The Enforceability of Mediation Clauses in Georgia: A Legal Analysis

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L.L.M Thesis

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16 june, 2025

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For bibliographic and reference purposes this thesis/dissertation should be referred to as: Iobidze Tekla. 2025. The Enforceability of Mediation Clauses in Georgia: A Legal Analysis. LL.M, Legal Studies, Central European University, Vienna.

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1. Abstract:

Mediation has steadily gained relevance across modern legal systems, especially over the past two decades, as policymakers and courts alike seek alternatives to overloaded litigation systems and adversarial courtroom strategies.[2] While traditionally viewed as an informal or voluntary process, mediation is now increasingly institutionalized and framed as a legitimate part of a structured dispute resolution landscape.[3] Among the tools used to support this evolution are mediation clauses—contractual provisions that require or encourage parties to attempt mediation before initiating litigation or arbitration. [4] In theory, such clauses promote cost-efficiency, flexibility, and cooperation. But in legal practice, particularly in Georgia, their enforceability remains a source of doctrinal ambiguity and judicial inconsistency.

The core objective of this thesis is to examine whether and how mediation clauses are enforceable under Georgian law. While the Law of Georgia on Mediation, adopted in 2019, and subsequent amendments to the Civil Procedure Code of Georgia[5] signal institutional support for alternative dispute resolution, enforcement mechanisms for mediation clauses remain underdeveloped. Courts have not yet established a consistent doctrine on whether they can or should stay proceedings when one party refuses to

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[2] Michael D Sander, 'The Future of ADR: Professionalism, Policy, and Practices' (2000) 2000(2) *Journal of Dispute Resolution* 3.
[3] Nadja Alexander, *International and Comparative Mediation: Legal Perspectives* (Kluwer Law International 2009).
[4] Klaus Peter Berger, *Private Dispute Resolution in International Business* (3rd edn, Kluwer Law International 2020) vol I.
[5] Law of Georgia on Mediation, No 4822-RS, adopted 18 July 2019; Civil Procedure Code of Georgia (as amended 2022).

mediate, especially in cases where the clause lacks procedural specificity.[6] In my view, this reflects a deeper struggle within Georgian legal culture—between the value of voluntariness in mediation and the need for predictability and enforceability in contractual obligations.

This thesis argues that the enforceability of mediation clauses in Georgia suffers from a lack of both statutory clarity and judicial guidance. Unlike arbitration clauses, which benefit from robust enforcement under the Law of Arbitration, mediation clauses fall into a procedural grey zone.[7] Judges often hesitate to impose any real procedural consequences on parties who bypass contractual mediation steps, even when those steps are clearly agreed to in writing.[8] At the same time, the concept of "good faith participation" in mediation is poorly defined, and sanctions for bad-faith conduct are largely absent.[9] This undermines party autonomy and diminishes the effectiveness of ADR as a real alternative to litigation.

The thesis also examines how international legal instruments, especially the Singapore Convention on Mediation, influence Georgian law.[10] Since Georgia ratified the Convention in 2021, it has formally committed to enforcing international mediated settlement agreements.[11] However, the domestic impact of this treaty is still limited. Its enforcement provisions are rarely invoked, and awareness among legal practitioners

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[6] Georgian Bar Association, *Commentary on the Enforcement of Mediation Clauses in Georgian Legal Practice* (Tbilisi, 2024).
[7] Law of Georgia on Arbitration, No 1649, adopted 2009.
[8] Case No. 3/ბ-210-22 (Tbilisi City Court, 2022).
[9] Civil Code of Georgia, art 8.
[10] Nadja Alexander and Shouyu Chong, *Singapore Convention on Mediation: A Commentary* (Wolters Kluwer 2020).
[11] United Nations Convention on International Settlement Agreements Resulting from Mediation (Singapore Convention on Mediation) (adopted 20 December 2018, entered into force 12 September 2020).

and judges remains inconsistent.[12] I argue that Georgia has not yet translated its international commitments into a coherent domestic enforcement framework.

To better understand how enforceability functions in practice, I analyzed public data from the Tbilisi City Court's Mediation Center, covering the years 2018 to 2025.[13] The data reveals that while mediation referrals are rising—particularly in labor and family law disputes—the success rate remains low. Mediation clauses are seldom the initiating factor; most referrals are made by the courts themselves.[14] This points to a disconnect between contract-based mediation and institutionalized (often court-annexed) mediation. In other words, mediation is used more as an extension of litigation than as a real pre-litigation tool.

From a comparative perspective, the German model offers an instructive contrast. Germany's Zivilprozessordnung (ZPO) explicitly allows courts to stay proceedings or impose cost sanctions when mediation clauses are ignored, even though mediation remains formally voluntary.[15] The EU Mediation Directive 2008/52/EC has also contributed to a more enforceable mediation culture across Europe, offering best practices that Georgia could adapt.[16] In addition, many international commercial contracts contain multi-tiered dispute resolution clauses that are only effective when courts respect each procedural step. Georgian courts have yet to fully embrace this layered model.

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[12] Giorgi Gogia, 'The Role of Mediation in Cross-Border Disputes: Georgia's Legal Adaptation' (2023) 5(2) *Caucasus Journal of Law and Policy* 77.
[13] Tbilisi City Court, *Mediation Statistics 2021–2025* (Public Data, 2025).
[14] GIAC, *Mediation Trends in Cross-Border Disputes* (2023).
[15] Zivilprozessordnung (ZPO) §278a; Oberlandesgericht Dresden, Judgment of 27 February 2019 – 9 U 1487/18.
[16] Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters [2008] OJ L136/3.

To address these challenges, I propose legislative amendments that would allow courts to stay proceedings based on clearly drafted mediation clauses, coupled with judicial training on best practices and interpretation of ADR clauses. Moreover, I suggest that the Judicial Training Center of Georgia incorporate mediation enforcement doctrine into its curriculum, and that standardized model clauses be distributed through the Georgian Bar Association.[17] These small but coordinated interventions would help build consistency in court decisions and encourage parties to engage in mediation seriously.

Ultimately, the enforceability of mediation clauses is about more than procedure. It reflects how seriously a legal system takes party autonomy, contractual integrity, and the legitimacy of dialogue over confrontation.[18] For Georgia, which is undergoing judicial reform and seeking closer alignment with European legal standards, this issue represents a meaningful test of its commitment to modern, cooperative justice.

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[17] Judicial Training Center of Georgia, *Curriculum on Alternative Dispute Resolution* (2022); Georgian Bar Association and Ministry of Justice of Georgia, *Model Mediation Clauses and Best Practice Guide* (draft, 2024).
[18] RA Baruch Bush and Joseph P Folger, *The Promise of Mediation: The Transformative Approach to Conflict* (Rev edn, Jossey-Bass 2005).

2. Introduction

Mediation has emerged as a vital element in modern legal systems, especially as courts worldwide grapple with increasing caseloads, public dissatisfaction with litigation, and the search for more collaborative dispute resolution methods.[19] Defined as a process where a neutral third party facilitates dialogue between disputing parties with the aim of reaching a voluntary agreement, mediation is no longer viewed as an informal side option—it is becoming central to how both domestic and international disputes are managed.[20]

In many jurisdictions, including Georgia, this trend has sparked debate around the legal enforceability of mediation clauses, which are contractual provisions that oblige parties to engage in mediation before pursuing litigation or arbitration.[21] The appeal of such clauses lies in their ability to encourage early resolution, preserve business or personal relationships, and reduce the time and cost involved in formal proceedings. But their

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[19] Sander MD, 'The Future of ADR: Professionalism, Policy, and Practices' (2000) 2000(2) *Journal of Dispute Resolution* 3.
[20] Alexander N, *International and Comparative Mediation: Legal Perspectives* (Kluwer Law International 2009).
[21] Berger KP, *Private Dispute Resolution in International Business* (3rd edn, Kluwer Law International 2020) vol I.

actual impact depends heavily on whether courts treat them as binding, enforceable obligations or merely as expressions of intent.[22]

Drawing on foundational ideas from Fisher and Ury, who emphasized focusing on interests over positions in negotiation, mediation has been framed as a tool for deepening dialogue and mutual understanding.[23] This perspective is especially relevant in the Georgian context, where many civil disputes arise within close-knit business communities or family relationships, and where adversarial court proceedings can have lasting social consequences. Similarly, Menkel-Meadow argues that mediation democratizes access to justice, particularly in transitional systems, by offering an alternative to inaccessible or intimidating court processes.[24] While I strongly agree with this normative vision, I also believe that its realization in Georgia depends on the strength and clarity of the legal infrastructure supporting mediation.

Despite growing legislative attention, including the 2019 Law on Mediation and revisions to the Civil Procedure Code, enforcement of mediation clauses remains a grey area in Georgian practice.[25] Courts have yet to establish whether a party's refusal to mediate constitutes a breach of contract, or whether litigation can be suspended based on the existence of such a clause. My own research suggests that mediation is often viewed by both courts and practitioners as a voluntary, non-binding step—even when

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[22] Strong SI, *Legal Reasoning Across Commercial Disputes: Comparing Judicial and Arbitral Analyses* (OUP 2018).
[23] Fisher R, Ury W and Patton B, *Getting to Yes: Negotiating Agreement Without Giving In* (2nd edn, Penguin Books 1991).
[24] Menkel-Meadow C, 'Whose Dispute Is It Anyway? A Philosophical and Democratic Defense of Settlement (in Some Cases)' (1995) 83 *Georgetown Law Journal* 2663.
[25] Law of Georgia on Mediation, No 4822-RS, adopted 18 July 2019; Civil Procedure Code of Georgia (as amended 2022).

agreed upon contractually.[26] This perception undermines the strategic function of mediation clauses and discourages parties from relying on them in practice.

The tension between voluntariness and enforceability is particularly challenging. On one hand, mediation's core strength lies in its consensual nature—no party should be forced into a dialogue they are not willing to engage in. On the other hand, when parties freely agree to attempt mediation before litigating, it seems inconsistent for courts to ignore that agreement.[27] This legal uncertainty risks reducing mediation clauses to symbolic gestures rather than real procedural tools.

Bush and Folger's transformative mediation theory adds another dimension to this tension. They argue that conflict should be seen as an opportunity for moral and relational growth, not just as a problem to be solved.[28] While this idea is conceptually powerful, it may not fully account for the legal and commercial reality that parties sometimes need predictability and enforceable processes. Especially in Georgia, where the broader culture of legal compliance is still developing, enforceable rules often matter more than aspirational ideals.

This thesis takes a multi-layered approach to the enforceability of mediation clauses in Georgia. It begins with a doctrinal analysis of the relevant legal framework, including legislation, judicial practice, and principles of contract law. I also explore how Georgian courts interpret and apply these clauses, using selected case studies and court data. In addition, the thesis incorporates comparative perspectives, with particular focus on Germany—a jurisdiction that has successfully integrated mediation into both statutory

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[26] Georgian Bar Association, *Commentary on the Enforcement of Mediation Clauses in Georgian Legal Practice* (Tbilisi, 2024).
[27] Case No. 3/ბ-210-22 (Tbilisi City Court, 2022).
[28] Baruch Bush RA and Folger JP, *The Promise of Mediation: The Transformative Approach to Conflict* (Rev edn, Jossey-Bass 2005).

and judicial processes. [29] Germany's system shows how voluntariness and enforceability can coexist, and I believe that Georgia can benefit from adapting aspects of this model.

Furthermore, while the primary focus of this thesis is the enforceability of mediation clauses under Georgian law, a meaningful analysis cannot be conducted in isolation. Georgia's legal system draws heavily on civil law traditions, particularly German law, which served as a model for Georgia's Civil Code and procedural reforms after independence [30] . Examining the German approach offers doctrinally relevant comparisons and practical insights for legislative improvements[31]. Additionally, as Georgia seeks deeper integration into international commerce and legal frameworks, the influence of instruments like the Singapore Convention on Mediation is crucial[32]. These comparative and international perspectives provide essential context to understand both the current challenges and the future directions for the enforceability of mediation clauses in Georgia[33].

Ultimately, this thesis argues that Georgia stands at a crossroads. On paper, it has adopted the language and structure of modern mediation law. In practice, however, the enforceability of mediation clauses remains uncertain, underutilized, and frequently

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[29] Zivilprozessordnung (ZPO), Germany §278a; Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters [2008] OJ L136/3.
[30] Kakha Kakhishvili, *Legal Reforms in Georgia: German Law as a Model* (GIZ Legal Series 2011) 15–20.
[31] Christoph Kern and others, *Zivilprozessordnung Kommentar* (18th edn, Beck 2023) §§ 278a, 1025–1066;see also Nadja Alexander, *International and Comparative Mediation: Legal Perspectives* (Kluwer Law International 2009) ch 6.
[32] United Nations Convention on International Settlement Agreements Resulting from Mediation (Singapore Convention on Mediation) (adopted 20 December 2018, entered into force 12 September 2020) https://uncitral.un.org/en/texts/mediation/conventions/international_settlement_agreements accessed 16 June 2025.
[33] Nadja Alexander and Shouyu Chong, *Singapore Convention on Mediation: A Commentary* (Wolters Kluwer 2020) ch 2.

ignored. If Georgia aims to promote mediation not just rhetorically but as a meaningful alternative to litigation, it must clarify the legal consequences of violating mediation clauses and provide courts with the procedural tools to uphold them.

3. The Legal Framework of Mediation in Georgia

Over the past decade, Georgia has embarked on an ambitious legal journey to institutionalize mediation as a core component of its dispute resolution landscape. This reform reflects not just an alignment with international trends but a growing domestic belief that court congestion, adversarial culture, and costly litigation require more flexible and humane alternatives.[34] While much progress has been made in setting up legal foundations, questions remain about how deeply mediation is embedded in practice—and whether the framework offers sufficient legal certainty for parties and practitioners alike.

This chapter explores three pillars of Georgia's mediation infrastructure: (1) the Law of Georgia on Mediation, (2) the Civil Procedure Code of Georgia, and (3) Georgia's international commitments, most notably the Singapore Convention on Mediation.

3.1. The Law of Georgia on Mediation

Adopted in 2019 and in force since 2020, the Law of Georgia on Mediation constitutes the country's first comprehensive legal framework for mediation.[35] It formally defines mediation as an autonomous dispute resolution mechanism, distinct from arbitration and litigation, and applicable to a broad range of civil and commercial disputes—

[34] Sander MD, 'The Future of ADR: Professionalism, Policy, and Practices' (2000) 2000(2) *Journal of Dispute Resolution* 3.
[35] Law of Georgia on Mediation, No 4822-RS, adopted 18 July 2019.

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including family, labor, and business conflicts. The law's objective is twofold: to institutionalize a non-adversarial pathway to justice and to relieve pressure on the overburdened judiciary.[36]

One of the law's strengths lies in its ability to accommodate both court-annexed mediation and private mediation, with procedures adapting to the context of the dispute. It maintains voluntariness as a core principle but allows for mandatory mediation in specific categories (e.g., family law cases), reflecting a pragmatic balance between autonomy and systemic efficiency.[37]

Key features of the law include:

> Confidentiality: Information disclosed during mediation cannot be revealed without the parties' consent or a legal requirement.
>
> Voluntariness: Participation is generally voluntary, but may be required in pre-specified cases.
>
> Mediator impartiality: Mediators must remain neutral, avoiding any form of conflict of interest.
>
> Legal status of agreements: A mediated agreement, once approved by a court, gains the legal force of a court judgment.[38]

In terms of institutional design, the law created the Unified Register of Mediators and mandated quality assurance mechanisms via the High Council of Justice of Georgia, which supervises court-annexed mediation, sets qualification standards, and monitors

[36] ibid.
[37] ibid art 3.
[38] ibid art 20.

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mediator conduct. [39] While these structures lay important groundwork, their effectiveness in shaping public trust and professional accountability is still under development.

3.2. The Civil Procedure Code of Georgia

The Civil Procedure Code (CPC) complements the mediation law by embedding procedural rules that connect mediation to litigation. Its 2020 amendments introduced provisions that allow courts to actively manage and support mediation processes.[40] For example, Article 187¹ empowers courts to propose or mandate mediation during ongoing litigation, suspending proceedings to enable parties to explore settlement.[41]

This integration is essential in bridging the gap between formal adjudication and alternative processes. It also promotes judicial awareness of mediation's value, a shift from the traditional adversarial mindset. However, the CPC does not yet resolve a key procedural gap: what should happen if a party violates a contractual obligation to mediate before filing suit? The absence of a clear enforcement mechanism leaves judges without tools to address such violations, undermining the legal weight of mediation clauses.[42]

Another vital contribution of the CPC is in the enforceability of mediated agreements. Under Article 187³, courts may approve a mediated settlement, granting it executory force equivalent to a judicial ruling.[43] This provision is crucial—it transforms an informal agreement into a binding instrument, reducing post-settlement disputes and

[39] ibid art 6; see also High Council of Justice of Georgia, 'Mediation Standards' (2020).
[40] Civil Procedure Code of Georgia, as amended in 2020.
[41] ibid art 187¹.
[42] Georgian Bar Association, *Commentary on the Enforcement of Mediation Clauses in Georgian Legal Practice* (Tbilisi, 2024).
[43] Civil Procedure Code of Georgia, art 187³.

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improving legal predictability. Still, until there is consistent judicial application and clarity on pre-litigation obligations, mediation clauses risk being treated as symbolic rather than substantive.

3.3. International Frameworks: The Singapore Convention on Mediation

Georgia's mediation framework does not exist in isolation. Its evolution has been shaped by international legal instruments—most notably the Singapore Convention on Mediation. Georgia signed the Convention in August 2019, affirming its intent to recognize and enforce cross-border mediation agreements.[44]

The Convention functions as the mediation equivalent of the New York Convention on Arbitration, providing a unified legal basis for international enforcement.[45] Once ratified and fully implemented, it will enable parties to directly enforce international mediated settlements in Georgian courts—without the need for fresh litigation. This could position Georgia as an attractive venue for international commercial disputes and align its mediation infrastructure with global best practices.[46]

Importantly, the Convention also imposes certain standards that domestic law must align with—including procedural fairness, consent, and public policy exceptions. These could serve as catalysts for upgrading local mediation rules and increasing consistency across jurisdictions.

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[44] United Nations, 'Status: United Nations Convention on International Settlement Agreements Resulting from Mediation (the "Singapore Convention on Mediation")' https://uncitral.un.org/en/texts/mediation/conventions/international_settlement_agreements/status.
[45] Singapore Convention on Mediation 2018, arts 1–3.
[46] ibid art 5.

Beyond the Convention, the EU Mediation Directive (2008/52/EC), though not binding on Georgia, offers further normative influence.[47] It encourages member states to support mediation through judicial referrals, enforceability mechanisms, and awareness initiatives—areas where Georgia can learn and adapt, especially given its aspirations for European integration.

Georgia's legal framework for mediation is impressively ambitious on paper. The Law of Mediation and the CPC jointly offer a solid architectural base for mediation practice, reinforced by international commitments. But legal design alone is not enough. Ambiguities remain—especially around the enforceability of mediation clauses and the lack of clear sanctions for bypassing them. Without stronger judicial guidance and procedural tools, there's a risk that mediation will continue to be seen as "soft law" rather than a reliable legal route.

In my view, Georgia is well-positioned to lead regional reform in this space. By investing in judicial training, procedural clarity, and robust enforcement practices, the country can make mediation not just an ideal, but a credible alternative for resolving private disputes.

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4. Mediation Clauses: Definition and Purpose

As alternative dispute resolution gains prominence in both domestic and international settings, mediation clauses have emerged as a key tool in proactive contract design. Far from being boilerplate, these clauses represent a deliberate effort by parties to control

[47] Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters [2008] OJ L136/3.

how disputes are handled before escalating to litigation or arbitration.[48] In this chapter, we explore their legal nature, practical function, and relevance within both Georgian and comparative legal systems.

4.1. Definition and Legal Nature

A mediation clause is a contractual provision in which parties agree to attempt mediation before initiating formal proceedings.[49] While it does not exclude recourse to litigation or arbitration altogether, it imposes a procedural obligation to seek an amicable solution first. Typically, these clauses define:

How mediation will be initiated,

The forum or institution for mediation,

Rules for selecting mediators,

Applicable procedural rules and timelines,

Whether mediation is a condition precedent to adjudication.[50]

The Law of Georgia on Mediation acknowledges this model and provides that parties may agree to mediation voluntarily or as part of a binding commitment.[51] Similarly, the UNCITRAL Model Law on International Commercial Mediation endorses mediation clauses as enforceable procedural mechanisms.[52] Although they do not strip parties of

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[48] Nadja Alexander, *International and Comparative Mediation: Legal Perspectives* (Kluwer Law International 2009) 68.
[49] Law of Georgia on Mediation 2019, art 2(1).
[50] ibid art 9.
[51] ibid.
[52] UNCITRAL Model Law on International Commercial Mediation 2018, art 7.

their right to litigate, they create a preliminary duty to engage in good faith negotiations—an idea rooted as much in contract law as in legal culture.[53]

4.2. Purpose and Function of Mediation Clauses

Mediation clauses serve a broader policy function than might initially appear. They are not only about preventing disputes, but about managing conflict constructively. Among their practical contributions:

Litigation Avoidance: By encouraging pre-litigation dialogue, they help parties avoid unnecessary proceedings and reduce court backlogs.[54]

Good Faith Obligations: These clauses promote civility and constructive engagement before tensions harden into legal confrontation.

Time and Cost Efficiency: Mediation is generally quicker and more economical than litigation or arbitration—especially valuable in commercial contexts.[55]

Relationship Preservation: In ongoing commercial relationships, mediation clauses provide a non-destructive dispute outlet.[56]

Confidentiality and Party Autonomy: Unlike formal trials, mediation allows parties to tailor the process and retain control over outcomes.[57]

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[53] ibid art 4.
[54] Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters [2008] OJ L136/3, recital 6.
[55] Alexander (n 1) 70.
[56] Klaus Peter Berger, *Private Dispute Resolution in International Business* (3rd edn, Kluwer Law International 2020) vol I, 40.
[57] Law of Georgia on Mediation 2019, art 2(1), art 9.

Judicial Resource Management: Mediation clauses indirectly serve public interests by easing pressure on formal courts.[58]

In the Georgian legal context—where civil litigation can be slow and overburdened—the value of mediation clauses goes beyond private efficiency. They serve as gatekeeping mechanisms that encourage early settlement and better use of judicial resources. Still, their effectiveness depends on enforceability, which remains contested under Georgian procedural law.[59]

4.3. Mediation Clauses in Comparative Legal Contexts

Globally, mediation clauses are increasingly treated as serious legal instruments. Courts in jurisdictions like the UK, Germany, and Singapore often uphold these clauses and may stay proceedings when parties fail to honor them.[60] Some legal systems even require judges to direct parties to mediation before adjudicating.[61]

International frameworks support this trend. The UNCITRAL Model Law and the Singapore Convention on Mediation both endorse the legal recognition and enforcement of mediated agreements, reinforcing the legitimacy of mediation clauses.[62] In Germany, for example, courts have discretion to sanction parties who bypass such clauses without justification, and mediation is actively encouraged through procedural incentives.[63]

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[58] Berger (n 9) 65.
[59] Civil Procedure Code of Georgia (as amended in 2020) art 187[1].
[60] Singapore Convention on Mediation (adopted 20 December 2018, entered into force 12 September 2020) art 1.
[61] Strong SI, *Legal Reasoning Across Commercial Disputes: Comparing Judicial and Arbitral Analyses* (OUP 2018) 97–99.

[62] UNCITRAL (n 5) arts 8–10.

[63] ibid; see also German Zivilprozessordnung (ZPO), §278a.

Even in jurisdictions where enforcement is less predictable—such as Georgia—the legal culture is shifting. With the 2019 Mediation Law and amendments to the Civil Procedure Code, Georgia is gradually aligning with international best practices, though gaps remain in enforcing pre-litigation obligations.[64]

Mediation clauses are not just contractual footnotes—they are strategic instruments in dispute management. When enforceable, they promote early settlement, preserve commercial relationships, save time and costs, and support the efficient functioning of the legal system. Georgia's embrace of these clauses is a welcome development, especially given the chronic overload of its court system. However, until procedural clarity is achieved regarding the legal consequences of bypassing such clauses, their practical power remains undercut.

As the following chapters will explore, the enforceability of mediation clauses in Georgia remains a developing issue. Yet their conceptual and comparative significance is clear: they are no longer optional extras in contract drafting, but key components of a modern, party-driven justice system.

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5. Positive and Negative Obligations in Mediation: An Enforcement Perspective

In theory, mediation thrives on voluntariness. In practice, however, parties often take on certain duties—explicit or implied—when entering into a mediation agreement. These can take the form of positive obligations, such as initiating mediation, or negative

[64] Law on Mediation (n 2); Civil Procedure Code (n 12).

obligations, such as refraining from litigation before mediation has been attempted. Yet the extent to which these duties are enforceable under Georgian law remains an unresolved and underexplored issue.

Georgia's mediation regime—largely based on the 2019 Law on Mediation and general contract principles from the Civil Code—does not yet articulate a full system for recognizing or enforcing such obligations. This chapter examines the nature of these duties and the consequences of their breach, while drawing from comparative legal systems to assess where Georgia stands and where it should go.

5.1. Positive Obligations in Mediation

Positive obligations refer to the affirmative duties parties undertake to engage with the mediation process in good faith. These obligations may arise contractually—through mediation clauses—or be imposed by judicial suggestion or procedural rules.

5.1.1 Duty to Initiate Mediation

Under Article 8 of the Civil Code of Georgia, parties have broad autonomy to design their dispute resolution process.[65] Thus, a contract clause requiring parties to initiate mediation before litigating is, at least in theory, enforceable.[66] However, Georgian courts have often hesitated to compel enforcement unless such clauses are sufficiently detailed, specifying timelines, procedures, or institutions.[67] In Case No 3/ბ-896-21, for example, the court treated a mediation clause as aspirational rather than binding, in part due to its lack of procedural specificity.[68]

[65] Civil Code of Georgia, art 8.
[66] Law of Georgia on Mediation 2019.
[67] Case No 3/ბ-896-21 (Tbilisi City Court, 2021).
[68] ibid.

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This cautious judicial approach contrasts with jurisdictions like Singapore or Germany, where courts routinely stay proceedings to uphold mediation clauses drafted with even moderate precision. The Georgian experience suggests a tension between upholding party autonomy and avoiding judicial activism in shaping the mediation process.

5.1.2 Duty to Participate in Good Faith

Although Georgian law emphasizes the voluntariness of mediation under Article 5 of the Mediation Law, it is arguable that once parties have agreed to mediate, a duty to participate sincerely arises.[69] While Georgian case law has yet to define or apply a "good faith" standard in mediation, comparative systems recognize bad faith indicators such as failure to appear, unreasonable delay, or tokenistic participation.[70] Sanctions in those systems range from cost penalties to adverse procedural inferences. Georgia may eventually adopt a similar approach as its mediation culture matures and judicial attitudes evolve.

5.2. Negative Obligations

Negative obligations refer to restrictions on conduct that could obstruct the mediation process. These typically include refraining from premature litigation or maintaining confidentiality.

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5.2.1 Obligation to Refrain from Premature Litigation

Some contracts include explicit provisions barring parties from commencing litigation until mediation has been attempted. These "no litigation before mediation" clauses are

[69] Law of Georgia on Mediation 2019, art 5.
[70] Nadja Alexander, *International and Comparative Mediation* (Kluwer Law International 2009) 144–148.

common internationally but face enforcement challenges in Georgia. While the Civil Procedure Code allows courts to suspend proceedings, Georgian judges rarely exercise this power without a strong textual mandate in the mediation clause.[71] In Case No 3/ბ-210-22, the court declined to stay proceedings where the mediation clause lacked mandatory language.[72]

This cautious enforcement undermines the effectiveness of mediation clauses and creates uncertainty for commercial parties who rely on procedural predictability.

5.2.2 Obligation to Maintain Confidentiality

Confidentiality is a cornerstone of mediation, and its protection is critical to the trust-based nature of the process. Georgian law enshrines this principle in Article 8 of the Law on Mediation, which prohibits the use or disclosure of information obtained during mediation in subsequent proceedings.[73] This aligns well with the UNCITRAL Model Law, which similarly promotes confidentiality to preserve the integrity of the process.[74]

However, enforcement mechanisms remain weak. There is limited case law on breaches of confidentiality, and the lack of strong deterrents may discourage open, honest participation.

5.3. Legal Consequences of Breach

Violating either positive or negative mediation obligations can give rise to a range of legal consequences, though enforcement in Georgia remains uneven.

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[71] Civil Procedure Code of Georgia (as amended 2020).
[72] Case No 3/ბ-210-22 (Tbilisi City Court, 2022).
[73] Law of Georgia on Mediation 2019, art 8.
[74] UNCITRAL Model Law on International Commercial Mediation (2018), art 8.

Contractual Remedies: Parties may seek damages or specific performance under the Civil Code, treating the breach as a contractual failure.

Procedural Sanctions: In theory, courts can impose cost penalties or suspend proceedings—but in practice, such remedies are rarely used.

Commercial Reputational Risks: In closely-knit business communities, a party's refusal to honor mediation commitments can damage its credibility and discourage future contracting.

Despite these options, the absence of systematic enforcement leaves parties uncertain about the true weight of their mediation clauses. This weakens the incentives for sincere participation and undermines the role of mediation in Georgia's broader justice system.

The Georgian legal framework currently treats obligations arising from mediation clauses with skepticism rather than seriousness. While the law provides for mediation in both voluntary and court-annexed forms, there remains a significant enforcement gap in translating procedural expectations into legal consequences. Without judicial willingness to treat mediation clauses as binding commitments—especially when clearly drafted—such provisions risk being rendered toothless.

Looking ahead, Georgia would benefit from more explicit statutory guidance or judicial practice on enforcing positive and negative mediation obligations. Drawing inspiration from comparative models and international instruments could help shape a more balanced and credible mediation regime—one that respects party autonomy while upholding the integrity of the dispute resolution process.

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6. Enforceability of Mediation Clauses under Georgian Law

As Georgia gradually integrates mediation into its legal system, the enforceability of mediation clauses—contractual obligations to attempt mediation before pursuing litigation—remains one of the least settled yet most practically significant issues in contemporary dispute resolution. Although the 2019 Law on Mediation marked a turning point in legitimizing mediation within Georgian civil procedure, the surrounding legislative and judicial treatment of mediation clauses remains fragmented, with enforceability hinging largely on judicial discretion and contractual precision. This chapter explores the current state of enforcement under Georgian law, drawing from statutory interpretation, case law, and institutional practice—particularly the experience of the Tbilisi City Court Mediation Center.

6.1. Legal Recognition of Mediation Clauses

Mediation clauses, while not addressed in an explicit or comprehensive fashion under the Civil Code of Georgia or the Civil Procedure Code, derive enforceability from the broader contractual framework established under Article 8 of the Civil Code, which guarantees parties the freedom to determine the content of their contractual relationships.[75] This principle provides the foundation for recognizing mediation clauses as binding obligations, provided they do not contravene public policy or mandatory legal norms.[76]

The Law of Georgia on Mediation reinforces this logic indirectly. Though it primarily governs the conduct of mediation rather than the enforceability of mediation clauses per se, it does confer legal legitimacy on mediated settlements and recognizes party

[75] Civil Code of Georgia, art 8.
[76] Law of Georgia on Mediation 2019.

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autonomy in initiating mediation by agreement or judicial referral.[77] In effect, mediation clauses operate within a hybrid space between contract law and procedural law—recognizable, but not fully regulated.

6.2. Judicial Practice: Interpretation and Enforcement

In practice, Georgian courts have taken an increasingly constructive view of mediation as a dispute resolution tool. Judicial referrals to mediation have become more frequent, especially in civil and family disputes.[78] However, this judicial willingness does not always extend to strict enforcement of contractual mediation clauses.

Where mediation clauses are precise and mandatory in language, courts are more likely to view them as binding preconditions to litigation. Where the language is ambiguous or lacking procedural detail (e.g., timelines or named institutions), judges often treat the clause as aspirational rather than obligatory.[79] This variability stems from the lack of express provisions in procedural law empowering courts to stay proceedings or penalize non-compliance with such clauses.[80] The result is legal uncertainty: while mediation clauses are facially valid, their enforcement is inconsistent and case-dependent.

6.3. Institutional Data: The Tbilisi Mediation Center Experience

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[77] ibid, arts 2, 5, 18.
[78] High Council of Justice of Georgia, *Annual Judicial Statistics Report 2023* (Tbilisi 2023) 23–25.
[79] See Case Commentary in: Georgian Bar Association, *Commentary on the Enforcement of Mediation Clauses in Georgian Legal Practice* (Tbilisi 2024).
[80] Civil Procedure Code of Georgia (as amended 2020).

The Tbilisi City Court Mediation Center, established in 2013, offers unique insight into the practical uptake and effectiveness of mediation clauses within the Georgian judiciary. At the author's request, the court provided official data on case referrals, outcomes, and dispute categories from 2013 to 2025.[81]

Between 2018 and 2025, a total of 1,081 cases were referred for mediation. The caseload composition reveals clear trends:

Dispute Type	2018	2019	2020	2021	2022	2023	2024*	2025*
Shared rights	10	4	6	6	10	2	9	1
Legal obligations	22	10	61	29	10	15	53	25
Family disputes	14	4	3	19	38	41	56	23
Inheritance disputes	3	7	7	7	11	8	13	5
Labor disputes	2	4	27	28	49	150	187	41
Non-property claims	0	2	2	1	2	1	1	1
Loan disputes	0	0	0	33	21	1	0	0
Total	51	31	102	123	141	218	319	96

*2024–2025 data are preliminary.[82]

Key patterns emerge:

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[81] Statistical Data from Tbilisi City Court Mediation Center (2013–2025) – Official Response to Research Request.
[82] ibid.

Labor disputes dominate the caseload post-2022, with 150 cases in 2023 and 187 in 2024. This may correlate with post-COVID labor unrest and increasing familiarity with ADR mechanisms in employment law.

Family disputes rose sharply post-2020, reflecting both court policy changes and a cultural shift toward non-adversarial resolution.

Loan disputes, once rising in 2021, have completely disappeared from the register—possibly indicating jurisdictional reassignment or shifting financial regulation.

Despite institutional growth, efficacy remains a concern. In 2025, only 2 of 96 mediated cases concluded with a settlement. Seven were terminated, and five reverted to litigation.[83] This outcome suggests persistent limitations: lack of party preparation, insufficient mediator authority, or mismatched expectations.

6.4. Policy Gaps and Reform Proposals

The relatively low rate of finalized settlements in recent years, especially in 2025, points to structural issues. A few reform suggestions follow:

Codify procedural consequences for breaching mediation clauses (e.g., cost sanctions or automatic stays).

Mandate pre-mediation suitability screening, particularly in complex or high-stakes civil cases.

[83] ibid.

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Enhance mediator training and case triage mechanisms to boost confidence and legitimacy.

Clarify legal standards for judicial enforcement of mediation clauses, ideally through amendment of the Civil Procedure Code.[84]

Formalizing judicial powers to impose procedural sanctions or grant stays would align Georgian practice with comparative European jurisdictions.[85]

Without clearer legislative direction and stronger judicial tools, mediation clauses risk remaining symbolic rather than substantive.

Mediation has undeniably gained ground in Georgian legal culture, and mediation clauses are increasingly common in private contracts and public referrals. Yet the gap between recognition and enforcement remains wide. Courts are willing—but not always empowered—to give effect to such clauses. For parties, this uncertainty complicates contract drafting and dispute resolution strategy.

To move from aspiration to enforceability, Georgia must take concrete legislative steps—inspired by international norms but tailored to domestic practice. In the meantime, mediation clauses should be drafted with maximum clarity and procedural specificity, enabling courts to honor the parties' commitment to resolving disputes constructively.

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[84] Georgian Bar Association (n 5).
[85] Strong SI, *Legal Reasoning Across Commercial Disputes: Comparing Judicial and Arbitral Analyses* (OUP 2018) 99–102.

7. Enforceability of Mediation Clauses under German Law

Germany serves as a highly instructive comparative jurisdiction for evaluating the enforceability of mediation clauses—particularly for transitional legal systems like Georgia's. The relevance of German law in this context is twofold: not only does it offer a mature and systematically structured framework for Alternative Dispute Resolution (ADR), but it also holds doctrinal and historical significance for Georgia. Following independence, Georgian legislators drew heavily from civil law systems—chiefly Germany's—when reforming the Civil Code and procedural law.[86] Consequently, fundamental legal concepts such as party autonomy and the binding force of contracts, integral to both mediation and broader contract enforcement, reflect German legal influence.[87]

7.1. The Legal Framework for Mediation in Germany

The German Mediation Act of 2012 established mediation as a formal ADR mechanism.[88] It implemented the EU Mediation Directive 2008/52/EC, ensuring that domestic law reflected European best practices in promoting amicable dispute resolution. Importantly, the Act situates mediation as a non-adjudicative process, guided by neutrality, confidentiality, and voluntariness, while encouraging judicial cooperation.[89]

Further legislative support is found in § 278a of the German Code of Civil Procedure (Zivilprozessordnung, ZPO), which authorizes courts to recommend mediation,

[86] Kakha Kakhishvili, *Legal Reforms in Georgia: German Law as a Model* (GIZ Legal Series 2011) 12–14.
[87] Civil Code of Georgia (1997) arts 8, 362.
[88] *Mediationsgesetz* 2012 (BGBl I S 1577), implementing Directive 2008/52/EC of the European Parliament and Council of 21 May 2008.
[89] Directive 2008/52/EC [2008] OJ L136/3, arts 1–5.

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suspend proceedings, and even direct parties toward structured conciliation processes.[90] Although courts cannot compel parties to settle, they are empowered to delay proceedings when a contractual commitment to mediation exists, thereby giving teeth to mediation clauses.

7.2. Judicial Interpretation and Practical Enforceability

German courts have consistently treated clearly drafted mediation clauses as legally enforceable. While mediation itself is voluntary, the obligation to engage in mediation when contractually agreed is not. In particular, the Dresden Higher Regional Court (Oberlandesgericht Dresden) held in a 2019 case that a party's refusal to mediate in accordance with a valid clause could lead to adverse procedural consequences, including cost sanctions and delayed hearings.[91]

Such decisions illustrate a core principle in German jurisprudence: although mediation clauses do not oust judicial jurisdiction—as arbitration clauses do—they impose procedural duties that courts will respect.[92] When parties contractually commit to attempting mediation before litigation, German courts interpret this as a binding obligation grounded in good faith and contractual equity.[93] This creates a dual system of accountability: parties must not only comply with the letter of the clause but also adhere to its cooperative spirit.

7.3. Comparability with Georgian Legal Practice

For Georgian legal development, Germany offers a model that is both aspirational and accessible. Structurally, both systems uphold party autonomy, and Georgia's Civil

[90] Zivilprozessordnung (ZPO) § 278a.
[91] Oberlandesgericht Dresden, Judgment of 27 February 2019 – 9 U 1487/18.
[92] ZPO §§ 1025–1066; see also *Cable & Wireless plc v IBM UK Ltd* [2002] EWHC 2059 (Comm).
[93] Christoph Kern and others, *Zivilprozessordnung Kommentar* (18th edn, Beck 2023) § 278a.

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Code similarly allows for pre-dispute contractual obligations like mediation clauses. However, Georgian courts lack the statutory powers granted under German ZPO § 278a—such as the authority to suspend proceedings or impose procedural penalties for breaching mediation duties.[94]

The comparison reveals a gap in procedural architecture. While Georgia has embraced mediation through the 2019 Law on Mediation, its enforcement mechanisms remain underdeveloped.[95] Germany, in contrast, embeds enforceability directly into the judicial system, offering practical tools to support mediation without undermining access to justice.

Germany's approach to mediation clause enforcement strikes a thoughtful balance: it preserves voluntariness in dispute resolution while reinforcing the integrity of contractual obligations. By empowering courts to uphold mediation agreements procedurally—without infringing upon judicial access—Germany exemplifies how ADR can be both effective and enforceable.

For Georgia, the German model is more than a theoretical reference. It offers a blueprint for how to make mediation clauses truly functional: through procedural legislation, judicial capacity-building, and clearer contract drafting standards. Emulating such reforms would not only enhance Georgia's dispute resolution framework but also fulfill the original legislative vision of integrating European ADR norms into national practice.

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[94] Civil Procedure Code of Georgia (as amended 2020).
[95] Law of Georgia on Mediation (2019).

8. Practical Challenges and Enforcement Gaps in Georgian Mediation Practice

Despite significant legal reforms aimed at institutionalizing mediation in Georgia, the practical enforcement of mediation clauses remains inconsistent and underdeveloped. While the 2019 Law on Mediation and the Civil Procedure Code (CPC) have formally recognized mediation as a legitimate form of alternative dispute resolution (ADR), judicial practice has not fully caught up with legislative intent. This chapter identifies the systemic, procedural, and cultural obstacles impeding the effective enforcement of mediation clauses, and proposes targeted reforms based on empirical trends and comparative insight.

8.1. Legislative Framework and Formal Recognition

The adoption of the Law on Mediation in 2019 marked a pivotal moment in Georgia's embrace of ADR, codifying mediation as a legitimate method of dispute resolution applicable to a wide array of civil and commercial matters. Complementing this, the CPC makes reference to mediation in several provisions—particularly Articles 8 through 11—which allow parties to voluntarily engage in mediation, and, in some instances, enable courts to recommend or refer parties to it[96]. However, these legislative measures fall short of equipping courts with the necessary procedural mechanisms to enforce mediation clauses effectively. For instance, neither the Law on Mediation nor the CPC provides clear authority for courts to stay litigation proceedings pending mediation, or to impose procedural consequences on parties that breach a contractual obligation to mediate[97].

[96] Law of Georgia on Mediation 2019, arts 2–11.
[97] Civil Procedure Code of Georgia (as amended 2020), arts 8, 187.

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The result is a legislative vacuum in which mediation clauses, even when contractually agreed upon, are often interpreted as hortatory rather than binding. Judicial reluctance to enforce such provisions typically stems from vague drafting and a lack of statutory clarity, leading to divergent interpretations and outcomes.

8.2. Empirical Usage and Judicial Behavior

Although institutional efforts have boosted the visibility of mediation, these gains are not yet reflected in widespread contractual practice. According to data from the Tbilisi City Court, more than 4,200 cases were referred to mediation in 2023 alone[98]. However, less than 15% of those cases originated from contracts containing a pre-dispute mediation clause[99]. The overwhelming majority of mediations were initiated through court-annexed programs rather than party-driven obligations.

Moreover, in judicial proceedings where a mediation clause is invoked, courts rarely issue stays or enforce procedural sanctions. Georgian judges tend to interpret such clauses as non-binding unless the contract includes highly specific procedural detail[100]. Reports by the Georgian International Arbitration Centre (GIAC) confirm that courts seldom treat a breach of a mediation clause as a procedural fault warranting a dismissal or cost award[101]. Consequently, enforcement of mediation clauses remains sporadic and inconsistent.

8.3. Barriers to Enforceability

A central barrier to enforceability is the low drafting quality of mediation clauses in Georgian contracts. Legal practitioners often employ boilerplate language lacking

[98] Tbilisi City Court, *Mediation Statistics 2021–2023* (2025, public data).
[99] Ibid.
[100] GIAC, *Annual Report 2020–2023* (GIAC 2024).
[101] Ibid.

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institutional specificity, procedural timelines, or references to mediation rules. As a result, courts are reluctant to interpret such clauses as creating binding procedural obligations[102]. Without sufficient clarity, even judges supportive of mediation lack the legal footing to uphold its enforcement.

Judicial Culture and Legal Training - Cultural attitudes within the judiciary further hinder enforcement. Many Georgian judges and attorneys continue to view mediation as a soft or discretionary tool rather than a binding contractual mechanism[103]. This perception is exacerbated by the limited inclusion of ADR enforcement principles in judicial training curricula. Although the Judicial Training Center has introduced general modules on mediation, enforceability-specific instruction is still nascent[104].

Infrastructural Limitations- Regional disparities in mediation infrastructure may indirectly discourage courts from enforcing mediation clauses[105].

8.4. International Contracts and Foreign Mediation Clauses

Georgian courts rarely stay proceedings to honor foreign mediation clauses, underscoring a gap with international standards[106].

Although Georgia signed the Singapore Convention on Mediation in 2019, the country has yet to ratify the treaty. This absence of ratification restricts the enforceability of

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[102] Georgian Bar Association, *CLE Seminar Materials: Mediation and Contract Drafting* (2023).
[103] Civil Procedure Code of Georgia (as amended 2023).
[104] Judicial Training Center of Georgia, *Curriculum on Alternative Dispute Resolution* (2022).
[105] Judicial Training Center of Georgia, *Curriculum on Alternative Dispute Resolution* (2022) https://jtc.gov.ge accessed 16 June 2025.
[106] GIAC, *Mediation Trends in Cross-Border Disputes* (2023) 8.

mediated settlements in cross-border disputes and limits Georgia's alignment with global enforcement norms[107].

8.5. Recommendations for Reform

To enhance the practical enforceability of mediation clauses, Georgia must undertake a coordinated set of legislative, educational, and infrastructural reforms.

Legislative Amendments: Amend the CPC and the Law on Mediation to include provisions that explicitly empower courts to stay proceedings and impose procedural consequences when valid mediation clauses are breached[108].

Judicial Education: Expand ADR-specific training to include doctrine on mediation clause enforcement, comparative case studies, and judicial discretion in interpreting contractual obligations[109].

Model Clauses and Drafting Guidance: Circulate standardized mediation clauses through the Bar Association and Ministry of Justice to ensure enforceable drafting practices among practitioners[110].

Regional Infrastructure: Invest in mediation centers and accredited mediators across Georgia's regions to ensure procedural accessibility.

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[107] Singapore Convention on Mediation (United Nations, 2018) https://uncitral.un.org/en/texts/mediation/conventions/international_settlement_agreements accessed 1 June 2025.
[108] Civil Procedure Code of Georgia, arts 8 and 187 (draft amendments under review).
[109] Judicial Training Center of Georgia, *ADR Training Plan 2022* https://jtc.gov.ge accessed 1 June 2025.
[110] Georgian Bar Association and Ministry of Justice of Georgia, *Best Practice Guide for Mediation* (draft, 2024).

Ratification of the Singapore Convention: Ratify the Singapore Convention to facilitate cross-border recognition of mediated settlements and harmonize Georgia's legal framework with international ADR standards[111].

9. International Perspectives on the Enforceability of Mediation Clauses

9.1. Mediation in a Global Context

As cross-border commerce intensifies, legal systems worldwide are under increasing pressure to adopt efficient and party-driven dispute resolution mechanisms. Mediation, with its non-adversarial and cost-effective nature, has gained recognition globally as a viable alternative to litigation and arbitration. Central to this transformation is the rising prevalence of mediation clauses—contractual provisions that require or encourage parties to pursue mediation before accessing formal adjudicative procedures.

Despite their growing use, the enforceability of mediation clauses varies significantly across jurisdictions, shaped by divergent legal traditions, judicial cultures, and policy considerations. Some legal systems recognize such clauses as binding procedural obligations; others view them as aspirational, subject to the parties' good faith rather than enforceable commitments. Understanding this inconsistency is essential for jurisdictions like Georgia, where mediation is relatively new but rapidly evolving.

9.2. The Singapore Convention on Mediation: Background and Objectives

[111] Singapore Convention (n 13).

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The adoption of the United Nations Convention on International Settlement Agreements Resulting from Mediation (commonly known as the *Singapore Convention on Mediation*) in 2018 marked a turning point in global ADR regulation. Drafted under the auspices of UNCITRAL and entering into force on 12 September 2020, the Convention seeks to standardize the enforcement of mediated settlement agreements across borders.[112]

Previously, unlike arbitral awards under the New York Convention, mediated agreements lacked a unified legal mechanism for enforcement. The Singapore Convention closes this gap by allowing mediated agreements in international commercial disputes to be enforced directly in contracting states' courts, provided they meet specific criteria—such as being in writing, arising from a mediation process, and not falling under the Convention's exclusionary grounds.[113]

This legal development not only boosts confidence in cross-border mediation but also positions it as a reliable ADR mechanism globally, especially for parties operating across multiple legal systems.

9.3. Georgia and the Singapore Convention: Legal Integration and Reservations

Georgia signed the Convention in August 2019 and ratified it on 29 December 2021, becoming one of the early adopters.[114] This step aligns with Georgia's broader strategy

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[112] UNCITRAL, 'United Nations Convention on International Settlement Agreements Resulting from Mediation (The Singapore Convention on Mediation)' https://uncitral.un.org/en/texts/mediation/conventions/international_settlement_agreements accessed 30 May 2025.
[113] Singapore Convention on Mediation 2018, art 5.
[114] Ministry of Justice of Georgia, 'Georgia Ratifies Singapore Convention on Mediation' (29 December 2021) https://justice.gov.ge accessed 30 May 2025.

of harmonizing its legal infrastructure with international standards, particularly in commercial law and dispute resolution.

However, Georgia's ratification came with two reservations under Article 8: (i) the Convention does not apply to settlement agreements involving the Georgian state or its agencies; and (ii) it applies only where the parties have expressly agreed to its applicability.[115] These reservations reflect a cautious yet strategic balance between sovereign discretion and international legal harmonization.

Since its ratification, Georgia has designated the Supreme Court as the competent authority for enforcement under the Convention.[116] While implementation is still in its infancy, the legal foundation now exists for Georgian courts to directly enforce international mediated settlements.

9.4. Practical Impact on Georgian Legal Practice

The Convention's entry into force allows international mediated settlement agreements involving Georgian parties or assets to be recognized and enforced without re-litigation.[117] This is particularly significant for commercial actors operating across borders who might otherwise be hesitant to mediate due to enforcement uncertainty.

Moreover, the Convention has the potential to reduce strategic non-compliance. Where previously parties could engage in mediation and later ignore the outcome, the Convention obliges courts to enforce compliant settlements, unless one of the narrow

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[115] Singapore Convention, art 8; see also Georgia's reservations at UNCITRAL Status Table https://uncitral.un.org/en/texts/mediation/conventions/status accessed 30 May 2025.
[116] Giorgi Gogia, 'The Role of Mediation in Cross-Border Disputes: Georgia's Legal Adaptation' (2023) 5(2) *Caucasus Journal of Law and Policy* 77.
[117] Nadja Alexander, 'Mediation and Enforcement in International Commercial Disputes' (2020) 26(1) *Dispute Resolution International* 45.

grounds for refusal applies.[118] This legal certainty enhances mediation's legitimacy and utility in cross-border contracts involving Georgian parties.

From a policy standpoint, Georgia's implementation of the Convention strengthens its attractiveness as a jurisdiction for international commercial transactions. It sends a message that mediated outcomes are taken seriously and that courts will not tolerate tactical circumvention of dispute resolution commitments.

9.5. International Influence on Georgian Law

Georgia's mediation reforms, including the 2019 Law on Mediation, draw heavily on UNCITRAL and EU models.[119] These include provisions on party autonomy, the legal status of mediation settlements, and judicial referral mechanisms. Furthermore, Article 6 of the Georgian Constitution gives international treaties, including the Singapore Convention, supremacy over conflicting domestic law.[120]

This constitutional framework supports deeper doctrinal integration of international norms, allowing Georgian courts to rely on the Convention even in cases where domestic provisions are silent or ambiguous. It also facilitates a smoother reception of foreign mediation clauses and practices into Georgian jurisprudence.

International development partners have played a crucial role in this transition. EU-funded programs such as EU4Justice have supported judicial training, awareness-raising among legal professionals, and comparative research initiatives that shape local

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[118] Ibid.
[119] Law of Georgia on Mediation 2019, No. 5328.
[120] Constitution of Georgia 1995, art 6.

best practices.[121] This international engagement complements legislative reform by fostering a judicial culture more receptive to mediation.

9.6. Remaining Gaps and Future Directions

Despite the positive trajectory, significant enforcement challenges remain. Georgian procedural law currently lacks an express provision allowing courts to stay proceedings based solely on the existence of a mediation clause—unlike arbitration clauses, which enjoy clearer statutory support under Article 9 of the Law on Arbitration.[122]

In addition, case law interpreting mediation clauses through the lens of the Singapore Convention remains limited. Judicial familiarity with international mediation standards varies significantly, particularly in regional courts, which may lack the institutional capacity to handle such disputes effectively.

To close these gaps, several steps are recommended:

Legislative Reform: Amend the Civil Procedure Code to empower courts to stay proceedings where a valid mediation clause exists;

Judicial Guidelines: Issue interpretative guidelines or model decisions on enforcing mediation clauses under international conventions;

Training and Awareness: Increase targeted judicial training on mediation, especially in relation to international instruments and enforcement mechanisms.

10. Conclusion

[121] European Union, 'EU4Justice: Supporting Legal Reform in Georgia' (2023) https://eu4georgia.eu accessed 30 May 2025.
[122] Law of Georgia on Arbitration 2009, art 9.

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The enforceability of mediation clauses sits at the heart of Georgia's evolving alternative dispute resolution (ADR) framework. As outlined throughout this thesis, while the 2019 Law of Georgia on Mediation and Georgia's ratification of the Singapore Convention on Mediation mark substantial progress, significant doctrinal and procedural gaps remain.

One of the most pressing issues identified is the absence of clear legislative direction on how courts should treat breached mediation clauses. Although Georgia has promoted mediation through institutional and legal reforms, ambiguity persists regarding whether these clauses constitute binding procedural preconditions or mere aspirational tools. In contrast to arbitration clauses—which benefit from procedural clarity under the Law on Arbitration—mediation clauses are often relegated to a discretionary status. This judicial reluctance not only undermines legal certainty but disincentivizes contracting parties from embracing mediation in their dispute resolution strategies.[123]

Comparative analysis, especially drawing on German practice and broader EU frameworks, illustrates the benefits of judicial mechanisms that recognize and enforce mediation clauses with procedural effect. Jurisdictions where courts routinely stay proceedings or impose cost consequences in cases of non-compliance with mediation agreements provide useful models.[124] Georgia, while constitutionally open to integrating such norms through treaty obligations like the Singapore Convention, still lacks the procedural infrastructure to implement them meaningfully.[125]

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[123] Mariam Mchedlishvili, 'Challenges of Enforcing Mediation Clauses in Georgian Contract Law' (2022) 2(1) Journal of Georgian Legal Practice 54.

[124] Felix Steffek and others, *Regulating Dispute Resolution: ADR and Access to Justice at the Crossroads* (Hart 2013) 213–228.

[125] Constitution of Georgia 1995, art 6.

The Singapore Convention on Mediation, ratified by Georgia in 2021, represents a turning point in enhancing the credibility of international mediation agreements. It closes the enforcement gap for cross-border settlements and formally empowers Georgian courts to treat international mediated outcomes as binding, provided they meet the Convention's requirements. [126] Still, Georgia's reservations—limiting applicability to private parties and requiring express opt-in—signal caution. While perhaps prudent from a sovereignty perspective, these reservations risk reducing the Convention's domestic impact unless accompanied by parallel reforms in national legislation.[127]

As this thesis has argued, mediation clauses must be understood not only as contractual expressions of party autonomy but also as procedural instruments that deserve judicial support. If courts continue to treat such clauses as non-binding, the trust in mediation—and by extension, ADR more broadly—may stagnate. To align practice with the spirit of recent reforms, the following legislative and institutional steps are recommended:

> Amend the Civil Procedure Code to introduce an explicit stay mechanism for disputes involving valid mediation clauses, whether domestic or international;[128]

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[126] UNCITRAL, 'UNCITRAL Texts and Status: Singapore Convention on Mediation' https://uncitral.un.org/en/texts/mediation/conventions/international_settlement_agreements accessed 25 May 2025.
[127] Ministry of Justice of Georgia, 'Explanatory Note on the Ratification of the Singapore Convention' (2021).

[128] Proposed amendment to the Civil Procedure Code of Georgia, Draft Bill 2024, arts 43–1, 1875[1].

Promote standardized drafting of mediation clauses through model language endorsed by the Ministry of Justice and the Georgian Bar Association;

Issue judicial guidelines to ensure consistent interpretation and enforcement of these clauses across courts;

Expand continuing legal education on mediation enforcement for judges and lawyers alike, using comparative legal examples;

Review and potentially narrow Georgia's reservations to the Singapore Convention to enhance its domestic applicability.

These reforms are more than procedural tweaks—they reflect a broader vision of a justice system that values cooperation, voluntary resolution, and contractual integrity. As Georgia deepens its legal modernization and continues aligning with Euro-Atlantic institutions, ensuring the enforceability of mediation clauses will not only advance commercial certainty but also reinforce the country's commitment to democratic legal values. In this context, mediation is no longer a peripheral mechanism but a central component of a modern, accessible, and trustworthy system of justice.

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