P-ISSN 2233-3746 / E-ISSN 2720-782X
https://doi.org/10.60131/jlaw.1.2024.7944

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An "Inducer" Third Person in Contractual Relations – Grounds and the Scope of Liability

In parallel with the evolution of contractual relations, the pre-contractual stage acquires increasing significance, where, along with a future creditor and a debtor, partake third parties, who might influence the forming of the consent of the negotiating persons. The following article explores the issue of the engagement of said third parties in pre-contractual relations, the grounds for claiming damages from them and the scope of liability; More precisely, highlighted is the legal nature of the claims raised against "inducer" third persons, and how it differs from other claims in the law of obligations.

Despite the participation of third persons in a pre-contractual stage and the practical importance of asserting a claim against them, Georgian norms fail to adequately and extensively regulate the issue. Hence, through the comparative legal methodology, the paper analyses the topic through the Georgian and German normative order lens. Definitions presented in the German doctrine of "culpa in contrahendo", as well as, judicial practice.

Keywords: *pre-contractual relations, culpa in contrahendo doctrine, third persons in the pre-contractual stage, an "inducer" third person, reimbursement of the expenses incurred*

1. Introduction

The purpose of the article is to explore the grounds for liability of the persons who at the pre-contractual stage do not enter into a contract, however, their actions influence the formation of trust and consent of the parties to negotiation. Such persons can be referred to as "inducer" third persons.

The case studies are presented through the lens of the norms in Georgian and German legislation, more specifically, the doctrine of *culpa in contrahendo* (fault in pre-contractual relations). The primary goal is to determine the normative grounds and scope of liability of third persons partaking in pre-contractual relations, as per Georgian legislation. Taking a focus on German law is justified by the fact that the rules regulating the topic of research in the Civil Code of Georgia[1] (CC) have been implemented through the reception of the said law, hence, German doctrine or practice, in terms of system and content, is the most relevant model to draw the parallels.

The notions mentioned in the article – fault in pre-contractual relations entails rights and obligations determined under the *culpa in contrahendo* doctrine; the "inducer" third persons – are persons indirectly participating in pre-contractual relations, who due to the special trust and/or their

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1 Law №786 of 1997, <https://matsne.gov.ge/ka/document/view/31702> [13.03.2024]. (In Georgian).

own qualifications, significantly influence the course of pre-contractual relations and the content of the agreement.[2]

2. *Culpa in Contrahendo* Doctrine and Its Position in the Law of Obligations

In Georgian law, pre-contractual relations are governed by Articles 316.2, 317.2 and 317.3 of the Civil Code of Georgia, which lay down the principle of care and determine the possibilities for emerging obligations at the pre-contractual stage.[3]

Norms, governing pre-contractual relations were introduced in the Civil Code through the reception of German law. A German scholar – *Rudolf von Jhering,* developed *culpa in contrahendo* doctrine[4], which was only codified in German legislation in 2002, after the reform of the law of obligations.[5] Before acquiring its normative form, the doctrine immensely influenced judicial law. German literature before 2002, commonly described it as a result of judicial practice and evolution of law through the doctrine, hence, resembled a set of precedential rules.[6] It is noteworthy, that the evolution of the *culpa in contrahendo* institute in the German Civil Code ("BGB") mainly stemmed from the reality that the protection mechanism of the tort law in terms of reimbursing damages, was "weak" at the pre-contractual stage.[7] Legal relations entailed in *culpa in contrahendo* doctrine do not fall within the group of contractual relationships, for the obligations arise at the "negotiations stage" i.e. when the parties have not sealed an agreement.[8] In these circumstances, the issue at hand does not pertain to a contractual claim; rather, it concerns the expectations to be fulfilled, which, considering the circumstances, might be expressed in the provision of essential information and documents, as well as cooperation with the due diligence,[9] or reimbursing the damages for violating these obligations. The precondition for reimbursing the damages is that a liable person violates the due diligence towards the other negotiator at the pre-contractual stage. The initiation of the pre-contractual and preparation stage

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2 *Lowisch M.*, New Law of Obligations in Germany, Ritsumeikan Law Review No. 30, 147. <http://www.ritsumei.ac.jp/acd/cg/law/lex/rlr20/Manfred141.pdf> [13.03.2024].

3 Law №786 of 1997, Civil Code of Georgia, Articles 316-317. <https://matsne.gov.ge/ka/document/view/31702> [13.03.2024] (In Georgian).

4 See *Rudolf von Jhering's* article published in 1861 – Culpa in contrahendo, Jahrbuch für Dogmatik <http://dlib-zs.mpier.mpg.de/pdf/2084719/04/1861/20847190418610005.pdf> [13.03.2024].

5 *Markesinis B., Unberath H., Johnson A*., The German Law of Contracts, 2006, 103.

6 *Zimmermann R.,* The Law of Obligations: Roman Foundations of the Civilian Tradition, Oxford, 1990, 422.

7 MüKoBGB/Gottwald, 9th edition 2022, BGB § 328 Rn. 167-169. <https://beck-online.beck.de.lez.tsu.edu.ge:2443/Dokument?vpath=bibdata%2Fkomm%2Fmuekobgb_9_band3%2Fbgb%2Fcont%2Fmuekobgb.bgb.p328.gliv.gl1.gla.htm&anchor=Y-400-W-MUEKOBGB-G-BGB-P-328-RN-167#FNID0ERDD6> [13.03.2024].

8 *Meskhishvili K.,* Pre-contractual Relations, a Preliminary Contract, Earnest Money (Comparative Legal Analysis), "Georgian Business Law Review," Issue VI, 2017, 33–34 (In Georgian).

9 *Zimmermann R., Whittaker S.,* Good Faith in European Contract Law, Cambridge University Press, 2000, 24.

for the contract entails any moment, where the parties obtain a certain influence on each other's property or other goods, which relates to the sealing of a contract.[10]

As previously mentioned, obligations arising at the pre-contractual stage fall within the category of non-contractual obligations, however, its position in the law of obligations leads to different viewpoints, especially in terms of tort law. Certain perspectives hold, that where the right or legitimate interest is violated, a tort claim (Article 992 of the Civil Code) completely covers all possible cases.[11] Approaches towards the correlation between the institute of torts and *culpa in contrahendo* differ country by country. For instance, pre-contractual relations in French and Spanish laws are fully governed by tort law schemes; In Germany, Austria and Switzerland this institute is separate from the tort; In Finland, both may be applied alternatively.[12]

Georgian judicial practice denotes one distinctive feature between the pre-contractual relations and torts. Any person can be a subject in torts, whereas pre-contractual obligation might be incumbent upon a negotiation participant. [13] One more notable difference can be found in the literature, which touches upon, the so-called, responsibility of reimbursement of "pure" material damages.[14] The objective of the tort law is for the damages caused by a violation[15] of law to be reimbursed when the unlawful action at the debtor's fault led to the reduction/destruction[16] of property/goods of a creditor, under the circumstances where the subjects were not bound by the law of obligations.[17] In *culpa in contrahendo* damages arise as a result of the initiation of negotiations, due to the failure to uphold trust,[18] within the scope of the law of obligations, on the ground of violating a specific protecting norm; additionally, damages may only be claimed from a negotiation participant. Hence, *culpa in contrahendo,* is an independent order normatively and characteristically; this inherently highlights the difference between *culpa in contrahendo* and a claim under the tort law, which sheds light on the aim of a legislator. A peculiarity of this relationship, in terms of components as well as legal consequences, is separate from a tort. Similar to the given definition, as per German scholars, *culpa in contrahendo* cases do not fall within the group of obligations arising on tort grounds, rather, due to

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10 *Vashakidze G.,* Civil Code Commentary, Tbilisi, 2019, Article 314, field 37, 46 (In Georgian).

11 *Meladze G.,* Compensation for "Pure" Property Damages Arising from Negligent Provision of False Information, "Comparative Law Journal" 2/2020, 41 (In Georgian).

12 *Wendehorst C.,* Precontractual Liability in European Private Law, 1 JETL 376, 2010, 381.

13 Ruling №ას-898-848-2015 of March 9, 2016, of the Grand Chamber of the Supreme Court of Georgia (in Georgian).

14 *Meladze G.,* Compensation for "Pure" Property Damages Arising from Negligent Provision of False Information, "Comparative Law Journal" 2/2020, 41 (In Georgian).

15 Encompasses any unlawful action.

16 The law entails the group of cases in tort law, when a person might be held liable even in the absence of fault.

17 Bichia M., Legal Obligational Relations, Handbook, Tbilisi, 2016, 241 (in Georgian).

18 Precontractual liability: reports to the XIIIth Congress, International Academy of Comparative Law, *H. Hondius Ewoud* ed., Montreal, Canada, 18 – 24 August 1990, Deventer 1991, 11. Reference from *Lapanashvili A.,* The Importance of the Principle of Good Faith and the Fault of a Negotiation Participant at the Pre-contractual Stage, Tbilisi, 2019, 37 (in Georgian).

their special features, they entail a separate normative order of arising of an obligation.[19] In the doctrine, in certain cases, features of the contract, as well as non-contract law, are revealed – it shows independent normative grounds for liability – so-called, the "third way" to solve the issue.[20]

3. "Inducer" Third Persons in Pre-contractual Relations

The notion of "inducer" third persons entails the persons who do not directly partake in the process of sealing a contract as decision-makers, however, they play a key role in forming a potential contractor's inner consent, and their actions significantly influence the expectations of the parties to a negotiation.[21] Their actions can be culpable or blameless, and while qualifying culpability, it is relevant to consider whether it is intentional or negligent. Liability under the *culpa in contrahendo* doctrine can only imposed on negligent actions.

In Georgian order, from the normative point of view, discussing the existence of an "inducer" is a complex issue, yet as per Article 317.2 of the Civil Code, thinking abstractively, the obligations under Article 316.2 may "… may also arise from the preparation of a contract." In this regard, "inducer" third persons may also be included. I.e. any obligation, including, the due diligence towards the property or rights of other persons, in line with the predictability criterion, may arise from the preparation of a contract.[22] While these norms do not entail the involvement of third persons in the pre-contractual relations, they can directly and indirectly influence the rights and duties of the parties, hence, they must be considered participants in the relations under the law of obligations and, therefore, they must adhere to the principle good faith and due diligence. Post-reform German regulation stipulates analogically, specifically, in Paragraph 311.2 of BGB, relationships under the law of obligations, as per the rules of Paragraph 241.2 (general rules on obligations), along with other cases, arise: 1. By initiating negotiations on the contract; 2. By drafting a contract, by the virtue of which one party grants the other the right to influence the former's rights, properties, interests, or confers their trust; or 3. By similar business contracts. As per part 3 of the same article, obligations may arise upon the persons, who are not to become the parties to the contract; More precisely, such obligations arise where a third person is vested with the utmost trust and thus, exerts significant influence over contract finalisation.[23]

Hence, as per BGB, within the scope of pre-contractual relations, the instances of the obligations arising are determined, where the addressee of an obligation is a third person. According to the doctrine, four groups of third persons in pre-contractual relations can be distinguished: A) Persons granted with special trust; B) Experts and specialists; C) Persons who have an economic interest in

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19 *Markesinis B., Unberath H., Johnson A*., The German Law of Contracts, 2006, 92.

20 *Markesinis B., Unberath H., Johnson A*., The German Law of Contracts, 2006, 92.

21 *Kropholler J.,* German Civil Code, Study Comment, 13th rev. ed., *translated by Chechelashvili Z., Darjania T., edited by Chachanidze E., Darjania T., Totladze L.,* Tbilisi, 2014, § 311, Field 1, 197 (in Georgian).

22 Law №786 of 1997, Civil Code of Georgia, Article 317 (in Georgian). <https://matsne.gov.ge/ka/document/view/31702> [13.03.2024] (in Georgian).

23 German Civil Code, translation of *Chechelashvili Z.,* 2nd edited issue, Tbilisi, 2019, 74-75 (in Georgian).

sealing a contract; D) Persons under special protection.[24] "Inducer" third persons act independently and cultivate trust in others toward themselves.

It is relevant to examine the interests worthy of protection at the pre-contractual stage. Due diligence entails the duties of the participants of a legal relationship to respect each other's rights and legitimate interests. This is a universal rule in the relations under the law of obligations, and hence, its manifestation in legal relationships cannot be normatively laid down and/or listed in the form of individual actions/omissions. As with numerous other norms, the rules on due diligence in Georgian legislation were introduced from Germany.[25] The cases of breaching the due diligence at the pre-contractual stage may encompass the following: 1. The participant of the contractual relationship violates the obligation of protection and security, which leads to damaging the interests of the participant of the legal relationship; 2. A participant in a pre-contractual relationship violates the duty to inform – does not provide information, or provides incorrect or insufficient information, which might have been substantial and important for the addressee during the contract drafting process. 3. A participant in a pre-contractual relationship hinders the process of sealing a contract, intentionally or negligently causes circumstances, or does not prevent them, which can hinder the sealing of the contract; 4. A participant in a pre-contractual relationship terminates the negotiations without a justifiable reason, which leads to the costs incurred by the other party prior to the sealing of the contract becoming futile (the duty of loyalty).[26]

4. Grounds for Liability

Damages stemming from pre-contractual relations can be claimed on the grounds laid down in Article 317.3, i.e. where there is a fault during contract formation and the creditor claims reimbursement of costs incurred for sealing the contract. Breaching of duties at the pre-contractual stage may involve the following: a debtor, due to "inducement" and betraying the trust of the contracting party, is in a "worse" legal condition, than they would have been should they had sealed the contract; or, a debtor, due to the "inducement" by a third person seals an undesirable contract.[27]

The rule stipulating the claiming of damages under *culpa in Contrahendo* (as per Georgian and German rules) consists of the following elements: 1. An action or omission of a debtor at the pre-contractual stage; 2. Gaining a creditor's substantial confidence in sealing a contract; 3. Based on this confidence, a creditor's action resulted in costs being incurred; 4. A reciprocal action of a debtor, which goes against the confidence. [28] Equally, where it is necessary to examine the imposition of liability on "inducer" third persons, the same elements shall be applied, however, they might require more precision. In order to assess the liability, it shall be determined that the "inducer" third person

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24 Mariamidze G., Law of Obligations, General Part, Part I, Issue I, Tbilisi, 2011, 45 (in Georgian).

25 *Vashakidze G.,* System of Complicated Obligations of the Civil Code, 2010, 88. Ref: The Civil Code Commentary, 2019, Article 314, Field 39, 47. (In Georgian).

26 *Vashakidze G.,* Civil Code Commentary, Tbilisi, 2019, Article 314, field 43, 49 (in Georgian).

27 *Markesinis B., Unberath H., Johnson A*., The German Law of Contracts, 2006, 97.

28 *Vashakidze G.,* Civil Code Commentary, Tbilisi, 2019, Article 314, field 43, 49 (in Georgian).

instilled substantial trust in the injured party (the one, who seals an undesirable agreement), which they betrayed by negligence, and eventually, this leads to the creditor suffering damages. Where an "inducer" misled a party to the negotiation intentionally, hence, directly and foreseeably violating the right of the creditor, should give rise to a tort claim for the restitution of the right, which in turn excludes the possibility of compensation for damages due to pre-contractual fault. Therefore, raising a claim on the said ground is allowed only in negligence cases. However, to impose liability, it is not necessary that the negotiating parties jointly have an expectation of a positive outcome of the pre-contractual relationship, yet it is sufficient that only the injured party had a unilateral trust before the injury.[29]

To determine liability at the pre-contractual stage, the action of the "inducer" third party must be causally related to the unlawful consequence – damage. In legal theory, the determination of the causal relation is based on the theory of equivalence. This entails determining facts through the *conditio sine qua non* formula, more precisely, there is no consequence without an action.[30] In the pre-contractual relationship, it is necessary that the action of the "inducer" third party induces consent that encourages them to seal the contract. To qualify for breach of trust, it is relevant to determine whether the initial potential debtor had a legitimate interest that would justify his action at the negotiation stage.[31] On its part, a separate assessment is required for the trust of a creditor. In the ruling[32] of July 10, 1970, of the Supreme Court of Germany, the following reasoning is developed, that the participant in the negotiations must clearly and within a reasonable time state that they also want to seal the contract. Trust, however justified it may be for a certain period, cannot be eternal.

On the topic of "blame", it must be mentioned that the Civil Code does not lay down the definition, whereas as per the doctrine, two forms of "fault" are identified: intent (*dolo*) and negligence (*culpa*), which are subjective elements.[33] As previously mentioned, the application of pre-contractual rules is only possible in cases of negligence. There were different theories defining the fault in civil law, however, considering the content of the research subject, the modern approaches of Georgian and German laws are noteworthy. In the doctrine, it is considered that the starting point for negligence is to assess the topic of care inherent in civil transactions. Therefore, it shall be assessed whether a participant has demonstrated "real" care,[34] which would have been demonstrated by any other reasonable and rational person. At hand must be an objective violation of the legal norm, which implies the existence of fault. By the stated reasoning, when the subject of assessment is the fault of the "inducer" third party, the emphasis should be placed on the standard of behaviour of an objective

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29 *Van Erp J. H. M.,* "Pre-contractual Stage." Translations of the European and Comparative Law Institute, Georgian Law Review," 2011-2012, 42 (in Georgian).

30 *Lutringhaus P.,* Tort Law Tbilisi, 2011, 19 (in Georgian).

31 *Van Erp J. H. M.,* "Pre-contractual Stage." Translations of the European and Comparative Law Institute, Georgian Law Review," 2011-2012, 42 (in Georgian).

32 Neue Juristische Wochenschrift (NJW) 1970, 1840-1841.

33 *Chitashvili N.,* The Importance of Fault for Determining the Liability, "Law Journal," №1, 2009, 149 (in Georgian).

34 *Kochashvili K.,* Fault, as a Prerequisite for Civil Liability (Comparative Legal Study), "Law Journal №1", 2009, 88 (in Georgian).

third person. On the one hand, the "inducer", due to their special pre-contractual role, is required to evaluate the issues relevant to the sealing of the contract in good faith, with due diligence and caution, and thus issue a conclusion and/or recommendation, and on the other hand, the possibility of damages to a participant of the negotiations must be expected and perceptible for them. Hence, imposing liability is only allowed in culpable actions,[35] where the damages are assumed.[36] How and to what extent did the "inducer" instil trust in the other party shall also be assessed.[37]

The liability of third persons, in German law, can also be based on the concept of a contract sealed for the benefit of third parties,[38] which, at the pre-contractual stage, has its peculiarities. The concept of "contract with the safeguarding effect for the third party", as per the principle of good faith, is based on the so-called "supplementary definition" of a contract. Prerequisites for the application of the contract with "safeguarding effect" for the third persons are: 1. "Closeness of the creditor" to the third person – the latter, like the creditor, should be concerned with the threats arising from the contract; 2. The creditor must have an interest in safeguarding the third person – the creditor must have an interest recognized by law; 3. "Awareness for the debtor" – the above-mentioned two elements must be known so that he can assess the risks accordingly; 4. There must be a need to protect the third person – the third person must not have the right to claim damages (contractual) on their own.[39] The third person can claim damages where, along with the said elements, other prerequisites for claiming damages are present. For instance: Where an expert, regarding the structural condition of the immovable object, provides a false report to the potential seller, which the future buyer trusts and incurs certain costs to conclude the desired purchase contract, they (the buyer) as a beneficiary[40] of the " safeguarding effect" of the expertise contract, may be entitled to claim damages. In such instances, an independent legal relationship under the law of obligations arises between the future buyer and the expert. The criterion of liability is the expert's knowledge of the person interested in the object of expertise and their legal interest. When examining the element of knowledge, the features of the expert's special knowledge and the subject of the work shall be taken into account, since, based on the specified circumstances, they "should have assumed" the application of the said standard.[41] Moreover, for raising a claim, it is required that the creditor does not have a contractual claim against the seller, which might be annulled by the contractor's innocence – their expectations, on their part, are based on

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35 *Vashakidze G.,* Civil Code Commentary, Tbilisi, 2019, Article 317, field 36, 45 (In Georgian).

36 *Vashakidze G.,* Civil Code Commentary, Tbilisi, 2019, Article 317, field 48,45 (In Georgian).

37 *Van Erp J. H. M.,* "Pre-contractual Stage." Translations of the European and Comparative Law Institute, Georgian Law Review," 2011-2012, 43 (in Georgian).

38 MüKoBGB/Emmerich, 9. Aufl. 2022, BGB § 311 Rn. 216-218.
<https://beck-online.beck.de.lez.tsu.edu.ge:2443/?vpath=bibdata%2Fkomm%2FMuekoBGB_9_Band3%2FBGB%2Fcont%2FMuekoBGB%2EBGB%2Ep311%2EglC%2EglV%2Ehtm> [13.03.2024].

39 *Rusiashcili G.,* Collection of Case Study, General Part of the Law of Obligations, Tbilisi, 2020, 229 (in Georgian).

40 *Volens U.,* Expert's Liability to a Third Person at the Point of Intersection of the Law of Contract and the Law of Delict, Juridica International, XVII, 2010, 187.

41 *Volens U.,* Expert's Liability to a Third Person at the Point of Intersection of the Law of Contract and the Law of Delict, Juridica International, XVII, 2010, 186.

the expert's opinion.[42] Therefore, the creditor and the seller are equally subject to the claim for contractual damages arising from the report's shortcomings.[43] The said approach may simplify – make it faster and more realistic for a potential buyer to seek compensation for damages rather than for them to present a claim to an innocent seller, and consequentially, for a seller to raise a claim based on the expert service contract.

According to German law, due to the pre-contractual fault, an "inducer" third person might be subject to liability on the grounds of breaching the duties under special law[44] – an auditor will be subject to liability due to the incorrect evaluation of the financial state of the company which caused damages to the investors. In the given case, the agreement between the company and the auditor was sealed for the benefit of third persons – investors, and a "safeguarding effect" operated in their favour.[45] The Federal Court of Germany, while assessing the issue of the "inducer's" responsibility, including the degree of fault, in addition to generating utmost trust and breaching it by a party to the negotiation, also mentions the personal economic interest of a third person – in the given case, personal economic interest of the representative.[46]

5. The Scope of Liability

The Civil Code order narrows down the scope of liability, specifically, Article 317.2 stipulates that the arising of an obligation may take place at the preparatory stage for the contract; as per the following part, the damage entails the costs incurred by a party for sealing the contract. On the other hand, the "inducer", who "induces" the party to the contract to show his consent, can be held liable only in the form and scope laid down by the law. Hence, at the pre-contractual stage, the party cannot require their potential contractor and/or third person to seal a contract.[47] Neither the creditor is entitled

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42 As per the general rule, the person who suffered damages caused by the action has the right to claim damages, however, in exceptional cases, German judicial practice allows a party to a service contract to claim damages for third persons. *Hagenloch U.,* The Liability of an Architect in Germany, "Georgian-German Journal of Comparative Law" 2/2024, 29 (in Georgian).

43 *Rusiashcili G.,* General Law of Obligations, Collection of Case Study, Tbilisi, 2020, 42 (in Georgian).

44 Law of Germany of 2021 on "Fostering the Financial Market Integration".
<https://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&jumpTo=bgbl121s1534.pdf#__bgbl__%2F%2F*%5B%40attr_id%3D%27bgbl121s1534.pdf%27%5D__1707139432545> [13.03.2024].

45 MüKoBGB/Emmerich, 9. Aufl. 2022, BGB § 311 Rn. 216-218.
<https://beck-online.beck.de.lez.tsu.edu.ge:2443/?vpath=bibdata%2Fkomm%2FMuekoBGB_9_Band3%2FBGB%2Fcont%2FMuekoBGB%2EBGB%2Ep311%2EglC%2EglV%2Ehtm> [13.03.2024]. Section 218

46 BGH , judgment of June 17, 1991 – II ZR 171/90.
<https://research.wolterskluwer-online.de/document/5bdac224-b34f-44f1-81e0-c0cdfddca809> [13.03.2024].

47 *Khunashvili N.,* The Principle of Good Faith in Contract Law, Tbilisi, 2014, 152 (in Georgian). The work presents the general rule as per the freedom of a contract and entails the group of cases of forcing contractors.

to claim the reimbursement of income from the "inducer" third person.[48] The doctrinal rationale for limiting damages in pre-contractual relations solely to the compensation of costs incurred by the creditor is based on the expansive interpretation of the principle of good faith. The order safeguards the debtor from unsubstantiated liability – not to be obliged to pay the amount due to a pre-contractual fault, which would be reimbursable in the event of the sealing of the contract, especially when the debtor, at such a time, cannot receive the benefits (performance of the contract); In addition, such approach would have violated the principle of freedom of a contract.

In German law, the issue of compensating "pure" property damage at the pre-contractual stage is trending. The notion of "pure" property damage entails the case, where, while the debtor's action causes the reduction of the creditor's property it is in a manner, that does not violate their absolute good, such as property, possession, body, health, etc. [49] German judicial law, where the safeguarding norm of the relevant right is violated and factual grounds exist, as an exception, allows for the possibility of compensation of "pure" property damage as per *culpa in contrahendo* principle.[50] For instance, the German court reckons that a person will be held liable, who states, that they will be a guarantor for a party to the contract, or will perform a similar action.[51] On the other hand, a third person will not be held liable, if they refer to their competence, or, simply, are a moderator in the negotiation process.[52] Moreover, the doctrine states, that the interest for trust arising in pre-contractual relations may also include unreceived payment from a failed alternative transaction.[53] Where a creditor, having substantial trust, refuses to seal another agreement, and hence, loses the opportunity to seal this agreement, they are entitled to claim the damages for the other contract sealed.[54]

According to the Georgian legislation, the debtor will not be held liable in the scope of the notion of "pure" property damage. Claims for compensation for "pure" property damage can only be based on tort law. It is noteworthy to mention, that there are different opinions on this issue in the doctrine.[55] Compensation of "pure" property damages with the grounds of Georgian tort law, is associated with the challenges in determining causal relation, as an obligatory element; To determine

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48 *Khunashvili N.,* The Principle of Good Faith in Contract Law, Tbilisi, 2014, 150 (in Georgian).

49 *Rusiashvili G.,* "Pure Property Damages" – Violation of Due Diligence or a Safeguarding Norm?, "Georgian-German Journal of Comparative Law," 4/2019, 1 (in Georgian).

50 *Rusiashvili G.,* "Pure Property Damages" – Violation of Due Diligence or a Safeguarding Norm?, "Georgian-German Journal of Comparative Law," 4/2019, 9 (in Georgian).

51 RegBegr BT-Drucks 14/6040, 163. Reference in Kropholler J., German Civil Code, Study Comment, Tbilisi, 2014, § 311, Field 8, 197, 200 (in Georgian).

52 *Kropholler J.,* German Civil Code, Study Comment, 13th rev. ed., *translated by Chechelashvili Z., Darjania T., edited by Chachanidze E., Darjania T., Totladze L.,* Tbilisi, 2014, § 311, Field 8, 200 (in Georgian).

53 *Van Erp J. H. M.,* "Pre-contractual Stage." Translations of the European and Comparative Law Institute, Georgian Law Review," 2011-2012, 42. Compare *Vashakidze G.,* Civil Code Commentary, Tbilisi, 2019, Article 314, field 44, 49 (in Georgian).

54 *Van Erp J. H. M.,* "Pre-contractual Stage." Translations of the European and Comparative Law Institute, Georgian Law Review," 2011-2012, 42 (in Georgian).

55 *Meladze G.,* Compensation for "Pure" Property Damages Arising from Negligent Provision of False Information, "Comparative Law Journal" 2/2020, 41 (In Georgian).

the liability, the possible damage must be foreseeable, and this, considering the peculiarities[56] of the "pure" property damage, makes it essentially impossible to raise a claim.

6. Statute of Limitation

On the topic of the statute of limitation, there is an opinion, that for the claims stemming from the pre-contractual relations, the same statute of limitation shall be applied as the one for the contract which was to be sealed by the parties. Thus, statutes of limitation laid down in Article 129.1 will be applied to them.[57] Hence, the opinion expressed in Georgian and German doctrines, that in cases of pre-contractual fault, rules of Paragraph 195 of BGB must be applied, shall be deemed justifiable. It states that a three-year statute of limitation applies to compensation for damages arising from pre-contractual fault where the contract to be sealed does not provide for a shorter statute of limitations. [58]

7. Conclusion

In conclusion, it can be stated, that Article 317.2 provides for an opportunity to impose liability at the pre-contractual stage, yet, it is not specified, who might be subject to this liability. It shall be taken into account that at the pre-contractual stage, a liability may be imposed not only on the party to the negotiations but on other players such as an "inducer" third person, as their influence might be crucial in the actions parties are to take. The forms and the scope of liability might be determined by defining the rules regulating pre-contractual relations, based on the principles of good faith and due diligence, which cover every participant of relations under private law.

Article 317.2 deems the possibility to impose liability on the "inducer" third person challenging. This is established by the provision of the third part of the same article, in terms of understanding the discussed elements, including possible damage to the creditor. An "inducer" third person, who influences the rights of the participants of pre-contractual relations, shall be subject to liability only in form and scope precisely prescribed by law. The current order only mandates the compensation for costs incurred based on trust shall be a form of liability, which excludes the possibility of imposing liability in cases of "pure" property damages. The norm regulating pre-contractual relations in the Civil Code requires further precision and detail. Recommended is the extension of the types of damages in pre-contractual relations, which will create grounds for a debtor to claim "pure" property

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[56] The doctrine examines several cases from judicial practice of Georgia and other countries: Loss, caused by the demise of a person, who was the sole breadwinner of the family; Loss of income of the hotels located on the coastline caused by the damaged oil rig; Damaged suffered by a sports club due to the death/injury of its key player in a traffic accident. Reference in *Svanadze I.,* General Tort Clause and Liability for Pure Property Damages, Tbilisi, 2019, 41-42 (in Georgian).

[57] *Meskhishvili K.,* Trending Issues of Private Law, Theory and Judicial Practice, Volume 1, Tb, 2020, 120. (In Georgian).

[58] *Kropholler J.,* German Civil Code, Study Comment, 13th rev. ed., *translated by Chechelashvili Z., Darjania T., edited by Chachanidze E., Darjania T., Totladze L.,* Tbilisi, 2014, § 311, Field 8, 197 (in Georgian). Also, a court judgement referenced in the work BGHZ 58, 123.

damages; Moreover, further regulation is essential, so as to enhance the precision of the group of persons who may be held liable and will entail the liability of third persons.

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