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THE IMPACT OF MEDIATION AND ARBITRATION ON BUSINESS DEVELOPMENT IN GEORGIA (RESEARCH CONCEPT)

Abstract: *The following paper is a scientific concept of doctoral research, which provides a scientific analysis of the improvement opportunities of the business environment in Georgia by the implementing Mediation and Arbitration as the alternative dispute resolution methods for resolving commercial disputes. The paper represents the authors vision in the interdisciplinary prism of the doctoral thesis of the issue as it represents a systematic and comparative study of theoretical and legal approaches of foreign and Georgian experiences.*

Keywords: *Georgia; business; Mediation; Arbitration.*

Actuality of the problem: After the collapse of the command economy, Georgia, like other post-soviet countries, faced the challenge of transitioning to a market economy. In parallel with the liberalization of the economy, the diversification of ownership, the development of various forms of business, it became necessary to create such legal and institutional environment that would facilitate the proper functioning of the competition mechanism and the stable development of business. Even though according to international rankings (e.g.: according to the Doing Business ranking, based on data of the year of 2020th, Georgia ranks seventh in terms of business start-ups) Georgia currently has a superior standing, in other international rankings (e.g.: according to the World Economic Forum's Global Competitiveness Report of the years of 2018-2019th¹¹), Georgia ranks 91st out of 141 countries in the year of 2019th. Cooperation between the interested parties (102nd place), the degree of consumers' development (95th place) confirm that a list of problems, which delay business development, need to be addressed. The degree of trust and willingness to cooperate between business entities is low. Under the conditions of transformation, having an unstable environment for business

¹¹ 2018-2019 years' ranking of Georgia in the Global Competitiveness Reports GCR, 2018, 236-237; GCR, 2019, 234-237

is interfering with the planning and implementation of long-term strategic projects. The situation has been aggravated recently by the more frequent financial crises and, finally - the Covid-19 pandemic because the number of factors affecting the business has increased, the situation has become unpredictable and unstable.

Numerous flaws came to the surface regarding the functioning of the market mechanism. The state regulation and deregulation policy instruments for the economy and business gained greater importance. Accordingly, it became important to make full use of endogenous opportunities to avoid falls in private markets, if all market participants are to benefit from it further. It became necessary to take the behavior of potential participants under the anticipated high competition conditions into consideration. Moreover, strengthening the effectiveness of the market allocation became possible by clearly defining and implementing the terms of the legal framework for market agreements.

The issues of the market may be addressed through the means of private contracts, promoting competition, establishing legal liability and transfers, and conducting negotiations. At the same time, behavioral economics and psychology are even more involved in explaining and resolving problems of business. Mediation and arbitration are largely considered tools for managing the latter, both on a national and international level. Furthermore, globalization is changing the existing business patterns. The impact of other countries' cultures and values on business needs to be reconsidered, especially with regard to the resolution of international business disputes. International practice proves that mediation can facilitate international economic agreements because it is based on confidentiality, characterized by flexibility and simplicity of mechanism (Lekashvili, 2019; Lekashvili & Dodashvili, 2017).

On the other hand, business disputes' arbitration clauses are included in practically all kinds of contracts, which makes arbitration a broad surrogate of civil litigation. It has gained an advantage over civil litigation because it has decreased the value and costs of court proceedings.

In the meantime, the introduction of mediation and other methods for resolving business disputes more quickly and effectively has raised serious questions about the costs of arbitration and its continuous role in resolving conflicts. Therefore, it is important to study the current situation in Georgia based on real examples by using a set of relevant research methods.

During the research process, we will be discussing the best experiences with alternative business-dispute resolution mechanisms (based on the examples of the UK, the US, the EU member states, China, and others), how the Advisory, Conciliation, and Arbitration Service undertook the role of "orientation", by which it promotes the development of more strategic forms of decision-making and change of forms of cooperative relationship. Such methods help with the transition to a more decentralized and market-oriented system of public service provision, as a result of which a new so-called "consulting and orientating" state/country is established that is based on the soft market view

of industrial relations.

Thus, the research will aim to study the changeable new role of the existing state in a market-oriented system in the context of industrial relations, which is evolving in regards to mediation, consulting, and arbitration services.

Research goal: The research aims to explore the theoretical-methodological issues related to studying the impact of mediation and arbitration on business, as well as successful experiences in advanced and growing economies with legal and institutional arrangements for alternative business-dispute resolution methods in order to identify the positive and negative sides of their effect on business development, factors, and strategies contributing to the perfection of their working mechanisms and institutionalization. Based on the above, to study the results of the formation and development of alternative business-dispute resolution methods in Georgia in the field of mediation and arbitration during the period of independence, identify the problems in their process of development and come up with ways to eliminate the existing inconsistencies in this regard.

Research methodology: Due to the interdisciplinary content of the issue, theoretical and methodological instruments of social sciences - business, economics, law, psychology - will be used. Part of the problems caused by external effects based on market flaws can also be resolved at the level of personal relations. A scientific explanation for the issue of internalizing the problems of external effects on the separation of the property and consumer rights through personal negotiations was provided by Ronald Coase (1960), known as a model carrying the same name as him. The model discusses the damaged and damaging parties' rights and effects. Many modern prominent researchers such as Amsler et al (2020), D. Goleman (1998), J. Creswell (1998), L. Schreier (2002), C. Moore (2003), A. Stitt (2004), GG. Wang (2009), J. Lande (2019), J. Wall and K. Kressel (2017), S. McCorkle and M. Reese (2019), G. Oprea (2019), etc., have provided research to study the nature, specifics, outcomes, strategies of alternative dispute resolution mechanisms in business. Studies and reports are always being published, including by recognized organizations such as the International Mediation Institute¹², the Georgian International Arbitration Centre¹³, and others.

In this paper, systematic¹⁴ and comparative analysis methods will be used, as well as a qualitative research method using an interview instrument, based on which we will be discussing the impact of alternative dispute resolution methods on business. Throughout the research, we will be actively using the specific case study method.

While researching the issues, as primary sources, we will be studying international conventions

¹² [International Mediation Institute \(IMI\)](#)

¹³ <https://giac.ge/ka>

¹⁴ When using systematic review methodology, databases such as Hein Online , LexisNexis, etc., will be used

and agreements¹⁵, domestic laws, arbitration, and mediation practices¹⁶, as well as analyzing hard copies and e-books, scholarly papers, and publications. In the elaboration of the study, we will use the scientific works of Georgian and post-Soviet space scientists, such as I. Gagnidze & N. Misuradze (2016), N. Papachashvili (2019), E. Sepashvili (2019), R. Seturidze (2016), G. Gaprindashvili (2012), T. Soboleva (2021), H. Hovhanesian (2014) et al. which presents conflicts of purpose in the direction of economic transactions, including the commercialization of science, custom business, international economic operations, business agreements, procurement and so on.

Moreover, it shall be noted that the Covid Pandemic has further complicated the conditions of administration and management because it has become impossible to plan and define development strategies. Added to the difficulty of developing and implementing a business development strategy were the uncertainties, which led to the global spread of the virus and unmanageable situations. Therefore, in the part of the methodology, we consider it suitable to use the modern economic analysis method VUCA (Volatility, Uncertainty, Complexity, Ambiguity).

Structure: The first part of the paper will be devoted to the theoretical analysis of the essence, role, mechanisms, and peculiarities of alternative dispute resolution mechanisms (mediation-arbitration). The deep analysis will be represented of the necessity and importance of these mechanisms in the developing countries regarding commercial, property, and labor, and financial-investment relations.

The next chapters of the paper will be devoted to the study of the impact of mediation-arbitration on business development in developed and fast-growing economies as well as post-soviet countries; the mechanisms will be discussed in both positive and negative contexts, on a national, regional, and international level.

In the third part, we will be studying the peculiarities of institutional and infrastructural development of alternative business-dispute resolution mechanisms in independent Georgia, as well as conducting research to identify the inconsistencies and problems that emerge in the process of using these instruments.

And, finally, we will be developing recommendations for the effective functioning of alternative dispute resolution mechanisms in business.

Expected results: This paper will be a valuable contribution to developing both fields in Georgia: business administration and commercial law. As there is a deficit of scientific researches in the Georgian language, the research and its results as well will help scientists, professors, and

¹⁵ including the United Nations (UN) Convention regarding the enforcement of international agreements resulting from mediation (<https://www.singaporeconvention.org/> 27.07.2021 10:45)

¹⁶ Analysis of the information requested from the Georgian Association of Mediators, the Georgian Association of Arbitrators, the Tbilisi City Court Mediation Centre and at the international level from relevant institutions, will be presented.

commercial law practitioners in the successful implementation of alternative dispute resolution methods in commercial disputes. This type of interdisciplinary research - where a systematic study of theoretical and legal approaches, foreign and Georgian experience is provided, has not been conducted in Georgia yet and this will undoubtedly be a step forward in terms of addressing the mentioned issues.

In addition, the paper will be relevant for Georgia due to the global importance of the business development and it will support the integration process of Georgian business activity in the global market.

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HUMOUR IN MANAGERIAL COMMUNICATION

Abstract. This paper contains analysis of different forms of humour that might be used by managers as communication tools to make impact on employees and shape effective organizational culture. Different theories of humour are described. The conclusions include recommendations for managers regarding appropriate usage of humour in communication.

Key words: communication, managerial communication, humour, humour theories.