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The Problem of Enforcement of Notarial Acts (Comparative Analysis)

This paper explores the legal nature and enforcement of notarial acts, along with the challenges arising particularly in an international context. The aim of the research is to conduct a comprehensive analysis of the enforcement of notarial acts, to compare various legal systems, and to offer the author's recommendations for resolving existing issues.

The study focuses on legal doctrine, the role of the notary, the significance of notarial acts, and mechanisms for their enforcement. The author examines issues related to the recognition and enforcement of enforceable notarial acts, especially within the framework of the Minsk Convention.

Structurally, the article is divided into the following sections:

- The legal nature and importance of notarial acts – addressing the role of the notary, the concept of a notarial act, and enforcement mechanisms;*
- Comparative analysis of enforcement of notarial acts – examining the practices of Spain, the Netherlands, Germany, Ukraine, Croatia, and Hungary;*
- Issues related to the enforcement of notarial acts issued abroad within Georgia – reviewing the legal basis of the Minsk Convention, judicial practice in Georgia, and specific case examples.*

The research applies criminological methodology, including documentary analysis, comparative legal methods, historical-legal approaches, and systemic analysis.

In its concluding section, the paper provides the author's own recommendations aimed at improving the enforcement practice of notarial acts. The article offers significant support to both theoretical and practical legal fields in national and international contexts.

Keywords: notarial act, enforcement, foreign country.

1. Introduction

In Georgia, the recognition and enforcement of notarial acts issued by notaries is based on Article 51(a) of the Minsk Convention. However, Georgia currently lacks any established practice regarding the enforcement of enforceable notarial acts issued by foreign notaries. This legal vacuum renders the topic both relevant and problematic. Given that notarial acts may produce legal effects similar to court decisions, the process of recognizing and enforcing such acts should be governed by rules akin to those applicable to judicial or arbitral decisions.

The objective of this article is to provide a comparative analysis of the enforcement of notarial acts, identify existing problems, and propose authorial recommendations for addressing them. The

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study draws upon documentary, comparative-legal, historical-legal, and systemic analytical methods. Based on this foundation, the work critically assesses current practices and outlines possible improvements.

2. Enforcement of Notarial Acts

2.1. The Legal Nature and Significance of Notarial Acts

According to Article 2 of the Law of Georgia on Enforcement Proceedings, the types of enforceable acts are listed exhaustively. This list should not overlook those acts which are frequently encountered in today's legal reality.

The law differentiates between acts issued domestically and those issued abroad. It distinguishes, for instance, an arbitration award made within the country from a foreign or international arbitration decision, the latter being enforceable in Georgia only if such enforcement is provided by international treaties.¹

While notarial acts are included among enforceable acts², it remains unclear whether this provision applies to notarial enforcement documents issued abroad.

Per Article 25 of the same law, the National Bureau of Enforcement initiates enforcement proceedings based on a written request by the creditor and an enforcement document³. If a legal document was issued in a foreign country, it is essential that the legislator define the procedures applicable to its recognition and enforcement. For instance, Article 68 of the Law of Georgia on Private International Law sets out the procedural rules for enforcing foreign judgments.⁴

According to paragraph 1 of that article, Georgia recognizes foreign court decisions that have entered into legal force. Paragraph 2 lists exceptions where such recognition shall not occur – for example, where the case falls under Georgia's exclusive jurisdiction, where the defendant was not properly notified, or where a conflicting judgment already exists.

The same law, in Article 73¹, stipulates that foreign arbitral awards are to be enforced under the Law of Georgia on Arbitration.⁵ That law provides that regardless of the country in which an award is made, it is binding and shall be enforced upon submission to the court.⁶

According to Article 44 of the Law of Georgia on Arbitration, regardless of the country where the arbitration award was issued, it shall be binding and, in the event of a written petition being submitted to the court, shall be enforced taking into account the provisions of this Article and Article 45 of this Law.⁷ For the purposes of this Article and Article 45 of this Law, the courts of appeal shall be considered competent courts in relation to decisions rendered in Georgia, and the Supreme Court of Georgia in relation to decisions rendered outside Georgia.

¹ Subparagraph m) of Article 2 of the Law of Georgia "On Enforcement Proceedings".

² Subparagraph n) of Article 2 of the Law of Georgia "On Enforcement Proceedings".

³ Paragraph 1 of Article 25 of the Law of Georgia "On Enforcement Proceedings".

⁴ Article 68, paragraph 1, of the Law of Georgia "On Private International Law".

⁵ Article 73¹, paragraph 1, of the Law of Georgia "On Private International Law".

⁶ Article 1, paragraph 1, of the Law of Georgia "On Arbitration".

⁷ Paragraph 1 of Article 44 of the Law of Georgia "On Arbitration".

In addition, the Law of Georgia on Arbitration directly indicates that the enforcement of an arbitration award shall be carried out on the basis of a court ruling, in accordance with the Law of Georgia on Enforcement Proceedings. Accordingly, while the legislator regulates in detail the rules for the recognition and enforcement of a court decision rendered in the territory of a foreign country and an arbitration award rendered in the territory of a foreign country, the issue of the recognition and enforcement of a notarial act issued by a notary of a foreign country should also be regulated, since a notarial act is also a document that may have legal consequences similar to a court decision. Although, theoretically, Georgia, as a contracting party to the Minsk Convention, enforces notarial acts issued in the territory of other contracting parties, due to the absence of a regulatory legislative provision, the procedural part of this remains questionable and, accordingly, indicates a legislative gap.

It is necessary to determine through legal research the possibility and procedure for the enforcement of a certificate of enforcement issued by a notary of a foreign country on the territory of Georgia. The research considered the practice of various countries and the explanations of the Supreme Court on this problematic issue.

The problem is relevant to the extent that enforcement proceedings play the role of a regulator of compulsory enforcement⁸, and the regulation of what is not initially included in the legislative framework represents a major challenge and obstacle for the judiciary.

2.2. The Role of the Notary Among Legal Professions

At the opening of the 1992 Notariats Assembly, the then President of the LNCA⁹, Gilles Demers, described the role of notaries in society¹⁰:

“Notaries perform an extremely valuable role in any modern state. Through their notarial activities, they ensure the continuity of transactions; as legal specialists, they explain the rights and obligations of the parties; their impartiality is a guarantee of balanced agreements. As representatives of public authority, they grant authenticity and enforceability to their acts.”

Since 1996, the legal status of the notary in Georgia has been definitively established under the Law of Georgia on Notaries, classifying the notary as a representative of a liberal profession. A notary is an impartial and trustworthy advisor to clients¹¹. One might call a notary a legal expert in the field of undisputed justice.¹²

For decades, notaries have been an integral part of society. The first notaries appear in ancient Egypt, known as “scribes.”¹³ A notary is a neutral and reliable advisor to the citizen. A document

⁸ Kurdadze Sh., Kerdadze G., Khunashvili N., Chkonia Z., Commentary on the Law of Georgia “On Enforcement Proceedings”, Part One, Tbilisi, 2018, 19. (In Georgian)

⁹ Latin Notary Union.

¹⁰ Notary Activities for the Welfare of Civil Society, Notary Master Andre Schwachtgen, Honorary President of the Luxembourg LNSK.

¹¹ Rostashvili M., Specifics of the Execution of the Enforcement Paper Issued by a Notary, Tbilisi, 2019, 8 (In Georgian).

¹² Notary Activities for the Welfare of Civil Society, Notary Master Andre Schwachtgen, Honorary President of the Luxembourg LNSK.

¹³ Notary History, Clay Mason, see <<https://www.superiornotaryservices.com/blog/history-of-the-notary>

certified by a notary possesses indisputable evidentiary power. Additionally, a notary performs public authority functions through notarial and related legal acts, all while acting independently in professional activities.¹⁴

Some in modern society may still question whether notaries remain relevant. In a remote and digital world, one might think everything can be done online – including notarial acts, from mortgage signings to giving testimony in court.¹⁵ However, the pandemic revealed that notaries retained their importance by transitioning to remote services in line with the public's needs. Even in the electronic era, the notary remains as essential as they were millennia ago.

The notary is obliged to explain the content and legal consequences of a notarial act to any party requesting it. Moreover, the notary must protect the interests of those unfamiliar with Georgian law and in need of legal advice.¹⁶

The notariat represents an ideal synthesis of public authority and private initiative and is accessible to all social strata. Due to the lack of theoretical knowledge in Georgia about notariat, its potential remains underutilized. Nevertheless, recent legislative and technological reforms in Georgian notariat have demonstrated that it is a dynamic system with untapped possibilities for further development.¹⁷

2.3. The Concept and Essence of the Notarial Act

The classification of notarial acts is a subject of scholarly interpretation and is inherently conditional. Classification can be made based on several criteria – for instance, according to the stage of the legal relationship (its creation, implementation, securing/protection, and so forth) or according to the act's purpose (certification of undisputed rights, granting enforceability, verification of factual circumstances, etc.). Classification can also be based on content.¹⁸

However, it is noteworthy that Georgian legislation does not categorize notarial acts in such a way. Instead, it divides them into only two types: private and public acts. This division is also known as the distinction between “simple” and “authentic” notarial acts. Abroad, this same distinction often appears as “notarial certification” versus “notarial attestation.”¹⁹

The performance of notarial acts in Georgia is governed by several legal instruments: the Civil Code of Georgia, the Law of Georgia on Notaries, the 2010 Ministerial Order No. 71 titled *Instruction on the Procedure for Performing Notarial Acts*, and other related legal acts.

A notary issues an enforcement document (enforceable writ) in the form of a public act, provided that such a clause exists in the parties' agreement and the notary has clearly explained the

¹⁴ seal/> [25.05.2024].

¹⁴ Decision of the Constitutional Court of Georgia of February 22, 2023 in the case Medea Gvazava and Julieta Archvadze v. Parliament of Georgia. (In Georgian)

¹⁵ Notary Association of Pennsylvania, see <<https://www.notary.org/article-why-are-notaries-still-important>> [25.04.2025]. (In Georgian)

¹⁶ Article 49 of the Law of Georgia “On Notaries”.

¹⁷ LEPL Georgian Chamber of Notaries, Georgian Notary Development Strategy for 2014, 23. (In Georgian)

¹⁸ Sukhishvili D., Notary Law, Tbilisi, 2012, 54 (In Georgian).

¹⁹ Kharitonashvili N. Notary Law 2021, Tbilisi, Bona Causa, 34 (In Georgian).

legal consequences of such issuance in the notarial act.²⁰ One of the fundamental purposes of notariat is to promote the stability of civil turnover and the conscientious fulfillment of contractual obligations.²¹ A notarial act has both evidentiary and enforceable legal force. It represents an out-of-court document with binding evidentiary value and executory power.

According to Article 38, Paragraph 5 of the Law of Georgia on Notaries, a notary may issue an enforcement writ based on a matured monetary claim, a demand to transfer property rights, or for compulsory enforcement against mortgaged property – if such a clause is agreed upon by the parties and the notary has explicitly stated the legal consequences of the enforcement writ in writing.

Article 72 of the *Instruction on the Procedure for Performing Notarial Acts* establishes the procedure for issuing enforcement writs. Key points include:

1. The notary issues the writ based on a notarial act that permits enforcement under Georgian legislation and where the statute of limitations has not expired.
2. The writ is issued upon the creditor's (or successor's) written request, which must include the legally required requisites.
3. The writ is preferably issued by the same notary who certified the enforceable notarial act – or their substitute, if applicable.

2.4. The Enforceability of the Notarial Act

A notarial act, when it is enforceable, carries the same legal power as a judicial decision and is not subject to appellate review. Its enforcement does not require prior recourse to a court – enforcement occurs automatically, by virtue of the act itself. A notarial act is a document executed by the free will of the parties.

By entering into such an act, the parties voluntarily accept the obligation to comply with its provisions and express their advance agreement to fulfill their responsibilities in a prompt and effective manner.

Even though the notarial act is enforced without court involvement, it does not strip the debtor of protective legal instruments. The debtor has the right to:

- Request observance of any statutory timeframes;
- Demand suspension of enforceability in the event of suspected forgery (e.g., if a complaint is filed alleging criminal falsification or the opposing party contests the document's authenticity in court);
- Invoke legislative provisions that allow for deferment of enforcement – such as cases involving notary selection disputes, employment-related obligations, contested sale terms, and others.

In Western European countries, parties may often choose the form of authentication for their legal documents. However, in several areas, the law mandates that the notarial form be used. This requirement typically rests on four primary considerations related to the idea of protection.

²⁰ Recommendation on the calculation of the fee established for issuing a duplicate of an enforcement document, adopted by the decision of the Board of the Notary Chamber of Georgia #21.1 of December 22, 2015.

²¹ LEPL Notary Chamber of Georgia Georgian Notary Development Strategy for 2014. (In Georgian)

First, in cases of social significance – for example, the formation of capital-based companies (limited liability companies, joint-stock companies, etc.), where public financial contributions are involved – even small legal errors can lead to major injustices. Thus, notarial authentication is required.

Second, it is used to protect vulnerable individuals – such as minors, persons with limited legal capacity, or heirs whose liability is limited to inherited property.

Third, the notarial form serves as an objective source of information for third parties interested in real estate transactions (e.g., regarding property transfer, registration, mortgages).

The new Law on Entrepreneurs in Georgia also aimed to strengthen the role of the notary in such contexts.

2.5. The Undisputed Jurisdiction of the Notarial Act

A notary may also act as a conciliatory intermediary, issuing documents that possess enforceable power. The notary's competence should not be limited to a specific field, but rather extended to all situations in which the parties request their involvement, except in matters reserved exclusively for representatives of other legal professions.

Accordingly, a notary who acts in the role of a “private judge”²² can go beyond merely drafting or certifying notarial acts; they may also serve as an arbitrator in the event of disputes between the parties. Given the notary's functional similarity to judicial authority in the domain of undisputed jurisdiction, it is possible – and often efficient – to delegate a significant portion of judicial authority to notaries.

The notary's activities serve to enhance legal security and efficiency. By exercising undisputed jurisdiction, notaries reduce the overall burden on the judiciary. Through notarial procedures: Deadlines are shortened; The submission of evidence becomes more efficient; Increased legal certainty reduces the need for court intervention.

Globally, only a fraction – approximately one in every thousand – of notarial acts become subject to litigation in court. The legal consequences of notarial acts include: Legal consensus between parties, helping avoid litigation; Evidentiary value that simplifies proof in court, if proceedings do arise; Enforceable power that expedites compulsory execution processes, relieving courts of this responsibility.

The strength of notarial acts in terms of evidentiary and enforceable power significantly simplifies legal proceedings and enforcement procedures. Thus, they play a crucial role in ensuring efficiency, certainty, and accessibility within the legal system.

2.6. The Issuance of Enforcement Writs by a Notary

The issuance of an enforcement writ by a notary is not mandatory by law and does not depend solely on the notary's discretion. Rather, it requires the parties' mutual agreement to delegate such

²² “Notary activity for the welfare of civil society” Notary André Schwachtgen, Honorary President of the Luxembourg LNK. (In Georgian)

authority to the notary. The validity of this agreement depends on the nature of the legal relationship between the parties and the specific type of contract concluded.

To initiate the procedure for issuing an enforcement writ, the requesting party must meet clearly defined legal conditions. These conditions vary among jurisdictions and also reflect the scope of authority granted to notaries in each legal system.

For instance in Italy²³, notarial authority to issue enforcement writs applies solely to claims arising from loan agreements. In Belgium, Japan, and France, notaries may issue writs for a broad range of matters. However, French law excludes specific types of claims – for example, actions related to unlawful occupation of residential property are reserved for court jurisdiction²⁴.

Under Georgian law²⁵, the notary's authority to issue an enforcement writ is directly linked to the will of the parties, explicitly expressed in their agreement²⁶. Specifically, the agreement must contain a clause stating that in the event of a breach, the notary is empowered to issue an enforcement writ.

The courts of Georgia have clarified that if the contract does not include such a clause in the body of the agreement (especially among its essential terms), then any enforcement writ issued by the notary is absolutely invalid²⁷.

The Law of Georgia on Notaries provides that a notary may issue an enforcement writ based on a written request by the creditor (or their legal successor). The request must comply with all statutory requirements, and its submission marks the formal beginning of the notarial enforcement procedure.

Once the request is submitted, the notary must verify all formal preconditions for issuing the writ. These include:

- Verifying the agreement between the parties and its legal validity;²⁸
- Reviewing the content of the obligation to be enforced;
- Examining the details of the claim, the legal relationship between the parties, the parties' identifying information, and the enforceability of the demand.²⁹

If any substantive legal requirements are not met, the notary must refuse to issue the writ. If a writ is issued in violation of these rules, it may be subsequently annulled by the court.³⁰

²³ “Procedural issues related to the issuance of a writ of execution by a notary”, Makhatadze N., Scientific Journal “Justice and Law” #3(71)'21, 58.

²⁴ Rouchaud A.M., Conclusions – Workshop No. 2: Writs of execution, The Execution of court decisions in civil cases, Council of Europa Publishing, 1998, 117.

²⁵ Civil Code of Georgia, Law of Georgia “On Enforcement Proceedings”, Law of Georgia “On Notary” and Order of the Minister of Justice of Georgia No. 71 of March 31, 2010 “On the Rules for Performing Notarial Acts”.

²⁶ “On Notary” Law of Georgia, Art. 38, Clause 5, Legislative Bulletin of Georgia, No. 46, 22.12.2009, Art. 346.

²⁷ Decision of the Supreme Court of Georgia of January 16, 2014 in case No. 689-655-2013.

²⁸ Law of Georgia “On Notary”, Art. 40, paragraph 1, Georgian Legislative Herald, No. 46, 22.12.2009, Art. 346. (In Georgian)

²⁹ “Procedural Issues Related to the Issuance of a Notary’s Enforcement Order”, Makhatadze N., Scientific Journal “Justice and Law” #3(71)'21, 62.

³⁰ Preuss N., *Zivilrechtspflege durch externe Funktionsträger*, Mohr Siebeck, Tübingen, 2005, p. 41.

The authority of the notary to issue enforcement writs may be described as falling under a form of jurisdiction – one might call it the “adjudicatory power of the notary.”³¹ In essence, during this process, the notary acts similarly to the judiciary. Although notaries do not formally possess judicial authority, the enforcement writ they issue functions as a delegated act of judicial enforcement.

Therefore, when issuing an enforcement writ, the notary must comply with the same standards as a judge – particularly regarding the enforceability of the claim.³²

Another key precondition is the maturity of the obligation. In Georgia, the notary plays a passive role in this process: the procedure begins upon submission of the request and depends on the statute of limitations.

3. The Problematic Nature of the Enforcement of Notarial Acts (Comparative Legal Analysis)

3.1. Enforcement of Notarial Acts in Spain

In the Kingdom of Spain, the activities of notaries are supervised by the Ministry of Justice, with the Minister of Justice recognized as the senior-most notary in the country.³³

Under Spanish law, notarial acts³⁴ constitute grounds for the initiation of enforcement proceedings. Furthermore, the law stipulates that not only the original act but also its certified copies may be enforced – provided such copies are issued with the consent of both parties or certified by the court and include the identification of the person against whom the act is to be enforced.³⁵

According to legal scholarship in Spain, the enforceability of a notarial act is not influenced by the time of its issuance.

Unlike the Georgian legal system, Spanish law allows notaries to carry out certain enforcement actions themselves. A prime example is the auction-based sale of mortgaged property, provided there is an agreement between the parties. Secured monetary claims – especially those backed by mortgages – are common in Spain and require prompt action. Therefore, notaries are authorized to perform enforcement actions for such claims, which significantly accelerates the process.³⁶

In these cases, the entire auction process is managed by the notary. This fact – that the auction of mortgaged property is conducted directly by a notary without court intervention – highlights the extensive powers of Spanish notaries.³⁷

³¹ Code of Civil Procedure of Georgia, Art. 363

Code of Civil Procedure of Georgia, Art. 36332. (In Georgian)

³² Law of Georgia “On Notary”, Art. 38.5.

³³ Ley del Notariado de (Ministerio de Gracia y Justicia), num. 149, de 29/05/1862, BOE-A-1862-4073.

³⁴ Escrituras públicas – public acts drawn up/issued by a notary and containing the relevant requisites (including the indication that they were signed in the presence of a notary, the indication of the verification of the capacity of the parties, etc.) (see – <<https://www.notariado.org/portal/c%C3%B3mo-leer-la-escritura>> [Last viewed – 27.05.2024]). (In Georgian)

³⁵ Ley de Enjuiciamiento Civil, (Jefatura del Estado) núm. 7, de 08/01/2000,BOE-A-2000-323, art. 517.2. 4⁰.

³⁶ MARTÍN FABA, J. M. (2017). Sobre la fuerza ejecutiva de la escritura pública y el nuevo sistema de expedición de copias: issues surgidas en la jurisprudencia actual. Revista CESCO De Derecho De Consumo, (20), 74-81 (see – <<https://revista.uclm.es/index.php/cesco/article/view/1247>> [21.09.2025]).

³⁷ Reglamento Hipotecario, (Ministerio de Justicia) núm. 106, de 16/04/1947, BOE-A-1947-3843, art. 234. Ibid., Articles 234 et seq.

The notary evaluates the creditor's application, and if all preconditions are satisfied, initiates the auction procedure. The auction is conducted electronically under the notary's supervision. Information about the auction and the details of the presiding notary are published in the Official State Bulletin.³⁸

3.2. Enforcement of Notarial Acts in the Netherlands

In the Netherlands, notarial activity is recognized as a liberal profession. Notaries are appointed by the Queen (currently, the monarch), and under Dutch law, the execution and certification of agreements for the transfer of rights (including their formation and termination) may only be carried out through a notary.³⁹

Dutch legislation grants notaries broad powers. The notarial institution is designed not only to relieve the judiciary of certain responsibilities but also to reduce the burden on enforcement agencies. The parties may agree that the sale of property will be handled by a notary; however, the notary's authority in this regard is limited strictly to immovable (real) property.⁴⁰

Unlike Georgian law, Dutch legislation prohibits the transfer of ownership of a property directly to the creditor. Instead, the law mandates public auction as the only acceptable method for realizing property value. This approach is considered the most transparent and reliable means of determining the true market value of the property.

To avoid conflicts of interest, the auction cannot be conducted by the creditor. Furthermore, public notice of the auction is required – typically through publication in newspapers – to ensure not only the debtor but also other potential creditors are properly informed.⁴¹

3.3. Enforcement of Notarial Acts in Germany

The enforcement of claims through the sale of property to satisfy outstanding debts is also a well-established procedure under German law. An enforceable document may be issued by a notary based on a contract certified in notarial form, which becomes immediately executable without requiring further judicial review.

This method of realization is particularly attractive because it enables creditors to obtain swift satisfaction of their claims at a market price previously agreed upon by the parties. Once the enforceable notarial deed is in place, the notary issues the enforcement writ automatically, without any need for additional examination or approval.

This efficiency reflects the strong institutional trust placed in the notary system in Germany, where notarial certification serves as both an evidentiary mechanism and an enforcement tool.⁴²

³⁸ Ibid., Articles 234 et seq.

³⁹ Paul Van Der Molen, Land registration and cadastre in selected European countries, Austria, Bulgaria, Croatia, Hungary, Netherlands, Serbia, ed. By center of legal competence e(CLC), published by Intersentia, 2009, 194.

⁴⁰ The activities of the Dutch enforcement agent, Jos Uitdehaag, Oct 2014, Netherlands, 19.

⁴¹ The activities of the Dutch enforcement agent, Jos Uitdehaag, Oct 2014, Netherlands, 82.

⁴² *Wolf Ch.R.*, Real-estate property Law Germany, Key Aspects of German business law, a practical manual, Michael Wendler (ed) 4, ed., Berlin, Heidelberg, Springer 2008, 284.

3.4. Enforcement of Notarial Acts in Ukraine

Under Ukrainian legislation, the non-judicial sale of property is permitted in specific cases determined by law. This may be carried out on the basis of an enforcement writ issued by a notarial authority.

Ukrainian practice thus recognizes the authority of the notary to initiate enforcement proceedings for certain monetary claims, particularly when they are secured by collateral, such as a mortgage. These provisions aim to expedite creditor satisfaction without engaging the courts, in turn reducing the judiciary's caseload and streamlining civil enforcement.

3.5. Enforcement of Notarial Acts in Croatia

In Croatia, simplified enforcement proceedings adhere to relatively higher standards compared to some other jurisdictions. Notably, it is not required that the underlying contract explicitly contain a clause authorizing the notary to issue an enforcement writ.

According to Croatian law, a notary is authorized to issue such a writ even if the creditor simply presents a credible document proving the existence of the debt. In the event that the debtor disagrees with the issuance of the writ, they have the right to initiate legal proceedings by filing a lawsuit in court.

This system reflects a strong presumption of enforceability, where the burden shifts to the debtor to challenge the notarial act through the judiciary – thus allowing for efficient initial enforcement while preserving judicial recourse.⁴³

3.6. Enforcement of Notarial Acts in Hungary

Hungarian legislation imposes a monetary threshold on the notary's authority to issue enforcement writs. Specifically if the amount of the debt does not exceed 3 million Hungarian forints (approximately €9,500), the creditor may request a payment order directly from a notary. If the debt exceeds that amount but is less than 30 million forints (around €95,000), the creditor still has the option to seek enforcement from a notary but may also choose to go to court.

To obtain an enforcement writ, it is sufficient for the creditor to submit a simple application asserting the existence of the debt – without providing additional evidence. This mechanism closely resembles Georgia's simplified payment order procedure, where the debtor's silence is interpreted as consent unless they formally object.

If the respondent disputes the existence of the debt, a judicial proceeding is initiated, during which the creditor must substantiate the claim with proper evidence.

Furthermore, any enforcement writ issued by a notary must be communicated to the debtor, who retains the right to appeal the notary's decision. It is worth noting that Hungary has made significant

⁴³ <www.E-justice.europa.eu> procedures for enforcing a judgement – Croatia; <https://e-justice.europa.eu/content_procedures_for_enforcing_a_judgment-52-hr-en.do?member=1> [01.05.2025].

strides in digital procedures – disputes and appeals can be submitted electronically via a registered email address.⁴⁴

4. Enforcement of Notarial Acts Issued Abroad Within the Territory of Georgia

According to Article 51(a) of the Minsk Convention, Georgia also recognizes and enforces notarial acts issued by foreign notaries, provided the issuing country is also a signatory to the Convention. However, practical experience in this area is currently lacking in Georgia. Presumably, such acts would be recognized and enforced under the same procedures applicable to foreign court judgments.

Under Article 25 of the Law of Georgia on Enforcement Proceedings, the National Bureau of Enforcement initiates enforcement based on a creditor's written application and an enforceable document.⁴⁵ When dealing with documents issued in foreign jurisdictions, it is crucial for the legislator to define the precise procedures for their recognition and enforcement.

For instance, Article 68 of the Law of Georgia on Private International Law provides the procedural rules for enforcing foreign judgments. According to Paragraph 1, Georgia recognizes judicial decisions of foreign states that have entered into legal force.⁴⁶

Paragraph 2 specifies the circumstances under which recognition is denied. These include: a) If the matter falls under Georgia's exclusive jurisdiction; b) If the party was not properly notified or procedural rights were violated; c) If a conflicting decision exists from a Georgian or recognized third-country court; d) If the foreign court lacked jurisdiction under Georgian law; e) If the foreign state does not reciprocally recognize Georgian judgments; f) If there is a pending case in Georgia between the same parties on the same matter; g) If the foreign decision contradicts Georgia's fundamental legal principles.

The same law (Article 73¹) also addresses the recognition and enforcement of foreign arbitral awards, which are governed by the Law of Georgia on Arbitration.⁴⁷ This law states that arbitral decisions, regardless of where they were rendered, are binding and enforceable by the court upon written application, in accordance with the Law on Enforcement Proceedings.⁴⁸

According to Article 44 of the Law of Georgia on Arbitration, regardless of the country where the arbitration award was made, it shall be binding and, in the event of a written petition being filed with the court, shall be enforced in accordance with the provisions of this Article and Article 45 of this Law. For the purposes of this Article and Article 45 of this Law, the courts of appeal shall be deemed to be competent courts in relation to decisions made in Georgia, and the Supreme Court of Georgia shall be deemed to be competent courts in relation to decisions made outside Georgia.⁴⁹ In addition,

⁴⁴ Debt Collection in Europe, Christian Steden etc., European Law Firm, 2019, 35 <<https://www.european-law-firm.com/guide/debt-collection-in-europe07022019.pdf>> [01.05.2025].

⁴⁵ Paragraph 1 of Article 25 of the Law of Georgia “On Enforcement Proceedings”. (In Georgian)

⁴⁶ Paragraph 1 of Article 68 of the Law of Georgia “On Private International Law”.

⁴⁷ Article 73¹ of the Law of Georgia “On Private International Law”.

⁴⁸ Article 1, paragraph 1 of the Law of Georgia “On Arbitration”.

⁴⁹ Article 44, paragraph 1 of the Law of Georgia “On Arbitration”.

the Law of Georgia on Arbitration directly indicates that the enforcement of an arbitration award shall be carried out on the basis of a court ruling, in accordance with the Law of Georgia on Enforcement Proceedings.

Accordingly, while the legislator regulates in detail the rules for the recognition and enforcement of court decisions and arbitration awards made in the territory of a foreign country, the issue of the recognition and enforcement of a notarial act issued by a notary of a foreign country should also be regulated, since a notarial act is also a document that, like a court decision, can have legal consequences.

4.1. The Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (The Minsk Convention)

According to Article 51 of the Minsk Convention, each contracting party shall recognize and enforce decisions issued by judicial bodies of other contracting parties in civil and family matters, in accordance with the provisions of the Convention.

Article 53 of the Convention further stipulates that the application for enforcement of such a decision must be submitted to the competent court of the contracting state where enforcement is sought.

Importantly, the Minsk Convention does not concern itself narrowly with legal assistance alone⁵⁰. Rather, it also addresses matters of legal protection of citizens, and as such, its scope covers both procedural cooperation and substantive legal rights. The Convention is grounded in the principle of equality – ensuring that citizens of one contracting party enjoy the same rights of access to justice in another contracting party.⁵¹

According to Article 1, Paragraph 2 of the Convention, citizens of any contracting state, as well as residents within its territory, may freely apply to the courts, prosecution services, and other relevant institutions of another contracting state in civil, family, and criminal matters. They may initiate proceedings, file claims, and carry out other procedural actions under the same conditions as citizens of that state.

The Minsk Convention consists of three main categories of legal norms:⁵²

1. Substantive legal norms – addressing rights and obligations under civil and family law;
2. Procedural legal norms – governing the mechanisms of cooperation and enforcement;
3. Conflict-of-law norms – resolving jurisdictional and applicable law issues between states.⁵³

⁵⁰ Preamble to the Minsk Convention: "... to ensure that citizens of the Contracting Parties and persons residing in their territories are granted in all Contracting Parties the same legal protection in respect of personal and property rights as is granted to their own nationals, attaching great importance to the development of cooperation in the field of legal assistance by justice institutions in civil, family and criminal matters...".

⁵¹ "International Mutual Legal Assistance in Civil Matters" Practical Guide, Tbilisi, 2018.

⁵² "Международная правовая помощь по гражданским и уголовным делам: на примере стран СНГ" Евдокимовым-Михайленко, 2004, 43-49.

⁵³ Reference private international law norms.

4.2. Recognition and Enforcement of Acts Under the Minsk Convention

Article 53 of the Minsk Convention outlines the list of documents that must accompany a motion for recognition and enforcement of a decision issued in a foreign country. These include:

1. A formal petition, submitted by a competent authority or an individual/legal entity, addressed to the competent court of the requested state. The petition must clearly state the nature of the request.
2. The original decision or a certified copy thereof.
3. An official document – i.e., the enforcement writ – confirming that the decision has entered into legal force, including the date of entry, and that it is subject to enforcement. If the decision has not yet entered into force but is still enforceable, this must also be stated.
4. A certificate from the National Bureau of Enforcement of Georgia stating that the decision has not already been enforced in Georgia and that enforcement proceedings are not underway.
5. Documentation confirming that the party against whom enforcement is sought was either present during the original proceeding or was duly summoned and notified in accordance with procedural requirements.
6. If applicable, documentation of partial enforcement already completed.
7. Any agreement between the parties regarding submission of the dispute to the foreign court (prorogation of jurisdiction).

All petitions and accompanying documents must be submitted either in the official language of the requested state (in this case, Georgian), or in Russian, and must be duly certified.

4.3. Recognition and Enforcement of Enforcement Writs Issued by Foreign Notaries

Notarial acts issued by foreign notaries – particularly those concerning monetary obligations – fall within the scope of legally recognizable and enforceable documents under Article 51 of the Minsk Convention.⁵⁴

However, in each case, it must be individually assessed whether the foreign notarial act qualifies specifically as a notarial document “concerning a monetary obligation.” In such instances, it is important to review the act in the context of Article 38(5)⁵⁵ of the Law of Georgia on Notaries, which governs the requirements for enforceable notarial acts.

It is essential to determine whether the scope and content of the foreign notarial act align with the enforceability criteria under Georgian law. If the foreign notarial act fails to meet these requirements, it may still be enforceable under Article 72 of the Law⁵⁶ on Private International Law of

⁵⁴ “International Legal Assistance in Civil Matters” Practical Guide, Tbilisi, 2018.

⁵⁵ “A notary shall issue an enforcement order based on a demand for payment of a monetary debt, transfer of property rights, as well as a request for compulsory enforcement of pledged/mortgaged property, if there is an agreement between the parties and the notary shall explain in writing in the notarial act the legal consequences of issuing the enforcement order.”

⁵⁶ 1. The court shall enforce the settlements of the parties and public documents of a foreign country that are subject to enforcement upon petition in accordance with Articles 70 and 71 of this Law. 2. The petition may not be satisfied if enforcement contradicts the fundamental legal principles of Georgia.

Georgia – provided that the document is public in nature and legally equivalent to a domestic enforceable instrument.

In Georgia, documents issued not only by courts but also by civil jurisdiction bodies – such as arbitration panels and notaries – are subject to compulsory enforcement. This explains the functional importance of enforcement proceedings in Georgia's legal system, which primarily regulate the enforcement of decisions in civil cases.⁵⁷

As a result, enforcement law in Georgia may be referred to as “civil enforcement law.” An enforcement writ issued by a notary, in accordance with notarial legislation, is an enforcement document subject to compulsory execution.

A notable legislative gap in Georgia is the absence of clear procedures for the recognition and enforcement of enforcement writs issued by foreign notaries. Addressing this gap requires careful legal analysis, including examination of the practice established by the Supreme Court of Georgia.

4.4. Specific Features of Enforcing Foreign Notarial Acts in Georgia

When addressing the recognition and enforcement of legal documents issued in foreign jurisdictions, it is advisable for the legislator to precisely define the procedures required for the recognition and enforcement of each type of document. For example, Article 68 of the Law of Georgia on Private International Law provides the procedural rules for the enforcement of foreign judgments.⁵⁸

According to Paragraph 1 of Article 68, Georgia recognizes foreign court decisions that have entered into legal force. Paragraph 2 sets forth the grounds on which such recognition may be denied, including:

- a) The case falls under Georgia's exclusive jurisdiction;
- b) The party was not properly notified of the court proceedings in accordance with the legislation of the issuing state, or there were other procedural violations;
- c) A judgment has already been issued in Georgia or in a third country (recognized in Georgia) concerning the same dispute and the same parties;
- d) The court that rendered the decision is not deemed competent under Georgian legislation;
- e) The foreign state does not recognize judgments issued by Georgian courts;
- f) Proceedings between the same parties and on the same matter are currently pending in a Georgian court;
- g) The decision contradicts Georgia's fundamental legal principles.

This provision provides a detailed framework for determining when a foreign court judgment may be recognized and enforced in Georgia, and it also designates the Supreme Court of Georgia as the competent authority for granting such recognition and enforcement.

Similarly, Article 73¹ of the same law refers to the recognition and enforcement of arbitral awards rendered outside Georgia.⁵⁹ According to Article 1 of the Law of Georgia on Arbitration, this

⁵⁷ *Kurdadze Sh., Kurdadze G., Khunashvili N., Chkonia Z., Commentary on the Law of Georgia “On Enforcement Proceedings”, Part One, Tbilisi, 2018, 19* (In Georgian).

⁵⁸ Article 68, paragraph 1 of the Law of Georgia “On Private International Law” (In Georgian).

⁵⁹ Article 731 of the Law of Georgia “On Private International Law” (In Georgian).

law governs the establishment of arbitration institutions, arbitral proceedings, arbitral awards, and the procedure for the recognition and enforcement of foreign arbitral decisions.⁶⁰

Pursuant to Article 44 of the Law of Georgia on Arbitration, an arbitral award shall be binding and enforceable regardless of the country in which it was rendered. The award must be enforced by the court upon submission of a written application, in accordance with the provisions of Article 45 of the same law. For arbitral awards issued within Georgia, the competent authority is the relevant Court of Appeals; for foreign arbitral awards, the competent authority is the Supreme Court of Georgia.⁶¹

Furthermore, the Law on Arbitration explicitly states that enforcement of an arbitral award shall be carried out based on a court ruling, in accordance with the Law of Georgia on Enforcement Proceedings.

Given that the Georgian legislator has provided detailed regulation concerning the recognition and enforcement of both foreign court judgments and arbitral awards, it is imperative to similarly regulate the recognition and enforcement of notarial acts issued by foreign notaries. A notarial act, like a court judgment, is a legal document that may produce binding legal consequences. The absence of enforcement mechanisms for such acts represents a significant gap in Georgia's legal theory and practice. This challenge served as one of the primary motivations behind the creation of this doctoral seminar.

4.5. Court Practice

Rajesh Wadhwa v. Dr. Sushma Govil, AIR 1989 Delhi⁶². According to the ruling in this case, the Delhi High Court held that even in the absence of a mutual treaty or bilateral agreement between India and another country, courts may nonetheless recognize and enforce notarial acts issued by foreign notaries. The Court emphasized that it is not possible for Section 14 of the Notaries Act to have no bearing whatsoever on the interpretation of Section 85 of the Indian Evidence Act.

The relevant portion of the Court's reasoning is as follows:

"The Court also examined the provisions of Section 14 of the Notaries Act and initially inquired whether there was any recognized reciprocity between India and the United States regarding the validity of notarial acts. It found that India does, in fact, recognize and give legal effect to notarial acts issued by foreign notaries. Therefore, such documents are admissible and legally valid in India."

Furthermore, the Court recommended that it was time for the Central Government to issue appropriate notifications under Section 14 of the Notaries Act. It also referred to Section 3 of the Diplomatic and Consular Officers (Oaths and Fees) Act of 1948, which provides the legal basis for performing notarial and oath-related acts abroad. The relevant section reads as follows:⁶³

"Powers in relation to notarial acts abroad. (1) Any diplomatic or consular officer shall have the authority, in any foreign country or place where they are stationed, to perform any notarial act required to be performed within the territory of a foreign state."

⁶⁰ Article 1, paragraph 1 of the Law of Georgia "On Arbitration".

⁶¹ Paragraph 1 of Article 44 of the Law of Georgia "On Arbitration".

⁶² Case No. S.A.O No. 378/87 & S.A.O No. 379/87.

⁶³ Diplomatic and Consular Officers (Oaths and Fees) Act, 1948.

This case demonstrates the judiciary's openness to the cross-border recognition of notarial acts and emphasizes the practical application of statutory provisions to give such documents evidentiary and legal force, even in the absence of formal international agreements.

5. Conclusion

The analysis of the study shows that in Georgia, the recognition and enforcement of enforcement acts issued by notaries are adequately regulated on the basis of the Minsk Convention. However, the recognition and enforcement of acts issued by foreign notaries face significant practical challenges.

The examination of international experience – including examples from Spain, Germany, the Netherlands, and other countries – revealed the need for corresponding legislative amendments. It is essential to introduce mechanisms that ensure the enforcement of foreign notarial acts in accordance with the legal principles of Georgia.

The research presents recommendations that include the adaptation of best international practices, the establishment of clear criteria for recognizing foreign notarial acts, and their comprehensive integration into the Georgian legal system. These steps will contribute to the improvement of legal processes and the strengthening of the notarial institution.

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