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The Impact of the Limitation of Contractual Claim on the Stability of Civil Circulation

The Institute of limitation represents a kind of framework, violation of which is related to a specific legal consequence. It has a positive impact on the protection of the rights of parties and the stability of civil circulation. Therefore, this institution is of great importance.

The analysis of influence of the limitation on stability of civil circulation shows that the main problem is related to the difficulties associated with determining a reasonable time for successful realization of limitation goals. An inadequately short or long limitation period can neglect the interest of stability of civil circulation, as well as the interest of determining a reasonable balance between the parties. Therefore, the deep analysis of the essence and goals of limitation is necessary.

Key words: *Limitation, stability of civil circulation, interest of the debtor, interest of the creditor, public interest, legal security, restriction, reasonable, goal.*

1. Introduction

The law and order of almost every country envisages the institute of limitation. Its existence is conditioned proceeding from the need for equal protection of equality and the interests of the parties of the agreement. Existence of reasonable claim limitation periods is a necessary prerequisite for realization of rights. That is why the importance of this institution in the modern society is great.

In general, time plays a major role in case of protection of violated rights or the rights that became disputed.¹ Some legal relationships between the parties may arise so long ago that it can influence the rights and duties of the parties.² Generation of right, as well as its termination is related to a specified time; consequently, the limitation period informs the subject of law about the term of implementation of its violated right through the court.³ The limitation bears the importance to the extent that some relationship took place so long ago that passing of a long period of time directly affects the rights of persons.⁴

The institution of limitation violates the principle of stability and continuity based on a contractual trust that is characteristic of a private legal relationship;⁵ however, the above mentioned has its justification. After some time, the requirement of legal stability is more worthy of protection.⁶

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¹ *Liluashvili T.*, Civil Procedure Law, 2nd ed., Tbilisi, 2005, 133 (in Georgian).

² *Akhvlediani Z.* in: *Chanturia L.* (ed.), *Akhvlediani Z., Zoidze B., Jorbenadze S., Ninidze T.*, Comment of the Civil Code of Georgia, Book I, Tbilisi, 1999, 316 (in Georgian).

³ *Zoidze B.*, From the History of Creation of the Georgian Civil Code, "Georgian Law Review", №6/2003-1, 2003, 110 (in Georgian).

⁴ *Akhvlediani Z.* in: Comment of the Civil Code of Georgia, Book I, *Chanturia L.* (ed.), *Akhvlediani Z., Zoidze B., Jorbenadze S., Ninidze T.*, Comment of the Civil Code of Georgia, Tbilisi, 1999, 316 (in Georgian).

⁵ *Bucher E.*, Schweizerisches Obligationenrecht, Allgemeiner Teil ohne Deliktsrecht, 2. Aufl., Zürich, 1988, 444.

Proceeding from the practical significance of the institute of limitation, it is necessary to define in detail, what is the impact of the limitation of contractual claim on the stability of civil circulation, in addition, does the mentioned institute cause unreasonable restriction of interests of the parties, which, from its part, is incompatible with the principle of contractual liberty.

2. The Concept of Limitation of Action and its Impact on the Stability of Civil Circulation

The institution of limitation is derived from Roman law. The sources of Roman law do not provide the definition of concept of limitation; therefore, the general indication about it is not available. In the Roman law, the word “praescriptio” expressed the certain period of time, during which the specific action had to be implemented or vice versa.⁷ In addition, there were different views regarding its legal essence. The lawmakers put the question, whether the limitation opposed the natural law. The answer to this question was negative, as, on the one hand, the limitation was considered as the negligence sanction, and on the other hand, the legal proceedings through the limitation, and, accordingly, the dispute would end, that anyway, corresponded to the doctrine of natural law.⁸

In Middle Ages the limitation, due to its nature, was considered as the sanction for negligent creditor, later it was qualified not as the sanction but as assumption, that the party, by its contracting bargains, denied the right. The mentioned aspect of the will of parties later became the basis for the pandectists.⁹

Tribaut, who fully recognized the abstract concept of limitation, was the most important among the scientists. Proceeding from the natural law he propagated the limitation, in general, to all the rights and required to justify the use of all cases in accordance with the positive law.¹⁰

In 1841, Savini evaluated the limitation as a very important and so-called "well-wisher" institute, and in 1975 the monograph of Spiro, which considered the limitation as indispensable in the state having developed legal system, was published.¹¹

The institute of limitation can be found in the Civil Law Code of SSR. It is also regulated under the current Civil Code of Georgia (hereinafter the CCG), which was adopted on 25 November, 1997. The term - "limitation" is of Georgian origin.¹²

The norms regulating the limitation institute are also found in the German Civil Code (hereinafter referred to as the GCC). The general part of the GCC includes the norms on the limitation that are applied to other legal relationships. The mentioned approach is dictated by Pandect Law.¹³

⁶ *Schmidt-Kessel M.*, Ein einheitliches europäisches Kaufrecht? Eine Analyse des Vorschlags der Kommission, München, 2012, 529.

⁷ *Engelmann J.*, Dissertation, Die Verjährung nach russischem Privatrecht, 1867, 3.

⁸ *Pichonnaz P.*, Ursprung und Begründung in historischer Sicht, Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Romanistische Abteilung, 2015, 521.

⁹ Ibid.

¹⁰ *Engelmann J.*, Dissertation, Die Verjährung nach russischem Privatrecht, Dorpat, 1867, 3.

¹¹ *Guckelberger A.*, Die Verjährung im Öffentlichen Recht, Tübingen, 2004, 1.

¹² *Lomidze V.*, Limitation (term for the issue), the ollection Dedicated to Prof. G. Nadareishvili's Memory: Historical Essays of Law and Political Thinking, Book I, Tbilisi, 2010, 370 (in Georgian).

The regulation on limitation is given in the chapter of law of obligation in the French Civil Code, however, there are different regulations as well; in particular, there are separate acts on limitation in England and Denmark. One of the most noticeable sign of such regulation is a comprehensive regulation.¹⁴

It should be noted that English law is not familiar with the limitation of the action. This is the right based on the law.¹⁵ There in the Limitation Act of 1980 in England that indicates the number of laws. In addition, the above-mentioned Act keeps the special limitation terms, established by other legal acts, unchanged.¹⁶

In general, the limitation period implies the period of time during which the person is given a legal opportunity to protect his/her rights and interests.¹⁷ By determining the limitation of action, the person whose rights were violated, has an opportunity to protect the right in a certain period of time, and the expiration of this period causes the limitation of a claim.¹⁸

2.1. Consider the Interest of the Debtor in the Context of Limitation of Action

When assessing the issue of limitation of action the motives that were the main factor for law-maker in determining the norms regulating the limitation, are important. The public and private interests should be differentiated from each other. It is not unambiguously decided yet whether the institute of limitation more serves to protection of public or private interests.¹⁹

One of the objectives of determining the limitation of action is to protect the debtor.²⁰ The more time passes, the more difficult it is to determine whether the agreed equivalent was available in the relevant period of time, and less likely that the counter party requests fulfillment of claims due to violation of the equivalence.²¹ The interest worthy of protection of the debtor and creditor is equally important, and as far as the interest of one party of the contract diminishes, the interest increases with the

¹³ *Mann M., Hervier M., Sychold M., Gutachten zum Recht der Verjährung in Deutschland, Frankreich, England und Dänemark, Lausanne, 2011, 10.*

¹⁴ *Ibid.*

¹⁵ *Ibid.*

¹⁶ Limitation Act, see, <<https://www.legislation.gov.uk/ukpga/1980/58>>, [27.03.2019].

¹⁷ Decree No.as-1089-2018 of 24 December, 2018 of the Chamber of Civil Cases of the Supreme Court of Georgia.

¹⁸ *Kvantaliani N., Comment of the Civil Code of Georgia, Book I, Tbilisi, 2017, Article 128, field number 2 (in Georgian).*

¹⁹ *Kepplinger J., Zur vertraglichen Verlängerung der kurzen Verjährungsfrist von Schadenersatzansprüchen, Juristische Blätter, Heft 3, 2012, 161.*

²⁰ *Kvantaliani N., Comment of the Civil Code of Georgia, Book I, Tbilisi, 2017, Article 128, field number 3 (in Georgian).*

²¹ *Schmidt-Kessel M., Ein einheitliches europäisches Kaufrecht? Eine Analyse des Vorschlags der Kommission, München, 2012, 529.*

same proportion for other party of the contract, which had to have the belief after certain period of time that the claim would no longer be submitted to the party.²²

First of all, the private interest protects the debtor from execution of unexpected, substantially delayed claims for an indefinite period. The debtor shall be well informed in the issue, whether he/she still has to fulfill the obligation or he/she can otherwise use the ordered subject.²³

The institute of limitation of action also serves the protection of interests of the debtor in terms of obtaining the evidences.²⁴ In legal relations the elapse of time is constantly associated with complication of burden of evidence. It is possible that the evidences can be lost or destroyed, the memories become vague, material evidences may no longer exist. After a long period of time, the witnesses, who can provide the evidences significant for the case, may no longer be available.²⁵ Consequently, it can become complicated for the debtor to prove the specific fact, the burden of proof he/she is bearing.

The debtor must be protected from the damage, conditioned by the time elapse in case of protection from unsubstantiated claim. In cases when the debtor has no more proof, keeping of which has been presumable within the specified limits even for him/her, probably he/she cannot protect his/her own interests. The institute of limitation on contractual claims serves the protection of the debtor from the mentioned case.²⁶

The above purpose of protection of the debtor's interests is especially important, when the debtor is not familiar with the facts proving the claim or does not expect the exercising of the right to him/her and, therefore, does not have any basis for protection of the proof.²⁷

The purpose of the limitation on contractual claims is to protect the interests of the party "from becoming a part of the process, in which the protection of position is difficult or impossible due to the limitation of a claim".²⁸ The economic relations of the debtor that may be deteriorated after passing of long time are protected by the limitation.²⁹

²² Ibid.

²³ *Sebastian B.*, Aktuelle Probleme des Verjährungsrechts, Juristische Ausbildung, 31. Jahrgang, Heft 7/2009, 2009, 481.

²⁴ *Derleder P., Meyer T.*, Die Verjährung zivilrechtlicher Ansprüche – Schuldrechtsmodernisierung zwischen Verbraucherschutz und Turbokapitalismus, Kritische Justiz, Nr. 3, 35 Jahrgang, 2002, 326.

²⁵ *Akhvlediani Z.* in: *Chanturia L.* (ed.), *Akhvlediani Z., Zoidze B., Jorbenadze S., Ninidze T.*, Comment of the Civil Code of Georgia, Book I, Tbilisi, 1999, 316 (in Georgian); *Guckelberger A.*, Die Verjährung im Öffentlichen Recht, Tübingen, 2004, 74; *Dohse R.*, Die Verjährung, 11. Auflage, München, 2010, 22; *Seidl E.*, Die Verjährung als sozialer Behelf im Rechtsbuch von Hermopolis, Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Romanistische Abteilung, 1974, 361.

²⁶ *Koller A.*, Schweizerisches Obligationenrecht: Handbuch des allgemeinen Schuldrechts ohne Deliktsrecht, 3. Aufl., Bern, 2009, §67, Rn. 6

²⁷ Ibid.

²⁸ Decision No.as-898-860-2014 of 9 October 2015 of the Chamber of Civil Cases of the Supreme Court of Georgia.

²⁹ *Klose M.*, Vindikationsverjährung: Gewogen für verfassungswidrig befunden! Rewiss, Heft 2, 2014, 242.

The limitation on contractual claims protects the debtor in case when the latter knows that the creditor's claim is materially grounded.³⁰ The good or bad will of a person based on limitation is essentially negligible. The justification of the above-mentioned fact is that the limitation is based on inactivity of an authorized person, due to which the subjective representation of a liable person is less important for this institution.³¹

At the same time, it is noteworthy that the debtor is not obliged to be ready for fulfillment of obligations for a long period of time; if the debtor has constantly ready economic means in order to meet the creditor's claim, this results in inappropriate restricting his/her economic freedom³² as well as dispositional freedom.³³ Those who are willing to intelligently implement economic activities should organize their own work in a manner not to use own limited means to satisfy the claims, which he/she does not expect to realize any more.³⁴

Spiro refers to the purposes of limitation that the debtor does not seriously assume to implement the right against it, after the time elapse. Therefore, it is less likely to raise a claim to him. In addition, the debtor, in any case, shall not feel morally obliged to do more than he/she promised and the law requires it; in particular, fulfill the obligation and sacrifice a life even when an authorized person no longer requires fulfilling the obligation.³⁵

The limitation institute protects the debtor not only from the fact that with time elapse possibility of proof may complicate, but also from the damage that could be caused for the debtor by the elapse of long time even when the burden of proof does not exist and the creditor's claim is justified, if the debtor has confidence for the fact that the creditor will no longer fulfill the claims against him/her.³⁶

Protection of debtor's interests on the basis of limitation is the priority in some cases even towards the creditor's interests. This is fully reasonable only in case if the creditor has enough time to exercise the right. In other cases, proceeding from the interests of protection of debtor, refusal to satisfy a claim will be inappropriate towards the creditor as well as principle of justice existing in civil circulation.

³⁰ *Koller A.*, Schweizerisches Obligationenrecht: Handbuch des allgemeinen Schuldrechts ohne Deliktsrecht, 3. Aufl., Bern, 2009, §67, Rn. 6.

³¹ *Guckelberger A.*, Die Verjährung im Öffentlichen Recht, Tübingen, 2004, 74.

³² *Liebel F.*, Die Verjährung von Schadenersatzansprüchen bei Vorliegen mehrerer Aufklärungspflichtverletzungen, ÖBA, 6/17, 404.

³³ *Guckelberger A.*, Die Verjährung im Öffentlichen Recht, Tübingen, 2004, 74.

³⁴ *Bergmann A.*, Der Verfall des Eigentums: Ersitzung und Verjährung der Vindikation am Beispiel von Raubkunst und Entarteter Kunst, Tübingen, 2015, 37.

³⁵ Ibid.

³⁶ *Dohse R.*, Die Verjährung, 11. Aufl., Stuttgart, 2010, 22.

2.2. Consider the Interest of the Creditor in the Context of the Limitation of Action

In addition to the debtor's interests, the institute of limitation of action serves the protection of creditor's interests. For the creditor the limitation causes not only own expectation but the expectation conditioned by the interest of clear legal relationship, to fulfill the claims in reasonable time and not to defer the dispute on request.³⁷

The creditor should have sufficient opportunity to fulfill own demands. The existence of the limitation period actually represents the guarantee to exercise the right. By the limitation period the creditor can protect the right proceeding from the topicality of protection of right and real possibility of submitting the relevant evidences.³⁸

In general, the institute of limitation does not infringe the creditor's interests. Within the limits of the limitation period, the creditor has the possibility to actually realize the existence of the claim, to examine the authority, to collect the evidences and to initiate execution of claims through the court.³⁹ However, in a separate case, the creditor does not have the opportunity to ensure the exercising of right before the expiration of the limitation period.⁴⁰

It should be shared the position that if the subject of the right is hindered to fulfil the claim or the subject of the right does not have the basis to exercise the right, the limitation loses its justification.⁴¹ The limitation should be compatible with the creditor's possibility to demand to fulfill the obligation.⁴² Accordingly, if the creditor does not have enough ability to fulfill the demand or the knowledge related to violation of rights, this results in inappropriate infringement of his/her rights.

2.3. The Limitation Conditioned by the Public Interest

The monograph of Spiro with regard to the legitimization of limitation, published in 1975, is important; here Spiro indicated that only the interest, worthy of debtor's protection, is not enough for legitimization of institute of limitation of action. It should also be clearly substantiated, why the legal damage, which inflicts the creditor by using a limitation, can be justified.⁴³

³⁷ *Thouvenin F., Purtschert T.*, Schweizer Obligationenrecht 2020, Entwurf für einen neuen allgemeinen Teil, Zürich, 2013, Rn. 1.

³⁸ Decree No.as-868-814-2012 of 19 July, 2012 of the Chamber of Civil Cases of the Supreme Court of Georgia.

³⁹ *Dohse R.*, Die Verjährung, 11. Aufl., Stuttgart, 2010, 21.

⁴⁰ *Medicus D.*, Allgemeiner Teil des BGB, 10. Aufl., München, 2010, Rn. 105.

⁴¹ *Habscheid W.*, Die Begrenzung privater Rechte durch Verjährungs-, Verwirkungs- und Fatalefristen, Band I: Die Verjährung der Forderungen, Band II: Andere Befristungen und Rechte by Karl Spiro, Archiv für die civilistische Praxis, 1978, 335.

⁴² *Pichonnaz P.*, Ursprung und Begründung in historischer Sicht, Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Romanistische Abteilung, 2015, 525.

⁴³ *Dannemann G., Karatzenis F., Thomas G.*, Reform des Verjährungsrechts aus rechtsvergleichender Sicht - Hans Stoll zum 65. Geburtstag, Rabels Zeitschrift für ausländisches und internationales Privatrecht/The Rabel Journal of Comparative and International Private Law, 55. Jahrgang, Heft 1, 1991, 699.

The fact is undisputed that rights are subject to change not only in certain time, but exactly in terms of time, which may weaken or even stop it.⁴⁴ The limitation is based on the fact that the creditors' long-term inactivity causes the groundlessness of claim and this may be perceived as a refusal to satisfy a claim.⁴⁵

Many private-legal norms and institutions that are recognized cannot be justified only by bilateral relationship. In addition, the social position should be taken into consideration.⁴⁶

Proceeding from the relationship of creditor and debtor refutation of the right based on the limitation is unreasonable; more global legal stability and rationality aim should be achieved.⁴⁷

By establishing the period of limitation of action, the purpose of lawmaker is to avoid the risk of unequal use or misuse of the right by the creditor. Establishing of the period of limitation of action also supports: the process of determining and studying of facts by the court, accordingly, making the reasoned decision; stabilization of civil circulation; strengthening of the mutual control of subjects of civil legal relationship and stimulating immediate restoration of the violated rights.⁴⁸

Limitation of action ensures the stability of legal circulation and legal security,⁴⁹ protects the potential defendant and ensures avoidance of injustice⁵⁰ that may arise if the courts have to settle the past cases based on unreliable or incomplete evidences.⁵¹

The evidences, changed or destroyed due to elapse of long time, in general, will complicate the determining of reliability of the evidence that became disputable.⁵²

The law provides for the institute of limitation of action, first of all, proceeding from the necessity of protection of public interest. In terms of legal stability and legal peace, the legal interest re-

⁴⁴ *Frank P.*, Befristung, Verjährung, Verschweigung und Verwirkung, Archiv für die civilistische Praxis, Band 206, Heft 6, 2006, 980.

⁴⁵ BGE 90 II 428.

⁴⁶ *Medicus D.*, System und Prinzipien des Privatrechts by Franz Bydlinski, Archiv für die civilistische Praxis, 1997, 317.

⁴⁷ Ibid.

⁴⁸ The Recommendations of the Supreme Court of Georgia on the problematic issues of Civil Law court practice, Tbilisi, 2007, 63; Decision No.as-547-515-2012 of 11 June, 2012 of the Chamber of Civil Cases of the Supreme Court of Georgia.

⁴⁹ *Bucher E.*, Schweizerisches Obligationenrecht, Allgemeiner Teil ohne Deliktsrecht, 2. Aufl., Zürich, 1988, 444.

⁵⁰ *Habscheid W.*, Die Begrenzung privater Rechte durch Verjährungs-, Verwirkungs- und Fatafristen. Band I: Die Verjährung der Forderungen. Band II: Andere Befristungen und Rechte by Karl Spiro, Archiv für die civilistische Praxis, 1978, 335.

⁵¹ Agentur der Europäischen Union für Grundrechte und Europarat, Handbuch zu den europarechtlichen Grundlagen des Zugangs zur Justiz, Luxemburg, 2016, 144.

⁵² Decree No.as-313-313-2018 of 20 April, 2018 of the Chamber of Civil Cases of the Supreme Court of Georgia.

quires that the claims that have not been fulfilled within the certain limits will not be the subject of realization.⁵³ Its goal is to arrange the interminable claims into a certain system.⁵⁴

The limitation period represents one of the effective guarantees of proper solution to the case. In particular, the decision is based on the evidences submitted by the parties; therefore, the possibility of truly defining of authenticity for the case of evidences is an essential precondition for making the sound and objective decision. After a long time elapse there is a high probability that memory of witnesses will turn pale, number of unreliable evidences will be increased, consequently, biased assessment of factual situation of the case can take place.⁵⁵

It's true, the limitation should serve the completion of uncertainty of existence and execution of the claim;⁵⁶ however, it is important, defining of what terms will be the effective mean for achieving this goal.

The public interest is different in legal security. The short limitation periods may bear the purpose of settling early conflict⁵⁷ and may serve prompt occurrence of legal peace,⁵⁸ however, it is possible that short limitation period may create the problems to the legal security, in case if injustice, caused as a result of establishing of short limitation period, goes beyond the certain boundaries. At this time the interest of the public can be changed; also, it can be required that individuals, despite elapse of long period of time, can satisfy the claim,⁵⁹ although long limitation periods can hinder the settlement of late conflict, based on complicated submission of evidences.⁶⁰

It is noteworthy that in separate cases the term for submission of a claim can be expired due to a defect, when the creditor learns about the defect of the object. In such case, refutation of the creditor's claim based on the limitation will evidently cause unfair result, and the institute of limitation of action will create the acute conflict, instead of a legal security tool. The situation can be improved only in the way that the limitation period should start when the creditor can truly exercise the right. In this case the limitation on contractual claims can be understood not as a result of the expression of a small interest, but as a transition of a risk.⁶¹

⁵³ *Boemke B., Ulrici B.*, BGB Allgemeiner Teil, Berlin, Heidelberg 2009, Rn. 16; *Gukelberger A.*, Die Verjährung im Öffentlichen Recht, Tübingen, 2004, 72; *Schmidt-Räntsch J.* in: Erman BGB Kommentar, 11 Auflage, Band I, Hamburg, 2004, §194, Rn. 2.

⁵⁴ Decision No.as-17-14-2015 of 1 July 2015 of the Chamber of Civil Cases of the Supreme Court of Georgia.

⁵⁵ Decision No.3/1/531 of 5 November, 2013 of Plenum of the Constitutional Court of Georgia – “Tamaz Janashvili, Nana Janashvili and Irma Janashvili versus the Parliament of Georgia”.

⁵⁶ *Meller-Hannich C.*, Die Einrede der Verjährung, JuristenZeitung, 60. Jahrgang, Heft 13, 2005, 658.

⁵⁷ *Derleder P., Meyer T.*, Die Verjährung zivilrechtlicher Ansprüche – Schuldrechtsmodernisierung zwischen Verbraucherschutz und Turbokapitalismus, Kritische Justiz, Nr. 3, 35 Jahrgang, 2002, 327.

⁵⁸ *Greiner S.*, Schuldrecht Besonderer Teil, Vertragliche Schuldverhältnisse, Berlin, Heidelberg, 2011, 130.

⁵⁹ *Bergmann A.*, Der Verfall des Eigentums: Ersitzung und Verjährung der Vindikation am Beispiel von Raubkunst und Entarteter Kunst, Tübingen, 2015, 36.

⁶⁰ *Derleder P., Meyer T.*, Die Verjährung zivilrechtlicher Ansprüche – Schuldrechtsmodernisierung zwischen Verbraucherschutz und Turbokapitalismus, Kritische Justiz, Nr. 3, 35 Jahrgang, 2002, 327.

⁶¹ *Medicus D.*, Allgemeiner Teil des BGB, 10. Aufl., München, 2010, Rn. 105.

When determining the limitation institute, the public interest towards the effective use of state resources is in place,⁶² including the interest of unloading of the court⁶³ from ungrounded claims.⁶⁴ In addition, there is an assumption that short terms of limitation helps to disburden the court through rigid manner.⁶⁵

Determining of small limitation ensures cost saving, in particular, by complication of obtaining of evidences the process may be extended, and even the amount of court costs related to the judicial proceedings can be increased, which may lead to an obvious inconsistency between the expenses incurred by the party for making a decision and the results.⁶⁶

Taking into consideration the indication of applying to the court today, when the workload of common courts is constantly increasing particularly in relation to civil-legal disputes, an indicated interest of limitation of action is noteworthy.

The institute of limitation also serves the strengthening of contractual discipline and helps the participants of legal relationship in effective implementation of their rights and obligations.⁶⁷

The limitation of action places high priority on the power of time, which, in turn, gives the mitigating result. According to a separate opinion the lawmaker, stability of relationship and clarity of legal relationship provided by establishing the period of limitation of action, is considered the most significant than exercising of old right.⁶⁸

Equal protection of interests of participants of circulation, based on limitation grounds, is ensured by the legislative stipulation that the participants of legal relationship are obliged to exercise their rights and obligations in good faith.⁶⁹ Proceeding from the above, while establishing the specific legislative regulation the interests of the debtor as well as the creditor have to be taken into consideration. Duration of limitation period shall be obvious and unambiguously approved⁷⁰ and it shall ensure defining of reasonable balance between the interests of parties.

In addition, it is noteworthy that despite granting such a great importance to the interest of stability of civil circulation, the separate provisions established by the CCG explicitly neglect the given

⁶² *Pichonnaz P.*, Ursprung und Begründung in historischer Sicht, Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Romanistische Abteilung, 2015, 521.

⁶³ *Thouvenin F., Purtschert T.*, Schweizer Obligationenrecht 2020, Entwurf für einen neuen allgemeinen Teil, Zürich, 2013, Rn. 2.

⁶⁴ *Friehe T., Schulz M., Zimmer D.*, Gutachten zur Revision des Schweizer Verjährungsrechts aus rechtsökonomischer Perspektive - Eine Regulierungsfolgenabschätzung, Bonn, 2013, 19.

⁶⁵ *Derleder P., Meyer T.*, Die Verjährung zivilrechtlicher Ansprüche – Schuldrechtsmodernisierung zwischen Verbraucherschutz und Turbokapitalismus, Kritische Justiz, Nr. 3, 35 Jahrgang, 2002, 327.

⁶⁶ *Friehe T., Schulz M., Zimmer D.*, Gutachten zur Revision des Schweizer Verjährungsrechts aus rechtsökonomischer Perspektive - Eine Regulierungsfolgenabschätzung, Bonn, 2013, 18.

⁶⁷ Decision No.as-266-254-2013 of 25 December, 2013 of the Chamber of Civil Cases of the Supreme Court of Georgia.

⁶⁸ *Guckelberger A.*, Die Verjährung im Öffentlichen Recht, Tübingen, 2004, 73.

⁶⁹ Decree No.as-609-582-2016 of 13 October, 2016 of the Chamber of Civil Cases of the Supreme Court of Georgia.

⁷⁰ *Meller-Hannich C.*, Die Einrede der Verjährung, JuristenZeitung, 60. Jahrgang, Heft 13, 2005, 658.

goal of limitation. A similar approach of the lawmaker generates the possibility of assumption that by establishing the limitation the lawmaker made more effort on legal stability to protect the debtor's rather than creditor's interests, however, in some cases, this situation changes in favor of the creditor.

3. The Main Peculiarities of Limiting the Right of Fair Court through Limitation of Action

When discussing the institute of limitation of action, it's necessary to provide the assessment in terms of its compliance with the constitutional-legal principles. There is no doubt that with expiry of limitation period, the creditor is deprived of the opportunity to carry out the forced execution of his/her claim.⁷¹ Since the most important guarantee of full use of this or that right exactly represents the opportunity of its protection in the court, and if there is no possibility to prevent a violation of the right or restore the violated right, enjoying of right can be called into question. Accordingly, prohibition of reference to the court or disproportionate restriction for protection of tight-freedom is incompatible not only with right of a fair trial but, at the same time, contains the threat of neglecting of right for protection of which the reference to the court is restricted.⁷²

It should be noted that the right of fair trial is of instrumental nature; its purpose is to ensure an opportunity of adequate and effective protection of human's rights and legitimate interests through the court. Accordingly, the realization of the right of a fair trial requires the existence of a specific right, the protection of which is related to the possibility of reference to the court.⁷³ The right of a fair trial has a special importance in a modern democratic and legal state; it is not absolute and it is subject to restriction that will be justified by legitimate public interest“.⁷⁴

The European Court of Human Rights indicates the legitimate aim of determining the limitation period, in particular, the court clarifies that the limitation "serves several important aims, namely, legal certainty and finality, protection of potential defenders from old claims, protection from which may become difficult, also, avoiding the injustice that may arise if the courts are forced to settle the cases that have occurred in the distant past and are based on the evidences that may be unreliable or incomplete because of time elapse“.⁷⁵

It is indisputable that limitation really serves the realization of the above-mentioned goals, which is determined under the European Court of Human Rights, as well as the practice of the Constitutional

⁷¹ Decree No.as-1267-1398-04 of 4 March, 2005 of the Chamber of Civil Cases of the Supreme Court of Georgia.

⁷² Decision No.1/466 of 28 June, 2010 of Plenum of the Constitutional Court of Georgia – “the Public Defender (Ombudsman) of Georgia versus the Parliament of Georgia”.

⁷³ Decree No.1/2/440 of 4 April, 2008 of the Constitutional Court of Georgia – “the citizen of Georgia Anatoly Kozlovsky versus the Parliament of Georgia”.

⁷⁴ Decision No.1/466 of 28 June, 2010 of Plenum of the Constitutional Court of Georgia – “the Public Defender (Ombudsman) of Georgia versus the Parliament of Georgia”.

⁷⁵ *Stubbings and Others v. The United Kingdom*, [1996], ECHR, 15.

Court of Georgia; however, in order to the limitation periods comply with the Law of European Council, it should bear the legitimate aim and should represent the proportional mean of achieving the goal.⁷⁶

Under the existence of a legitimate goal it is necessary to evaluate the separate norm in accordance with the principle of proportionality. In line with principle of proportionality “the right restricting legal regulation shall represent the useful and necessary mean for achieving of valuable public (legitimate) goal. At the same time, intensity of restriction of right should be proportionate to the public goal to be achieved. It is inadmissible to achieve a legitimate aim at the expense of increased restriction of human rights.”⁷⁷

The control of expediency and compliance of the institute of limitation of action is achieved definitely in terms of compliance with its principle of proportionality.

Generally, the assessment of the constitutionality of the institute of limitation of action should be made proceeding from the objective possibility of the reasonableness of established terms and satisfaction of claim. The term established for execution of a legal action must be reasonable and, usually, should serve the general legal protection or the protection from injustice generated from early demand.⁷⁸

“On the one hand, the legislator shall not establish an unjustifiably long term, following which the possibility that any deal can become disputable and even the conscientious contractor may be unable to protect itself, is created. On the other hand, it should not be unreasonable, obviously small, should not exclude the possibility of protecting the legitimate interests of the interested person.”⁷⁹

Proceeding from the mentioned discussion, any term established by the legislator shall be reasonable and bilateral interests of the parties shall be taken into consideration. The term established by the legislation, which is inappropriately short or unjustifiably long, can be considered as incompatible with the Constitution, on the grounds of inconsideration of protection of reasonable balance between the interests of the parties. If unreasonable term is established then the law cannot ensure real protection of a person's right and it will be only fictitious.⁸⁰

Assessment of the issue of reasonableness of limitation periods should be made individually. When establishing the separate terms of limitation, the legislator must take into consideration the real possibility of submission of a claim by the creditor. If the creditor fails to submit the claim because he/she did not have the information due to the basis of claim submission, this should not cause an im-

⁷⁶ Agentur der Europäischen Union für Grundrechte und Europarat, Handbuch zu den europarechtlichen Grundlagen des Zugangs zur Justiz, Luxemburg, 2016, 143.

⁷⁷ Decision No.3/1/512 of 26 June, 2012 of the Constitutional Court of Georgia – „Danish citizen Heike Cronqvist versus the Parliament of Georgia”.

⁷⁸ Agentur der Europäischen Union für Grundrechte und Europarat, Handbuch zu den europarechtlichen Grundlagen des Zugangs zur Justiz, Luxemburg, 2016, 133.

⁷⁹ Decision No.1/1/543 of 29 January, 2014 of Constitutional Court of Georgia – “Metalinvest Ltd” versus the Parliament of Georgia”.

⁸⁰ *Kokhreidze L.*, Problems of the Definition of Some Civil-Legal Norms in Resolution of Disputes Related to the Heritage; Justice and Law, №2(41)'14, 2014, 15.

possibility of satisfaction of the claim, based on the limitation.⁸¹ In order to the person can enjoy a right of granting of annulment of the decision, he/she shall have an opportunity to have information on availability of decision, related to his/her rights and interests. Restriction of the right of reference to the court with the period of limitation of action will be the proportional mean of achieving a legitimate aim if the person has enough time and opportunity to exercise the right.⁸²

According to the Constitutional Court the situation changes when the public interest conflicts with the possibility of protection of the right of private individuals, for example, when the violation of the rights of the interested parties is caused by illegal/guilty conduct of the state (state bodies/officials) and/or other persons (witness, expert, party or its representative). The crucial aspect of legal security is to ensure the ability of compensation for damages caused by violation of the law by the state. The legal state recognizes a human not only as the main value, but also provides full and efficient exercising of basic rights, since, in the legal state, the state represents only the possibility of realization of rights. “It is true that by restriction of claim limitation period the legitimate aims are maintained, but these objectives are qualitatively modified towards the state as they are not related to the threat of violation of the rights of specific private individuals. The state, which itself should be a guarantor of legal security, does not have the expectation of satisfaction of this interest (legal security) from another party that distinguishes it from private individuals. “⁸³

Since during participation of the state the opposing interests are different, therefore, the approach must be different for evaluation of fair balance between these interests. In this case, the interested persons should have the real opportunity to protect their rights, in addition, to require invalidity of court decision violating their rights and made in favor of the state, when it is a direct and necessary way to restore the right or get the compensation.⁸⁴

The court noted in relation to the state that in these relations, in which the state participates, the level of trust and conscientiousness is very high, in addition, the principle of lawful trust is valid on the part of private law entities towards the actions of the powerful counter-party, the state.⁸⁵

In case of private individuals, the state shall not have the possibility to protect itself using the limitation period, because it itself represents the guarantor of protection of the rights and interests of a person.

⁸¹ Decision No.2/2/656 of 21 July, 2017 of Constitutional Court of Georgia – „JSC "Silk Road Bank" versus the Parliament of Georgia”; *Gabriel U.*, *Verjährung der Schadensersatzansprüche gegen den Steuerberater nach altem und neuen Verjährungsrecht*, Hamburg, 2014, 26.

⁸² *Kokhreidze L.*, *Problems of the Definition of Some Civil-Legal Norms in Resolution of Disputes Related to the Heritage*, “Justice and Law”, №2(41)’14, 2014, 15 (in Georgian).

⁸³ Decision No.3/1/531 of 5 November, 2013 of Plenum of the Constitutional Court of Georgia – “Tamaz Janashvili, Nana Janashvili and Irma Janashvili versus the Parliament of Georgia”.

⁸⁴ *Ibid.*

⁸⁵ *Svanadze G.*, *Comment of the Civil Code*, Book I, 2017, Tbilisi, Article 144, field number 4 (in Georgian).

4. Conclusion

The importance of limitation of contractual claim is indispensable, it has a positive influence on the protection of the parties' interests and the stability of civil circulation; however, together with the importance of institute of limitation of action and necessity of its implementation, it is important to mention those difficulties that are generally associated with the institute of limitation.

It's quite difficult to justify the establishing of different limitation periods in relation to separate cases. The goals, by which the existence of institute of limitation of action is justified, can be successfully used in different cases. In general, it is very difficult to substantiate, why the specific claims shall be limited within a shorter period of time, compared with other similar claims. For illustration, different limitation periods applied towards the purchase agreement and contractor's agreement can be cited from the legislation.

The main weakness related to institute of limitation is that, when establishing the limitation period, the interests of only debtor or only creditor are taken into consideration, which, naturally, violates the reasonable balance between the parties. In addition, it may become impossible to satisfy a claim due to expiry of limitation period, even if the creditor did not know and could not have known about violation of the right. Such solution of an issue may itself be incompatible with the stability of civil circulation.

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