transport and Communications**, dated 30 June 2004, the regulatory fees are established for certain entities engaged into aviation services. Those fees shall be paid to the Administration for Civil Aviation and shall not exceed two percent (excluding VAT) of income received as a result of entrepreneurial activities or of service tariff amount. Such regulatory fees may further be specified through a separate act of the Administration of Civil Aviation.
- **Order No22 of the President of National Bank of Georgia Order**, dated June 21, 2004, **amended Order No19 of the President of National Bank of Georgia**, dated June 7, 2004, in regard to norms related to minimum reserve requirements whereby the new limits are: 0 percent-for minimum reserves for attracted average sources in national currency; 11 percent-for minimum reserves for attracted average sources in foreign currency; 2 percent-for average reserve for attracted average sources in national currency; and, 2 percent-for average reserve for attracted average sources in foreign currency.

Ratifications

- The following documents have been ratified by the Parliament of Georgia:
- **The Consular Convention** dated 17 July 2002 among **the Republic of Italy and Georgia** was ratified by the Parliament of Georgia on June 24, 2004.
 - **The Consular Convention** dated 10 October 2003 among **the Republic of Uzbekistan and Georgia** was ratified by the Parliament of Georgia on June 24, 2004.
 - **The Grant Agreement on Agriculture Sector** among **Georgia and IDA** was approved by the Parliament of Georgia on June 30, 2004.
 - **The Credit Agreement on Interstate Roads Infrastructure** among **Georgia and IDA** was approved by the Parliament of Georgia on June 30, 2004.
 - **The Credit Agreement on the Project for Supporting the Reforms** among **Georgia and IDA** was approved by the Parliament of Georgia on June 30, 2004.
 - Amendments to **the Credit Agreement on Developing the Georgian Wholesale Energy Market** among **Georgia and IDA** were approved by the Parliament of Georgia on June 30, 2004.
 - **The Agreement between the Republic of Lithuania and Georgian for the Avoidance of Double Taxation and the Prevention from Evading of Payment of Taxes** dated September 11, 2003, was ratified by the Parliament of Georgia on June 24, 2004.
 - **Protocol to the Agreement on Partnership and Co-operation between Georgia and European Communities and its Member States** dated 30 April 2004 was ratified by the Parliament of Georgia on August 10, 2004.
 - **The Development Credit Agreement on Inter-State and Local Motor Roads between Georgia and IDA** was approved by the Parliament of Georgia on 10 August 2004.

Case Law

US SUPREME COURT DECISION FOR COMPANIES WITH INTERESTS IN DEVELOPING COUNTRIES

On 29 June 2004, the United States Supreme Court rendered a decision that may have implications for US companies and/or multinationals operating, among others, in Georgia.

The Supreme Court ruled that the US Alien Tort Statute (ATS) -- a statute under which cases have been brought seeking to hold multinational entities operating in developing countries liable for human rights abuses -- is merely jurisdictional and creates no causes of action.

The ATS, 28 U.S.C. 1350, provides as follows: "The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States."

Although the ATS was rarely invoked for nearly 200 years after its enactment, a trend has emerged in recent years of plaintiffs invoking the statute against multinational corporations operating in a developing countries with bad human rights records.

Facts of the Case

In 1990, a US grand jury indicted Dr. Humberto Alvarez-Machain, a resident of Mexico, for his alleged part in the abduction, torture and murder of a Special Agent of the US Drug Enforcement Agency (DEA) in Mexico five years earlier. When the Mexican government refused to assist in the US prosecution, the DEA approved the use of Mexican nationals, including José Francisco Sosa, to apprehend Alvarez-Machain and transport him to the US. After he was acquitted of the criminal charges, Alvarez-Machain brought suit in the US District Court against the US, DEA officials, Sosa and others who had participated in his apprehension. Alvarez-Machain's claims against Sosa

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and the other individual defendants included a claim under the federal ATS, alleging that his arrest and detention in Mexico violated international law.

The US District Court in Alvarez-Machain granted judgment for Alvarez-Machain on his ATS claim against Sosa and this was upheld on appeal. The United States Supreme Court then agreed to hear the case.

Decision

The Supreme Court held that the arbitrary arrest and detention of which Alvarez-Machain complained did not constitute a violation of international law which could support an ATS claim. A majority of the Court, however, rejected the view (advanced by the US government) that the only principles of international law which may support ATS claims are those universal international norms that were recognised in 1789, when the ATS was enacted. Rather, the Court concluded that federal courts may adjudicate a claim based on present-day international law when claims are based on "definable, universal and obligatory norms".

The Court held that ATS does not grant a cause of action, but rather is merely jurisdictional, allowing claims based on certain recognised violations of international law to be brought in federal courts. However, the Court's ruling left to the lower courts to determine which alleged violations of international law are sufficiently definite and universally accepted to support a claim brought in federal court under the ATS.

The Court's decision in Alvarez-Machain, moreover, does not restrict plaintiffs' ability to pursue similar claims in US state courts, based not on the ATS but rather on the tort laws of the individual states .

Mgaloblishvili, Kipiani, Dzidziguri (MKD) law firm was founded in November 1996. It operates as a general partnership and is recognized as well-established, respected leading law firm in Georgia with major national, regional and international clients.



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