Guardians or Gatekeepers?

Judicial Power in Georgian Arbitration

Over the past decade, Georgia has invested heavily in its image as a jurisdiction open to commercial arbitration. With modern legislation based on the UNCITRAL Model Law and institutions like the Georgian International Arbitration Centre (GIAC) and Georgian Association of Arbitrators (GAA) taking shape, Georgia appeared poised to become a regional hub for alternative dispute resolution.

These efforts were supported by judicial training programs, ethics initiatives, and strong institutional partnerships with international organizations. For many in the legal and business communities, this progress was more than aspirational—it was actionable. Georgia appeared ready to offer an arbitration framework that could rival more established centers in the region.

But while the legal infrastructure progressed, a troubling trend began to emerge from the judiciary.

Between May 2023 and July 2024, the Tbilisi Appellate Court issued rulings that undermined this momentum. In each case, the court invalidated arbitration agreements on the grounds that one party's legal counsel was listed as an arbitrator at the institution administering the case. Despite having no adjudicative role in the dispute, the counsel's mere inclusion as part of the institution's general roster was deemed sufficient to cast doubt on the integrity of the process.

This reasoning surprised many arbitration professionals. It directly contradicted a 2021 Supreme Court of Georgia ruling that affirmed that such listings do not, in themselves, create conflicts of interest. That earlier decision had aligned Georgia with international standards, including the IBA Guidelines on Conflicts of Interest, which distinguish between disqualifying relationships and routine professional affiliations.

By treating passive listings as grounds for invalidation, the Appellate Court blurred the line between institutional association and adjudicative bias. The result was a level of scrutiny that was both unrealistic and disruptive.

The consequences were swift. Georgian businesses began to express reluctance to resolve disputes through arbitration, citing unpredictability and doubts about enforcement. Some returned to litigation; others shifted to foreign forums. International investors, who often require reliable and neutral dispute resolution mechanisms, took note. Confidence, once shaken, is difficult to restore.

International practices

This issue is not unique to Georgia. Courts in other jurisdictions have grappled with balancing support for arbitration while ensuring procedural fairness. Most have adopted a principle of judicial restraint, intervening only in cases of serious procedural violations or proven conflicts of interest.

At the heart of the current debate lies the notion of "double-hatting"—where individuals alternate between serving as arbitrator and counsel. In international arbitration, this issue is taken seriously when roles overlap in related proceedings. However, the Georgian cases involved nothing more than names on a roster, not active appointments. Equating that with bias stretches the concept well beyond international consensus.

What arbitration needs is clarity, not confusion. When courts treat formal affiliations as functional conflicts, they risk undermining the very institutions they are meant to support. Parties must be able to trust that agreements will be upheld, and institutions respected unless there is evidence to the contrary.

Other jurisdictions have offered guidance. In Switzerland, only "intolerable violations of justice" justify refusing enforcement. Hong Kong courts have found that mere affiliations or professional history are insufficient to cast doubt on an arbitrator's impartiality. In Poland, courts upheld more than 90% of arbitral awards in 2020, underscoring strong judicial support for arbitration. These examples demonstrate that courts can safeguard fairness without undermining the arbitration framework.

Paths to reform

Adding to the complexity of the situation, Georgia's enforcement regime is structured in a way that separates the review of domestic and foreign arbitral awards: domestic awards fall under the jurisdiction of the Tbilisi Appellate Court, while foreign awards are reviewed by the Supreme Court.

This divergence in enforcement raises a fundamental question about how best to ensure consistency. Two paths are possible. The first—and most straightforward—solution is for the Appellate Court to align its reasoning with the Georgian Supreme Court's precedent and internationally recognized arbitration norms, particularly on issues of institutional neutrality and conflicts of interest. Alternatively, as the GAA has recommended, appeals to the Supreme Court could be allowed in cases where recognition or enforcement is refused by the Appellate Court. Such a system would ensure consistent interpretation of key arbitration principles without overburdening the Supreme Court or prolonging the recognition phase. This targeted appellate mechanism would enhance predictability and reinforce confidence in Georgia's arbitration framework while preserving efficiency in enforcement proceedings.

Despite these challenges, Georgia remains well positioned to recover. Its legal framework is strong, its institutional ecosystem is growing, and a new generation of legal professionals fluent in international practice is emerging. But progress depends on judicial alignment. Oversight must remain, but courts should act as guardians of the system—not gatekeepers that hinder its growth.

Georgia does not need to start over. It needs refinement and recalibration. Aligning judicial interpretation with legislative intent and international norms is not only possible—it is essential.

If that alignment is achieved, Georgia's ambition to become a leading arbitration destination remains within reach. The business community is watching. The legal community is ready. The institutions are in place.

Now, the courts must follow.

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