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Grounds for Termination of the Apartment Rental Agreement (Comparative Study)

The paper delves into the intricacies of apartment rental agreements, the freedom to determine their form and content, and the practical issues related to it, which may arise within the context of freedom of contract. The paper also examines the rights and obligations of the parties to the agreement, which mainly entail the basis for determining, reducing, increasing, the amount of rent, and terminating the contract. Relevant judicial practice analysis is provided.

Based on a comparative study, opinions and recommendations are expressed on the role of the state in regulating and controlling the scope of apartment rental and changes in it, which will guarantee the protection of the rights of the parties, both landlords and tenants, and therefore the stability of apartment rental agreements. Conclusions were made on the need for state intervention, its form, and scope, which will help to resolve the relations and issues arising from the apartment rental. This objective can be met by perfecting the legislation, demonstrated through commentary on legal norms that align with practice, and by implementing specific amendments.

The comments and opinions expressed in the paper will be of use to both practicing and non-practicing lawyers, students, and all other stakeholders.

Keywords: *apartment rental, contract, rent, landlord, tenant*

1. Introduction

"Each country in the modern world is involved in the race called economic development in its way. Every country, including Georgia, fights in its way to win first place in this race, and everyone has their own methods of fighting. In order to advance in the said marathon, it seems that the Georgian legislator chose to protect such a component of economic development at the legislative level as civil circulation. Civil circulation, it can be said, is a set of transactions, by virtue of which the objects of civil circulation are circulated among the participants (subjects). Civil circulation includes both onerous (e.g., purchase) and gratuitous (e.g. a gift) transactions, under which this or that property can be transferred to a person, both with the right of ownership and ownership."[1] Civil circulation based on the proper legislation and practice is also a guarantee of a strong economy. That is why it is important to regulate the real estate and facts of apartment rental, especially active today, and the legal relations arising from them based on the correct legal framework.

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1 *Kitia R.,* Stability, Simplicity, Inexpensiveness, and Conscientious Acquisition of Real Estate Ownership of Civil Circulation, "Private Law Review", 2021-2022, #3-4, 73 (In Georgian).

The social and economic events developed today, both inside and outside the country, have made the use of living space and the relations stemming from it an important and problematic issue. The problems that existed between apartment users (owners and non-owners) appeared even more acute for both lessors and lessees.

Problems arising in practice, which concern the regulation of legal relations, may become the basis for legislative changes. Legally sound legislation provides even more opportunities for the parties to correctly fulfill the obligations that they undertook under the contract.

It is the obligation of the state to create legislation equally adapted to the interests of the subjects, and the obligation of the subjects is to approach implementation in good faith. Finally, fairness in law is the main and necessary thing. Law is a "space" created by a set of norms, which establishes the rules of behavior, and fairness is an evaluative category, which in its general sense determines the "quality" of the law and of the behavior of its executors. Legislation should equally "take care" of the rights of both landlords and tenants and protect their interests.

People need to have housing conditions. "The state is not directly obligated to build residential apartments for the entire population, let alone provide them free of charge, however, at the theoretical and legal level, it is obligated to protect and supervise the protection and realization of the right to housing. The relationship and rights of the apartment owner and the resident are especially important[2]."

In the work, the relations of the temporary users of the apartment are discussed using the comparative-research method.

In legal relations, the rights and duties of one subject do not exist independently, and they are always considered in direct or indirect connection with the rights and duties of the other subject, which in itself is a guarantee of both limitation and protection of the legal rights and duties of the subjects.[3] Therefore, in the process of implementing the legislation adopted based on the principle of fairness, the protection of the principles of good faith and fairness is a special obligation for the subjects of private legal relations and directly for the parties to the contract.

Considering this, the rights and duties regulated by the dispositional norms, which are related to the grounds and consequences of the termination of the apartment rental agreement, will be discussed in detail by evaluating the circumstances and not by the literal meaning of the norm.

Thus, the work aims to outline the practical problems characteristic of existing relations based on the rental agreement, and the legal ways of solving them based on its analysis.

2. Legal Nature of the Rental Contract

A rental agreement is an opportunity to use someone else's property, which ensures the filling of the deficit in people's property opportunities and the satisfaction of demands. In this regard, there is

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2 *Chitoshvili T.,* 2023, Legal Order of Some Issues in the Apartment Rental Agreement (Georgian-German study), published Besarion Zoidze Jubilee Collection 70, University Publishing, 2023, 225 (In Georgian).

3 *Chitoshvili T.,* Content and Types of Obligations Derived from the Relations in the Law of Obligations (General Characterization) Unjust Enrichment (Main Issues), Tbilisi, "Bona Kausa" Ave., 2015, 11 (In Georgian.)

much in common with lease, finance lease, and also contracts of lending, which are contracts for the use of someone else's property and at the same time onerous, except for the contract of lending. These agreements have a lot in common. Importantly, there is even more in common with a lease agreement. Rent norms also apply to lease relationships. Often, these two agreements are confused in practice. Despite the great similarities, it is not allowed to equate them, since the purpose of the rental agreement is only consumption, the use of the thing without receiving income, and the purpose of using leased movable-immovable property is production as a source of income and the main means of existence. [4] Also, a way to accumulate capital.

As per the opinion expressed in the doctrine based on the analysis of the German legislation, the content of the contract is preferred over the title. In the rental agreements, they give more importance to the apartment rental contract. "Article 535 of the German Civil Code applies to all types of rental agreements and also to sub-rental agreements. In addition to the lease agreement as a special form of rental. To determine the legal nature of the contract, the parties do not need to choose the name of the contract. This will mainly be determined from the content of the contract. However, the chosen name indicates what the parties wanted to achieve[5]."

Despite the essential similarity of the lease and rental agreements, I believe that there should be no confusion, and, in addition to the content, the title should specify the desired type of agreement that the parties have decided to conclude. This will prevent the ambiguity and ambiguous nature of the content, as well as the expected moments of controversy between the parties.

There is a certain relationship between the rental agreement and the usufruct as a right of sale. In this regard, the opinion in the doctrine is interesting, namely: "The main difference between usufruct and rent is that usufruct, as a right, is directly related to the thing, and the usufructuary has nothing to do with the owner who is left without the right to use." During the existence of the usufruct, there is no obligation between them, except for a negative obligation, according to which the owner without the right to use is obliged to respect the usufruct. In contrast, the lessee has no right directly related to the thing, although he has the right to ask the lessor for permission to use the thing properly. Thus, a tenancy is not independent like a right of sale, and the lessee is dependent on the other party to the contract.[6]

There is a lot of similarity between the tenancy agreement and other agreements, such as finance leasing, leasing, and a contract for performing work. A detailed discussion (depending on the format of the article) is not the purpose of this paper. [7]

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4 *Chitoshvili T.,* Commentary on Article 581 of the Civil Code. Commentary on the Civil Code of Georgia, book four, volume one, Tbilisi, "Samartali" Publishing, 2001, 161 (In Georgian).

5 Bürgerliche gesetzbuch, Kommentar. Herausgegeben von Prof. Dr.Dr. h.c. Hanns Prütting; Prof. Dr Gerhard Wegen; Gerd Weinreich-Vorsitzender Richter am OLG Oldenburg a. D. 12 Auflage. Luchterhand verlag 2017, 992.

6 *Zarandia T., Bostoghanashvili D.,* Usufruct in Roman and Modern Georgian Law. Published Besarion Zoidze Jubilee Collection 70, scientific editors: Prof. Lado Chanturia, Prof. Tamar Zarandia, University Publishing, 2023, 94-95 (In Georgian).

7 On the similarity of the contract of rent to other types of agreements see: *Chitoshvili T.,* Legal Order of Some Issues in the Apartment Rental Agreement (Georgian-German study), published Besarion Zoidze Jubilee Collection 70, ed.: Prof. Lado Chanturia, University Publishing, 2023, 223 (In Georgian).

3. Consequences of Mutual Influence of the Form of the Apartment Rental Agreement and Contractual Freedom

The private legal relationship and the content of each contract consists of rights and obligations, which acquire binding force for the parties that made it. Which is somewhat coercive and affects the fulfillment of obligations. "Coercion follows a breach of obligation. Coercion is aimed at the consequences caused by the violation of the obligation and, obviously, from this point of view, it is connected with the obligation".[8]

In law, the principle of freedom, which is understood within the scope of the protection of the law, is of special importance. Private law, in contrast to public law, "is a law granting more freedom, and restrictions are also an exception."[9]

In private legal relations, freedom is more defined in the field of contractual law and is reflected in the form and content. "The freedom of content, freedom to conclude a contract, freedom to choose the form, freedom to choose the type of contract, and the permission of the state when concluding a contract can be considered as separate aspects (manifestations) of freedom of contract." [10]

Freedom of contract does not mean absolute freedom. Limitation of contractual freedom is only possible and even necessary if this freedom violates the principle of good faith and thereby violates the interests of third parties. Violation of legal good faith can mainly associated with the content of the contract, the drafting of which depends on the mutual agreement of the parties. Legal restriction of contractual freedom, in most cases, can associated with the choice of the type of contract.

The freedom to conclude a contract in its broadest sense entails the prohibition of concluding a contract and the obligation to conclude one, without which the freedom to conclude a contract cannot be discussed. Parties may express their will to conclude a specific contract, however, its conclusion may be prohibited by law. Also, the opposite can take place when the parties/parties do not wish to enter into a specific contract or with a specific entity and the law obliges them to do so. Both the prohibition and the obligation to conclude are derived from public interests. Namely: obligatory permission, dominated position, preferential right, etc.

Limiting the freedom of contract is not allowed, however, it cannot exist without borders either. That is why there are mandatory and dispositional norms established by law. Dispositional norms give preference to contractual freedom, which is distinguished by its excess compared with imperative norms.

"Hence, contractual freedom is a necessity, although the scope of its realization is different in each specific case and sometimes it is also associated with the problem of "contractual balance". Contractual equilibrium is the practical manifestation of equality. It indicates the fair distribution of rights and obligations between the parties and arises when the counterparties have equal rights and

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8 *Zoidze B.,* An Attempt to Recognize the Practical Existence of Law Primarily from the Human Rights Perspective (essays), Tbilisi, University Publishing, 2013, 95 (In Georgian).

9 *Chanturia L.,* Introduction to the General Part of the Civil Law of Georgia, Tbilisi, "Samartali" Publishing, 1997, 357 (In Georgian).

10 *Jorbenadze S.,* Freedom of Contract in Civil Law, Davit Batonishvili Law Institute Publishing, 2017, 170 (In Georgian).

obligations. When there is a contractual equilibrium, contractual fairness is established. In other words, the pursuit of contractual fairness also implies the establishment of contractual equilibrium. As soon as the equivalence of rights and obligations is violated, the contractual equilibrium is threatened. It has to be mentioned, that it is difficult and sometimes even impossible to achieve contractual equilibrium in the market economy."[11]

Contractual freedom is mainly determined by dispositional norms, which allow the parties to freely define the content of the contract and its scope. "The principle of freedom of contract, together with the origins of private property, is the cornerstone of the entire civil order."[12]

"As per the general principle of freedom of contract, the Civil Code also fosters the principle of freedom of form,"[13] which is stipulated in Article 68 of the Civil Code: "For a transaction to be valid the form of the transaction prescribed by law shall be observed. If no such form is prescribed, the parties may determine it themselves." Taking account of this, the law provides for mandatory cases of the written form of the contract. In other cases, the parties themselves agree in what form to conclude the contract, in case of disagreement, no contract will be concluded.

"When talking about contracts, the starting point should be the reaching agreement between the parties based on the expression of will on the conditions that determine the rights and obligations of the parties (contractors), by which the parties are bound and what is stipulated in the general provisions of the Civil Code and the relevant contractual norms."[14]

In private legal (contractual) relations, the manifestation of the will of the parties is an important factor in achieving legal results. For this, it is necessary to reveal the will and prove it, which is directly related to the form. "The form is a guarantee of the veracity and confirmation of the manifestation of the will, and the form does not exist for the sake of the form, but it, as a proof of the authenticity of the manifestation of the will, is the basis of orderly, safe and guaranteed civil circulation." [15]

The freedom to select the form of expression of will is an opportunity to be used wisely by the parties. The written form of the infallibility of the expression of the will is not only a means of legal expression, but also an undeniable proof of the expression of the will. Which also provides a basis for the protection of the parties' demands.

The freedom to choose the form of the contract implies that the parties themselves are obliged to take into account the expected consequences and risks that may result from the contracts concluded in oral form, based on discretion and reasonable judgment. Naturally, the choice of the parties is based on absolute freedom, however, often due to inexperience or lack of legal knowledge, not considering the consequences, the party/parties may face problems.

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11 *Chachanidze T.,* Contractual Freedom, and Contractual Fairness in Modern Contractual Law, published – Justice and Law, #3, 2010, 24 (In Georgian).

12 *Kochashvili K.,* Metalegal Understanding of Freedom, "Bona Causa" Publishing, 2018, 11 (In Georgian).

13 *Darjania T.,* Civil Code Art. 68 Commentary, Civil Code Commentary, Book I, Authors Collective, Ed.: Lado Chanturia, GIZ, USAID, EWMI, 2017, 386 (In Georgian).

14 *Nadibaidze L.,* 2002, Legal Basis of Property Acquisition. "Meridiani" Publishing, 18 (In Georgian).

15 *Kochashvili K.,* Metalegal Understanding of Freedom, "Bona Causa" Publishing, 2018, 101 (In Georgian).

The conclusion of contracts in oral form significantly simplifies the initiation of contractual relations. In such a case, the parties are free from extra formalities and bureaucracy, however, it becomes difficult to manage future relations, to protect the interests, the necessity of which may arise during the stages of the contract (implementation, termination, etc.). Such difficulties may outweigh the ease of entering into an oral contract.

Based on the analysis of the practical results, it is possible to make some form of contract mandatory in writing and thereby prevent many undesirable results and long-term disputes. Perhaps, this was the idea of the legislator when they established mandatory written forms for such agreements as, for example: three-day maintenance, partnership (joint activity), delivery of goods to a warehouse, as well as preliminary (promise of loan, promise of gifts) agreements. Some of the mentioned contracts provide for the results of the transfer of ownership of real estate, and some of them are of a service nature. Requiring the written form by law for this kind of agreement implies that the legislator considers it inadmissible to entrust the parties with the absolute freedom to choose the form. This is due to the complexity of certain features characteristic of specific legal institutions (eg: three-month maintenance contract, gift promise, loan promise, etc.).

Based on the analysis of judicial and real-life practice, we can think that the legal freedom to choose the form of the apartment rental agreement is often associated with undesirable consequences for the parties.

Long-term apartment tenancy agreements are associated with special difficulties. Here the "insufficient precision of the agreement"[16] and the "proper cooperation"[17] of the parties for the timely fulfillment of obligations become even more noteworthy. The guarantee of correct cooperation is always the specified content of the contract, that is when its existence does not depend on the evidence of the circumstances. It is possible to ensure this in the case of a written contract when the parties do not have to prove disputed facts, which may be related to the terms of termination, rent, quality of performance, permits for the production of improvements, utility bills, etc.

The norms of the Civil Code do not provide for the mandatory written form of the rental agreement. Accordingly, confirmation of the existence of an oral apartment rental agreement is made with the consent of the parties, otherwise based on the assessment of the actual situation.

It is noteworthy that the Code entails two mandatory cases of written agreement between the parties during the period of validity of the apartment rental agreement. **The first is the case** when it concerns the extension of the term of the contract. In particular: "If the lease contract for a residential space is concluded for a specified period, then the lessee can request the extension of the lease contract for an indefinite period with a written statement no later than two months before the termination of the tenancy relationship if the lessor gives their consent."[18] A fixed-term contract entails a specific term agreed upon by the parties, the expiration of which is the grounds for terminating the contract itself. After the expiration of the agreed term, the lessee must notify the lessor in writing about the

[16] *Zarandia T.,* Place and Terms of Performance of Contractual Obligations, GCI Publishing, 2005, 66 (In Georgian).

[17] Ibid, 67 (In Georgian).

[18] Civil Code with amendments and additions until January 20, 2016, published by Bona Causa Law Firm. Article: 560 (In Georgian).

continuation of the agreement, to which the lessor must confirm their consent or refusal, in writing. The code does not provide for a specific time frame in which the lessor must confirm the consent or refusal. In such a case, the response from the lessor must be received within the time requested by the lessee, or within a reasonable time.

The second case is provided by Article 563 of the Civil Code, according to which: "Termination of the rental agreement for a residential space shall be in writing." According to this norm, all residential rental agreements, regardless of the term, require a written form for termination. The purpose of it is to avoid the disputes that may arise between the parties regarding the facts and consequences of the termination of the contract.

I believe it would be better if the form of the residential apartment rental agreement were in writing. As well as certain (above-mentioned) forms of contract.

As per the German doctrine, contracts by which the parties change the subject of the contract, the amount of rent, the expiration of the rental period, the purpose of the rental, or the rental period are subject to written form. The same applies to the landlord's consent to improvements to the rental property. This emphasizes the importance of matters requiring written form. In this regard, it is noteworthy that if the changes made by the parties in relation to the above-mentioned issues of the contract require a written form, then we must undoubtedly consider the written form of the apartment rental contract mandatory.

We should share the views expressed in the doctrine that the freedom of the form of the contract "can be evaluated as a step forward, in terms of simplifying the form of the transaction and canceling the barrier imposed on the party and reducing the costs, however, on the other hand, it should be noted that a liberal approach may lead to the unjustified weakening of the standard of protection of a person (especially the consumer)". This has been reflected in the relations arising from the apartment rental agreements. This problem has been highlighted even more recently by the activation of apartment rental contracts and its undesirable practical consequences. It is often difficult and unachievable for the parties to assert contractual rights and obligations and their scope. Also, whose rights are violated more and to whom the contractual responsibility should be imposed.

The will is expressed through the oral form of the apartment rental agreement. The property is transferred, which is confirmed by the transfer of the keys to the tenant and their actual living in the apartment. However, difficulties may arise in the fulfillment of rights and obligations between the parties. Which is related to long and almost never-ending vindication disputes. This is confirmed by more facts revealed in real life. However, such disputes are fewer in court practice, which is due to various circumstances, in particular: long-term disputes and long waiting for results, court costs, etc.

The flawed results of the freedom of the form of the contract are indicated by the evaluations of international specialists, according to which: "Many countries have canceled the basic competencies of notaries in favor of other players in the legal services market. In many cases, the qualitative requirements for entering the profession have been reduced. This brought a double effect. Since then, notarial services have been partially taken over by law firms that compete with notaries in deregulated markets. At the same time, the radius of activity of the notary is becoming wider for law offices".[19]

[19] *Bock R.,* Some Opinions on the Future of Notary, Georgian-German Journal of Comparative Law, Institute of State and Law Publication, #2, 2022, 6 (In Georgian).

This emphasizes the role of notaries, as well as the fact that only written agreements will guarantee mutual protection of the parties' interests.

"Due to the absence of written forms, the cases of premature termination of commercial premises rental agreements are particularly common. The purpose of the written form prescribed by law is that the parties to the rental agreement can easily determine the contractual rights and obligations arising from the rental agreement. [20]

The written form of the contract also has a kind of coercive function for the parties, so that they fulfill their obligations under the contract in good faith and with high consideration.

The interest of a citizen (private person) to use their property freely and independently is often less of an interest for the state, and therefore it does not engage in the legal relationship of private persons. Yet, should this relationship concern the state's interest, the state intervention should take place here in a larger dose, if it is also in the interests of a private person. It may be better for the parties to enter into a written tenancy agreement, which will allow them to better protect their contractual rights and obligations, even by paying certain tax or fee costs. Accordingly, the state will also receive certain benefits by making such contracts mandatory in written form and receiving a fee based on it. Based on a solid tenancy agreement, neither the tenant can easily, without grounds, try to terminate the agreement, nor can the landlord affect the tenant's contractual rights.

Given this practical account, it is a fact that the situation of the parties to the apartment rental agreement is legally unfavorable and they are constantly in the mode of difficult protection of their rights, which is related to the termination of the agreement, vacating the apartment, payment of rent, restoration of damaged property, reimbursement of incurred expenses and other difficult to determine cases. It is in such a case that the state should intervene in private legal relations when their regulation is related to practical problems and increased difficulties. The involvement of the state implies legislative changes with norms of imperative content.

Legislative intervention, with the imperative norms (meaning the binding of the written form of the apartment rental agreement), should be done so that on the one hand the parties can easily protect their interests and on the other hand no cabal conditions will be imposed, which will be associated with taxes. Based on the written form of the contract, as an infallible document, and the rules stipulated by the corresponding changes in the executive legislation, not only the facts of eviction of illegally occupied apartments by the tenants will be simplified, but also the interests of the tenants themselves will be protected.

4. Changed Circumstances as Grounds for Termination of the Contract

4.1. Termination of the Apartment Rental Contract on the Grounds of Changed Circumstances

The obligation exists and it is necessarily subject to fulfillment, this is directly indicated in the legislative norm, namely, according to Article 361 of the Civil Code:

1. Each performance implies the existence of an obligation.

[20] *Cramer C.,* Mietrecht, Studium und Praxis, Eine systematische Einführung 2019, 30.

2. The obligation shall be performed duly, in good faith, and at the time and place predetermined.

With this, it can be said that if the legal requirement on the debtor's necessary and timely performance of the obligation is violated, it must be reversed or damages should be compensated. Willingly or unwillingly, these axioms prompt the legislator to do justice to the creditor's interests and to make all normative efforts for this purpose. The legislator does not forget the interests of the debtor either, but it can still lean towards the side of the one who has a claim."[21] However, this does not mean that only the creditor's interests are protected by the necessity of the obligation's immediate fulfillment.

Immediate performance means performance according to the law and reservations of the parties. Reservations by the parties are an opportunity to freely determine the content of the contract, however, this freedom must be within the framework of good faith and moral norms.

Good faith and in general performance of the obligations in good faith is subjective of the debtor, when the debtor does everything to fulfill the obligation. For this, they show a high degree of consideration. Non-fulfillment of the obligation without the mentioned leads to the liability of the debtor and the contract may be terminated.

"They who do not know and cannot be aware of the true state of legal facts which may prevent the fulfillment of an obligation is of good faith"[22]. Legal facts, when they affect the contractual conditions and make it impossible for the parties to fulfill their obligations in their original form, can become the grounds for terminating the contract. For instance, a change in market conditions can cause an increase in the rent of an apartment, and the tenant cannot pay the increased rent. Also, if the landlord needs a living space directly for themselves, or their close relatives, etc. These are the circumstances that the parties cannot be aware of in advance, and if they arise, the parties will be obliged to consider the changed circumstances. They create the impossibility of subjective performance when a specific person, as a lessee, cannot pay the increased rent, or on the contrary, the lessor themselves or their close relatives urgently need an apartment, or due to the change of circumstances, the lessor cannot restore the condition desired by the lessee, etc. These and similar circumstances become grounds for terminating a contract as a person is not obliged to do what is impossible for them due to changed circumstances. Coercion is impermissible even when there is no absolute inadmissibility of a change of circumstances, as "a change of circumstances in terms of admissibility is always expected." [23]

Thus, "the debtor, who does not fulfill his obligation in time, will not be able to enjoy the privileges related to responsibility. In this situation, the only "way to salvation" for the debtor is to prove that damage would have occurred even if the obligation was fulfilled on time. [24]

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21 *Zoidze B.,* Correlation of Private and Public Law (mainly in the context of the theory of interest), Private Law Review, # 5, 2023, 11 (In Georgian)

22 *Zoidze T.,* The Influence of the Presumption of Completeness and Infallibility of Public Register Data on the Bona Fide Acquisition of Property, "Private Law Review" #3-4, 2021-2022, 32 (In Georgian).

23 *Vashakidze G.,* Commentary on Article 398, Commentary on the Civil Code, Book III, 2019, 620 (In Georgian).

24 *Kochashvili K.,* Culpa in Civil Law, "World of Lawyers", 2024, 232 (In Georgian).

It should be noted that the lessor should not abuse these legal opportunities and the interests of the lessee should not be harmed. That is why, "termination of the rental agreement by the owner should be well justified for their own needs. {...} The termination of the rental agreement shall be considered an abuse of the property right even if the owner can satisfy their needs with other similar free housing unless he brings logical and convincing arguments as to why he cannot use this alternative space. The alternative apartment should match the layout, size, and structure of the rental apartment owned by him and should fulfill the functions that will meet the owner's requirements. [25]

If justifiable arguments are presented, neither party should be forced to fulfill the obligations, or to adapt to the changed circumstances that will create a precarious situation for them, the protection of the tenant's interest will be unreasonably prioritized compared to the interest of the owner, etc. This will result in "a breach of contractual equity if, as a result of changed circumstances, there is a sudden and obvious imbalance between the interests of the debtor and the creditor." [26]

In practice, there have been facts of the violation of the principle of good faith by the parties due to the changed circumstances, which does not lead to the adaptation of the contract terms, but can also become the grounds for terminating the contract. One of the court's decisions will serve as an example of this, namely:

On August 1, 2011, a natural person – G.G. (owner, plaintiff) and N(N)LP "Tbilisi Development Fund" (hereinafter the defendant) entered into an agreement based on which the defendant undertook to demolish the plaintiff's house until December 31, 2012, and upon building a new premise, they would provide the plaintiff with the residential space of at least 59m^2 at the same address. The fund also assumed the obligation to pay monthly rent for the apartment – 350 GEL- before handing over the residential area to the owner under the contract. During construction, the foundation determined that it was impossible to build 59m^2 of living space as it turned out that as per the public register, the plaintiff only owned 56m^2 of land. The Foundation explained in writing to the claimant that there was a need to adapt to the changes. Without this, it would be impossible to fulfill the contract. The plaintiff refused all the offers from the fund. Due to this, the fund refused to pay the rent of the apartment stipulated in the contract. According to the third part of Article 398 of the Civil Code and also the third part of Article 8, the court explained that the participants of the legal relationship are obliged to exercise their rights and duties in good faith. The court considered the fact that the fund used all possibilities to convince the plaintiff of the need to adapt the contract to the objectively existing circumstances as confirmed. However, the latter did not agree to any proposal. The court evaluated the said action as an abuse of rights by the owner. In such a situation, the court considered justified the foundation's unilateral termination of the contract in the part of the obligation to pay the rent, with the mentioned argumentation, and the claim of the owner was not satisfied. This was shared by both the Court of Appeal and the Supreme Court.[27]

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25 *Shatberashvili L.,* The Right to Property as a Basic Right and the Disclosure of Its Social Function on the Example of Ownership of a Residential Lot, "Private Law Review", #3-4, 2022, 235 (In Georgian).

26 *Vashakidze G.,* Commentary on Article 398, Commentary on the Civil Code, Book III, 2019, 621 (In Georgian).

27 Supreme Court of Georgia, ruling, case №ას-793-742-2017, January 17, 2018 (In Georgian).

Hence, the parties are obliged to observe the principles of good faith and consideration as much as possible, both contractually and in changed circumstances, which affect the quality of the performance of the obligation and the maintenance of the obligation relationship in general. However, "forcing the debtor to perform the obligation regardless of any changed circumstances would be unreasonable and fatal."[28]

4.2. Circumstances Changed by Mutual Agreement of the Parties and Their Consequences When Renting an Apartment

Circumstances existing during the contractual relationship, which are directly related to the fulfillment of obligations by the parties, may change not only independently of the will of the parties, but also by mutual agreement of the parties, which may lead to the change of certain contractual conditions. This may relate to timing, location, quality of performance, prices/rents, etc.

By mutual agreement of the parties to the apartment rental agreement, the circumstances may change (for example, the improvement of the rental property), which will lead to the adaptation of the terms of the agreements to these circumstances, for example, an increase in the rent. According to the first and second part of Article 548 of the Civil Code:

1. As a rule, the tenant shall carry out current repairs. He/she may not make alterations or reconstructions of the dwelling place without the consent of the landlord.

2. The tenant shall perform the works at his/her own expense.

3. The landlord may claim damages caused by the tenant's non-performance of the duty under paragraph 1 of this article.

As per the provision, the duties of the lessee are defined, the first is the obligation to carry out current repairs, the performance of which is the responsibility of the lessee at their own expense. Current repairs are not related to substantial improvement of the rented apartment. It may be caused by the reconstruction of the apartment. The second obligation is associated with the process of reconstruction of the apartment, which the tenant has the right to carry out only upon the agreement with the landlord, that is, he/she is obliged to get the consent of the landlord. The need for consent gives the tenant the opportunity of reimbursing the costs incurred by the landlord, or perhaps, by mutual agreement, offset against the rent. This is provided in Article 556 of the Civil Code: "If against the claim for payment of rent the tenant has the right to detain property or to set off other claims arising out of the tenancy relation, then the tenant may exercise such right even if otherwise provided for in the agreement, provided he/she gives advance notice to the landlord.".

The reconstruction of the apartment, which is carried out under mutual agreement of the parties, might be a new, mutually changed circumstance as a basis for increasing the rent, i.e., the improvement may not be caused by necessity and it may be the result of the mutual agreement of the parties, for example: by agreement of the parties, substantial improvement of the apartment by reconstruction, which may be done by the landlord at his own expense, or at the expense of the tenant,

[28] *Chitashvili N.,* Impact of Changed Circumstances on the Performance of Obligations and Possible Secondary Claims of the Parties (comparative analysis), "Bona Causa" Publishing, 2015, 80 (In Georgian).

subject to deduction of rent thereafter. In both cases, there will be an improvement in housing conditions, which will lead to an increase in the rent of the apartment from the period after the improvement. Otherwise, it would go beyond contractual relations and fall within the scope of unjust enrichment.

4.3. Distinction Between Expenses Incurred on the Improvement of the Apartment and Necessary Expenses

For the duration of the apartment rental agreement, it is important to distinguish the costs incurred for improvements from the necessary costs. As for the necessary expenses, it is related to the renovation works that serve to maintain the suitable condition of the rented apartment, so that the tenant can use the apartment properly. Such works may be necessary in the process of the signing of the contract and handing it over to the tenant. For example: the apartment had certain defects, which, according to the agreement, the tenant had to fix at their own expense and on the condition of compensation from the landlord. Also, some damage may have occurred later that is subject to repair by the lessor and it delays the performance. In order not to interfere with the use, the lessee has the right to repair this defect themselves and then be compensated by the lessor. Unlike the Civil Code of Georgia, the German Civil Code specifies the cases when necessary expenses must be incurred. In particular: 1. The lessor delays the correction of the defect; 2. Immediate elimination of the defect is necessary to maintain or restore the condition of the rental object; [29] The tenant will be compensated for other expenses as per the rules of the agency without specific authorization. There is no definition in the code of what is meant by other costs, which is a matter of assessing the specific actual circumstances. [30]

5. The Landlord's Obligation to Maintain the Perfect Use of the Apartment for the Tenant and the Consequences of Violation

During the entire period of rental, the landlord is obliged to take care and maintain such conditions, which is necessary for the tenant to be able to use the apartment fully. The basis and period of the interference are not important, that is, in what period the interference occurs and from whom, excluding the fault of the tenant.

The lessor is obliged to protect the interests of the lessee from third parties as well. If the lessor does not/cannot fix the defect within a reasonable time specified by the lessee, then the lessee has the right to unilaterally withdraw from the contract and (as stipulated in the German doctrine and legislation, non-standardly GCC Art. 543) terminate it with the right to demand damages. The lessee is not always required to specifically prove why the continuation of the lease agreement is unacceptable

[29] Prütting/Wegen, Weinreich, Bürgerliches Gesetzbuch, Kommentar, 12 Auflage, Luchterhand Verlag. 2017, 1038.

[30] See more about the necessary expenses: *Chitoshvili T.,* 2023, Legal Order of Some Issues in the Apartment Rental Agreement (Georgian-German study), published Besarion Zoidze Jubilee Collection 70, University Publishing, 2023, 223 (In Georgian).

for them, more precisely: if the defect is related to the state of emergency, the need to carry out capital repairs and this does not come from the fault of the lessee, as well as the implementation of necessary improvements, partial or completely arbitrary occupation of the space by third parties, etc.

Considering the above, it is interesting to see the judicial practice: G. A-shvili and A. N-dze filed a lawsuit against "Georgian Railways" LLC regarding the termination of the rental agreement and the return of prepaid rent on the following grounds: in 1992, a rental agreement was signed between the plaintiffs and the Trade and Production Union of the Supply of Georgian Railway Workers , by which the lessor, the defendant, undertook to provide benefits to the plaintiffs. The flats were transferred by right for a period of 10 years, allowing the plaintiffs to carry out both current and capital repairs to the flats, the cost of which would be included in the flat rent. The plaintiffs renovated the rooms and paid the contractual rent in advance. However, the plaintiffs were only allowed to use the rooms for two years, until the beginning of 1994. After that, the apartments were occupied by IDPs. Since the tenants, due to reasons beyond their control, could not use the apartments, the tenants requested the refund of the 8 years amount of rent.

The defendant did not recognize the claim on the following grounds: [...] that the plaintiffs used these rooms without restrictions until 1994, and in 1994, for reasons independent of the defendant, IDPs from Abkhazia broke into these apartments, for which the defendant is not to blame. Thus, the defendant has not violated the obligation under the rental agreement.

The court referred to the first and second parts of Article 541 and Article 352 of the Civil Code and considered that "Georgian Railways" LLC had an obligation to return the disputed amount. The Court of Appeals also agreed with this decision.

The Court of Cassation also shared the opinion of the appellate courts and explained that the appeals chamber correctly based the legal justification of the appealed decision on Article 541 of the Civil Code, according to which the lessor is obliged to hand over the leased object to the lessee at the time agreed by the parties and to ensure that the lessee exercises unlimited possession and utilization rights. In this case, it was determined that the immovable property stipulated in the agreement was not handed to plaintiffs, "Georgian Railways" LLC could not ensure the unhindered possession and use of the disputed premises by the tenants within the framework of the rental agreement, which is why the loss of interest from G.A-shvili and A.N-dze in the rental agreement is fully justified, and their demand for early termination of the deal and return of the prepaid rent – 5,184 GEL was legally satisfied by the decision of the Court of Appeal. Indeed, this is a case in which the lessee is not required to specifically prove the circumstances preventing the use. That's why the court considered the landlord's claim groundless.[31] We encounter the same ideas in the German doctrine. "The lessee has the right to terminate the rental agreement without warning if the use of the rented property is impossible in whole or in part, there is use contrary to the terms of the agreement. The defect may be caused by the transfer of legally and materially deficient property, partial or complete non-fulfillment of obligations, or other reasons – for example, the rental space is 10 percent less than specified in the contract, etc."[32]

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[31] Supreme Court of Georgia, Decision # ას-344-663-09 of September 22, 2009 (In Georgian).

[32] *Prütting/Wegen,* Weinreich., Bürgerliches Gesetzbuch, Kommentar, Weinreich. 12 Auflage, Luchterhand Verlag, 2017, 1064.

6. The Scope of the Apartment Rent and Its Changes as a Basis for Terminating the Contract

"While discussing the transactions, based on which a person receives some benefit, the question arises: is it done gratuitously or in exchange (for a price)? A transaction in which the obligation assumed by one party is matched by the reciprocal performance equivalent of the other party is considered onerous. According to the types of contracts the Civil Code provides and used in practice, onerous transactions are more common. Precisely, such transactions represent the sphere of interest of the subjects, in contrast to gratuitous transactions. Bribery transactions are mainly the basis for improving the subjects' economic status and living conditions.

It is known that the rental agreement is an onerous transaction. Therefore, the essential condition of this contract is the rent and the rules for its determination.

According to Article 327 of the Civil Code: "1. The contract is considered concluded if the parties have agreed on all of its essential terms in the form provided for such agreement.

2. Essential terms of a contract shall be those on which an agreement is to be reached at the request of one of the parties, or those considered essential by law.

The first part of the norm associates the moment of concluding the contract with the establishment of essential conditions, while the second part indicates the types of essential conditions. Taking this into account, the content of the norm has a general character, as it emphasizes the conditions agreed upon by the parties and the essential conditions stipulated by the law, however, none of them is specified. In this regard, it is especially important to note the essential terms based on law, which the parties must take into account during the conclusion of the contract and which cannot be implied. Such essential terms include, for example: identification of the parties to the contract, i.e. subjects, subject of the contract, time of conclusion, price (if it is a contract onerous), etc.

In the apartment tenancy agreement, as well as for other purchase agreements, price determination is an essential term. The law allows free determination of the type of rent, that is, the rent can be determined both in cash and in kind. It is not possible to specify its amount, however, it must be indicated in the method of determining its amount at the time of payment, for example: the prices in the market at the time of the fulfillment of the monetary obligation. Regardless of the mentioned assumption, I believe that to avoid the results of disputes and vague expressions between the parties, it is better to specify the amount of rent. If the amount of rent payment is determined according to the market prices at the time of payment, this may become the basis of the dispute. This form of rent determination may not meet the expectations of the parties at the time of the agreement. Based on the analysis of the doctrine, it can be said that the subject of the contract is not only what the parties directly promise each other and promise to fulfill their obligations, but also whether they trust each other and what are their expectations from each other to fulfill their promises.[33]

Based on the rental agreement norms, neither the minimum nor the maximum limit of the amount of rent is established, I believe that this is an acceptable rule. As for the terms of rent payment, the dispositional norm of the Civil Code (Art. 553) indicates the rule of rent payment, according to

[33] *Staudinger,* BGB, Eckpfeiler der Zivilrechts, 2018, 817.

which: 1. Rent must be paid at the end of the term of the rental agreement. If the rent payment is determined by periods, then it must be paid after the expiration of these periods.

2. Payment of additional costs is mandatory only if there is an agreement between the parties.

The first sentence of the first part of the specified norm is imperative. This is revealed in the content of the second sentence. The second proposal allows the parties to freely agree on the terms of rent payment. I.e. if the parties do not agree on the term of rent payment, then the payment will be made at the end of the contract. However, I believe that the content of the second sentence is still vague and may become the basis of a dispute for the parties. The mentioned sentence has both dispositional and imperative character. according to which the parties can determine the periods of rent payment, although there is an imperative reservation that: "it must be paid after the expiration of these periods ", which deprives the parties of the opportunity to freely agree and makes the moment of payment unclear. On the basis of this, the rent must be paid not in the agreed period, but after the expiration of this period. It would be better if the first part of Article 553 of the Civil Code had a similar content: "1. The rent must be paid at the end of the term of the rental agreement if the terms of rent payment were not agreed between the parties." It would be better if this content is reflected in the new comments of the norm.[34]

The concept of "additional costs" is no less vague, which is also given in the redaction of part 2 of Article 553. It would be better if the scope of its connection with the first part of the same article was outlined.[35]

Changing (increasing or decreasing) the amount of apartment rent and its grounds are of essential importance.

According to Article 536 of the Civil Code: "If the rented item is found to have a defect, then the lessee's rent will be reduced by the amount by which the suitability of the item was reduced due to the defect. This right loses its validity when the defect is corrected. Minor defects are not taken into account."

The Code of Civil does not define "insignificant defect", however, a defect should be considered insignificant, in which case the tenant does not prevent the intended use and the desired result. The assessment should be made only based on the analysis of specific factual circumstances. The consequences caused by the tenant's fault should also be taken into account.

The second part of the specified norm is a special rule that directly refers to apartment rent. In particular: "A rental agreement that is harmful to the tenant of a residential lot is void." This is the case when the nullity of the contract may become questionable and the contract may be terminated. For example: if a flaw that is harmful to the tenant is revealed after a certain period has passed after

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[34] This issue is also vaguely presented in the comments, Commentary on the Civil Code of Georgia, Book Four, Vol. 1, "Law" publishing house, 2001, 123

[35] In this regard, "expenses", which are mentioned in articles 537, 545 of the Civil Code, do not create uncertainty. The mentioned norms distinguish between necessary costs and additional costs in general, the basis of their origin, and the manner and scope of the restitution. The mentioned costs, including additional costs, have nothing to do with the rent and its volume. Unless the parties have agreed on the rule of mutual deduction of rent and expenses. A detailed discussion of the mentioned issue is impossible due to the format of the article.

the conclusion of the contract, then the tenant may terminate the apartment rental agreement unconditionally, without observing special terms. In such a case, he is not obliged to request a rent reduction and to extend the rental agreement. Also, the tenant should not lose the right to claim compensation for the rent already paid for the defective period of use.

The moment of invalidity of the apartment rental agreement will be when the harmful and dangerous circumstances were identified immediately after the conclusion of the agreement and the period of flawless use is not defined. In case of confirmation, the issue of damages may arise.

Article 538 of the Civil Code clarifies the requirement of Article 536 and limits the right of the lessee if the lessee was aware of the defect at the time of the conclusion of the contract, or could have known about it.

The restriction on terminating the contract does not apply to a case where the defect of the apartment poses a threat to human health, in particular: "If the apartment or other space intended for human habitation is in such a condition that its use poses a significant threat to their health, the tenant can terminate the rental agreement without observing the term. The employer has this right even if he knew about the danger when concluding the contract, but did not make a claim."[36] Thus, in the specified case, the tenant has the right to terminate the contract, however, the law does not consider such a case as a direct basis for the request for a rent reduction, and the tenant can terminate or extend the contract without any reservations or compensation.

Reconstruction of the apartment, or its substantial improvement, may become the grounds for increasing the rent of the apartment. For this, a joint agreement of the parties is necessary. Improvements which shall not be of necessity, or shall not be mutually agreed upon, shall not be made, or shall not affect the rent as said above.

A change in the economic situation in the market may become the basis for the rent increase. This directly follows from Article 562, paragraph "c" of the Civil Code: "If the tenant refuses to pay the increased rent offered by the landlord, which corresponds to the rent of the apartment in the market"; It should be noted that the non-compliance must be substantial. I consider it important that in this case the length of time that has passed since the conclusion of the contract should be taken into account. If a short period has passed since the conclusion of the contract (for example, up to 1 year), it should be inadmissible to meet the request for a rent increase. I think that based on the principles of equality, the rights of the parties will be protected and the stability of the contracts will be maintained.

In this regard, foreign legislation and practice are noteworthy, for example: "According to the prevailing view in German jurisprudence and theory, a transaction is immoral if 1. the disproportionality between the service and the price is "glaring" and 2. there is reprehensible behavior on the part of the beneficiary. A glaring and especially gross mismatch between service and price is when the service exceeds the price by 100%. The match between service and price may be compromised in smaller doses. Relations in the real estate field are regulated differently according to German case law, the disproportionality is noticeable even if the selling or renting price of the apartment is 50% higher than the market prices.[37]

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[36] Civil Code, 1997, with amendments and additions until January 20, 2016, "Bona Causa" publishing house, Article: 542.

[37] *Khubua G.,* "Laesio enormis" as a Principle of Law, published in Besarion Zoidze Jubilee Collection 70, scientific editors: Prof. Lado Chanturia, Prof. Tamar Zarandia, University Publishing, 2023, 77-78.

"Private law cannot always balance the interests of the debtor and the creditor in such a way that the rights of both parties are fully protected. [...] the obligation must be performed, if it is not performed and is violated, it must be reversed or damages should be paid. Willingly or unwillingly, these axioms prompt the legislator to do justice to the creditor's interests and to make all normative efforts for this purpose. The legislator does not forget the interests of the debtor either, but still, he can turn to the side of the one who has a claim. In the mirror of fundamental rights, the creditor's one-sided or excessive legal power, because he is a creditor, seems crooked. In particular, it leads to the distortion of the principle of proportionality and the overshadowing of the debtor's constitutional right".[38]

That is why, according to the German doctrine based on practice: "In the absence of a solid economic basis, the rent ceiling can be adjusted taking into account the legislative scope. A further rent increase – without increasing the rent in the local market – is extremely unacceptable from a constitutional point of view." [39]

Accordingly, amendments introduced to the German Civil Code, according to which the amount of rent is limited, in particular: the amount of initial rent provided for in a newly concluded apartment rental agreement for apartments within the territories established by the state cannot exceed by a maximum of 10% the amount of rent established in the municipalities during the last four years.[40]

State governments have the power to designate distressed housing market areas for a 5-year period, where rental conditions for residents are at risk, and rents are rising rapidly above the national average when the number of renters increases without new construction and needed housing. In such areas, the marginal rent limits are established by legislation, the increase of which is not allowed except in exceptional cases, which are related to the improvement of the apartment and are stipulated by the contract (GCC 560). State bodies are obliged to study the circumstances and justify the reasons that complicate the conditions of renting an apartment in the market and lead to the creation of difficult housing market areas. In addition, the justification should indicate what measures the state will take to correct the situation.[41]

The fact that the increase in apartment rent is perceived as a particularly important and noteworthy issue is well illustrated by strict legislative intervention. The new legislative changes substantially limited the freedom of the parties and especially the landlords in determining the scope of the rent.

"At the time of entering into a new tenancy agreement, if the rent that belonged to the previous tenant (the previous rent) is higher than the new rent within the difficult housing market area established by the legislation (the rent permitted by Article 556d paragraph 1), then the parties may set a new rent up to the amount of previous rent. When determining the new rent, the increased or

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38 *Zoidze B.,* Correlation Between Interest and Public Law (mainly in the context of interest theory), Review of Private Law, # 5, 2023, 27-28.

39 *Winkle L.,* Die Regulierung von Bestandsbauten in angespannten Wohnungsmärkten, 2023, 540.

40 Bürgerliches Gesetzbuch, bearbeitet von Ellenberger, Götz, Grüneberg, Herrler, von Pückler, Retzlaff, Siede, Sprau, Tohrn, Weidenkaff, Weidlich, Wicke. C.H.BECK, 81. 2022, 863.

41 Blank/Borstinghaus/Siegmund, Miete kommentar BGB, 7-Auflage, 2023, §556d-kommentar.

decreased rent, which changed the scope of the previous rent in agreement with the tenant, and this happened during the last year before the end of the rental agreement, is not taken into account.[42]

It is clear that with the changes made in the norms defining the scope of the apartment rent, including the added norms, the freedom to determine the amount of the rent is somewhat limited, which is strictly regulated and controlled by the state. The existing norms confirm that housing rent is a special area of regulation and the involvement of the state and its control mechanisms are necessary to ensure the protection of the interests of the parties and the provision of housing for citizens with fewer problems.

7. Conclusion

According to the results of the research, it was determined that the freedom of contract should be within certain legal limits so that the interests of both the parties and third parties are protected accordingly. Limitation of contractual freedom in the relations arising from apartment rent and bringing it into the legal space is particularly important in for determining the form of the contract and the amount of rent. The recently changed circumstances made these issues especially relevant.

The freedom of one person should not result in violation of the interests of another. Thus, along with dispositional norms, there are imperative norms. The state must protect the citizen, as a subject of legal relations, from falling into cabal conditions. For this, it is necessary to constantly update the legal framework based on the generalization of practice.

The right to use is essentially different from the right to ownership as a commodity. Therefore, I do not consider it necessary to register the apartment rental agreement in the public register. With a simple written contract, the parties will be able to easily protect their rights, both among themselves and third parties. If we say that when refusing to register a rental agreement in the public register, it is possible to involve public-legal interests, which can be connected to the state tax policy, then it will be interesting to analyze the economic research results from the state, based on which the state should ensure its tax-related, protection of interests.

Based on the rationale discussed in the paper, it would be preferable if certain restrictions were established regarding the change of the apartment rent amount, which would be determined by certain terms, that is, it would be determined in what period it should be possible to increase or decrease the apartment rent after the conclusion of the contract and the change of the apartment rent.

The mentioned legislative changes will contribute to the stability of apartment rental contracts and it will be possible to better protect the rights of the parties.

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