



GRATA
INTERNATIONAL

Choice of Law in International Commercial Contracts

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GRATA International Georgia

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Introduction

Parties may choose law to regulate international commercial relations based on the principle of the autonomy of the will of the parties.

In the process of choosing a law, following questions that need to be answered:

How limited are parties to choose the legal system of any country?

Is it necessary to have some connection between the law of the chosen country and the contract?

How should the contract be settled if the parties do not choose at all or, due to disagreement with each other, cannot choose the law of any country?

Definition of the applicable law:

Choosing of dispute resolution court or arbitration



Choosing of law applicable to the dispute



Application of the applicable law

Regulation of Law:

The Law on Private International Law:

Article 35 - Choice of law by the parties:

- 1. Determination of rights and obligations derived from contractual relationships, particularly interpretation, fulfilment, termination of contracts, as well as the results of annulment of contracts, violation of obligations, including the violation of pre-contractual and post-contractual obligations shall be regulated by the law of a country chosen by the parties.**
- 2. As agreed to by the parties, the law of a chosen country may be replaced by the law of another country even after concluding the contract.**
- 3. The choice of law shall be considered void if it disregards imperative rules of the law of a country that is most closely related to the contract.**



Regulation of Law:

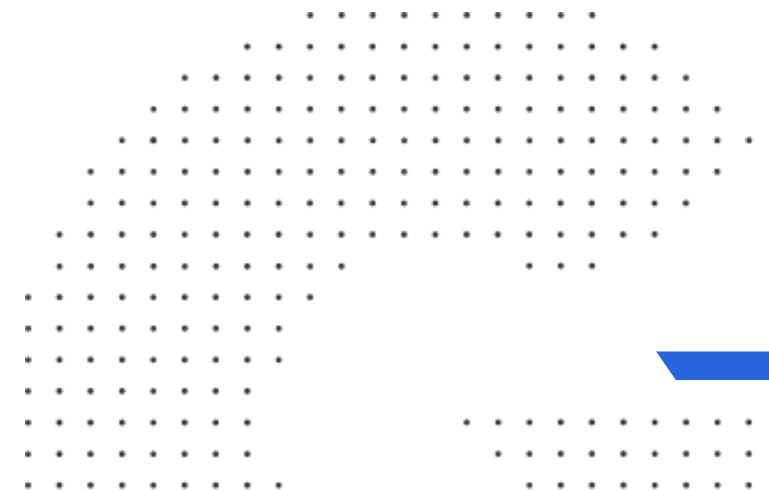
The Law on Private International Law:

Article 5 - Public order

The rules of a foreign law shall not be applied in Georgia, if it contradicts the basic legal principles of Georgia.

The rules of a foreign law chosen by the parties to govern the contract shall not be applied in Georgia if it contradicts the basic legal principles (ordre public) of Georgia. In addition, imperative rules of the law of Georgia are still applicable (e.g. provisions regulating consumer protection, product liability, etc.).

For example: in the case of an employment contract, despite the existence of an agreement between the parties on the law, imperative norms of Georgia on social protection will apply.



Regulation of Law:

The ability of the parties to choose the law is reinforced by the 1980 Vienna Convention on the International Sale of Goods (CISG).

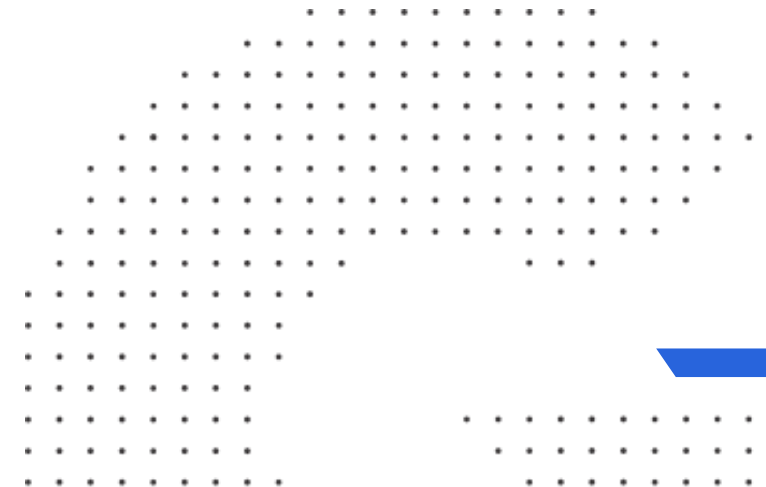
Chapter I. Sphere of application

Article 1

(1) This Convention applies to contracts of sale of goods between parties whose places of business are in different States:

(a) when the States are Contracting States; or

(b) when the rules of private international law lead to the application of the law of a Contracting State.



Case Law

Supreme Court of Georgia Decision N s6-1597-2018 of 25 January, 2019

Delivery Contract - Parties: Buyer and Seller

Pursuant to paragraphs 5.1 and 5.2 of the Contract, *all disputes relating to the performance of this Contract shall be settled by negotiation. If no result was reached, the dispute would be settled using English law. Place of Jurisdiction: London.*

The buyer has filed a lawsuit against the seller with Tbilisi City Court.

The seller did not recognize the jurisdiction of the Common Courts of Georgia and pointed out that the dispute should have been settled through arbitration, at which point English law should have been applied.

The Supreme Court of Georgia explained that the content of Article 5 -2 2 of the Contract between the parties concerned only one action - the resolution of the dispute under English law (jurisdiction London), which did not in itself indicate that the dispute should be heard by an English court, so the Common Courts of Georgia had jurisdiction over the case and heard the case based on Georgian laws.

Case Law

Supreme Court of Georgia Ruling N 5-887-0-21-2016 of 26 August, 2016

Delivery Contract - Parties: Buyer and Seller

Pursuant to Articles 5.1 and 5.2 of the Contract, *all disputes relating to the performance of this Contract shall be settled by negotiation. If no result was reached, the dispute would be settled using English law. Place of Jurisdiction: London.*

The Seller has filed a lawsuit against the buyer with the Arbitral Tribunal in London.

Supreme Court of Georgia rejected the Seller's motion to recognize and enforce the decision of the Arbitral Tribunal in London. Court found that the arbitral award is contrary to public order, as the arbitration agreement in the Contract does not contain the name of the arbitral tribunal, the parties have not expressed their consent for the dispute to be considered by a particular arbitral tribunal.

Case Law

Decision of Supreme Court of Georgia N as – 287 – 2020 of 16 September, 2020

Earnest Money Payment Contract- Parties: Buyer and Seller

Article 11 of the Contract - the contract is drawn up in accordance with the laws of England and Wales and all matters not regulated by the contract must be settled in accordance with the laws of England and Wales. All disputes and disagreements related to the contract must be resolved through negotiation. If a negotiated agreement is not reached, the case will be considered in the English court under the relevant legislation.

The Buyer has filed a lawsuit against the seller with the Tbilisi City Court. The seller disputed jurisdiction of the Common Courts of Georgia.

Supreme Court of Georgia clarified that parties to the Contract are entrepreneurial entities registered in Georgia, the actual location of the parties is Georgia, their activities are carried out in Georgia, the contractual rights and obligations were to be performed in Georgia. Thus, no foreign element is involved, thus the Common Courts of Georgia had jurisdiction over the case and heard the case based on Georgian laws.

Case Law

Contracting Parties:

Creditors - **JSC Georgian Post Bank** and **Imperial Wine Limited**
and debtor - **Kardanakhi XXI LLC**

Loan Agreement - Article 22: *this Loan Agreement is governed by and construed in accordance with English law.*

The plaintiff Imperial Wine Limited filed a lawsuit with the Krtsanisi-Mtatsminda District Court of Tbilisi.

The Court decided the case based on the Civil Code of Georgia and not English law, as both parties based their claims on the Civil Code of Georgia and the Law of Georgia on Entrepreneurs.

THANK YOU!

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QUESTIONS?
