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Relationship of State Courts and Arbitral Tribunals Country Report on Georgia

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Structure

- ✓ Overview of the development of arbitration legislation in Georgia
- ✓ Short summary of current legislation
- ✓ How do Georgian courts view arbitration and what are the reasons for their attitude?
- ✓ Recent positive changes observed

I. Short Legislative History

- 1991: Georgia obtains independence
- 1994: Georgia ratifies the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards
- 1997: Georgia adopts Private Arbitration Act with serious legal flaws
- 2009: Georgia adopts the Law on Arbitration based on the 1985 UNCITRAL Model Law on International Commercial Arbitration with amendments as adopted in 2006
- 2015: Georgia adopts the Bill of Amendments to the Law on Arbitration making the law to be fully in line with the UNCITRAL Model Law with minor amendments

II. Current Arbitration Legislation

- The Law on Arbitration follows the UNICTRAL Model Law
  - Recognizes the principle of *Competence-Competence* (art. 16)
  - Unequivocally declares arbitral tribunals to be independent and that the courts may not interfere in the arbitral process, except as provided in the law (art. 6)
  - Courts assistance: appointment of arbitrators (art. 11), appeal the preliminary award on jurisdiction (art. 16), recognition and enforcement of interim measures (art. 21), order interim measures (art. 23), assist in evidence taking (art. 35)
  - Makes setting aside a sole recourse against the awards rendered on the territory of Georgia (art. 42)
  - Fully aligns grounds for setting aside (art. 42), and denying recognition and enforcement of foreign arbitral awards (art. 44) with those set in the Model Law and the New York Convention, with some minor differences
- Result: modernised and pro-arbitration legislation?

III. How do Georgian courts view arbitration?

- For a long time Georgian courts had a critical view towards arbitration
  - Arbitration agreements were interpreted strictly (in general, if courts are seized of the matter subject to an arbitration agreement, they need to terminate proceedings and refer parties to arbitration, unless such arbitration agreement is found void, invalid or incapable of being performed (art. 9))
  - Public policy was interpreted broadly and invoked extensively
- What could be a reason for courts' low trust towards arbitration?
  - Arbitration still suffers from the “liability of newness”
  - Courts often viewed themselves as an “appeal instance”
  - "Pocket arbitrations" negatively affecting the courts' attitude towards arbitration

IV. Recent Positive Changes

- Recently, some courts have started explicitly limiting the application of public policy and have taken a pro-arbitration stance (2ð/5858-13): "*courts may not 'review' the case based on public policy, otherwise public policy will become an 'appeals mechanism' of arbitral awards, something that goes against the principle of finality of arbitral awards*"
- Many initiatives to engage in discussions with state courts judges
- First international arbitration centre (GIAC) was established, positively influencing the courts' view

Liels paldies!
Thank You!
მადლობა!
Спасибо!
Danke schön!

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