

DEBTOR’S RIGHTS AND OBLIGATIONS DURING COURT ORDER ENFORCEMENT, CAUSES OF PROBLEMS THAT MAY ARISE AND THE METHODS OF OVERCOMING THESE PROBLEMS

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Abstract

Everything has his pros and cons. Debtor’s rights and obligations during court order enforcement, causes of problems that may arise. This problem is in the whole country, not just in one city or in one social class. A very large number of families from everywhere around Georgia have been affected. How and where it started will be discussed below in the text. Rights of creditors and debtors overlap in many aspects. We need to be very careful when sorting out this issue. We cannot under any circumstances make a decision with a benefit of one party while the other party will suffer losses. Georgian law on “Law Enforcement” does not support in any ways rights of debtors and all the procedures highlighted are towards forcing the debtor to pay off the debt. At this stage based on the current law, current socio-economic problems, statistics, ways on sorting out the problem, this object of studies is very important and has a very high intrinsic value in its theoretical part as well as in its practical part. If the right approach is taken it is possible to minimise the need to protect rights of creditors or debtors in the futures, because every party will be fully aware of their abilities and punishments for failures to fulfil their obligations, before signing the contract

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Introduction

Recent development of financial institutions in Georgia led to a very active phase of lending in the country. First active phase started in 2005-2008 that can be called the wild west of Georgia. Loans were given out with a very high interest rate, ranging from 15% and over. Necessary credit checks were not being carried out. Mainly, no affordability checks were carried out, which automatically excludes stress test to check whether the debtor will be able to pay off his loan if interest rates rise. Loans would be given out as long as collateral would have covered amount of the loan with some excess. The whole system was very fragile and risky. It could survive only by having an absolute majority of large loans secured by collaterals. This way of doing business turned out to be very profitable.

Because of this business model of financial institutions led to a quick expansion of government enforcement agency. Law enforcement agency was initially one of the departments of Georgian court, later this department was passed on to the ministry of justice and later private institution of law enforcement agency was founded. A short-lived war with Russian Federation in August 2008 in a murderous tandem with a global financial crisis shattered Georgian economy. Loads of budgetary expenses on infrastructure have been reallocated to the war, Russia embargoed any products from Georgia, Georgian export fell not only to Russia but to other countries as well further worsening government balance

sheets, less tourist were visiting the country and less investments were made into the country because of the war and because of the global financial crisis.

This led to very tragic consequences for Georgian economy as a whole as well as for businessman and whole general population. Businesses and private debtors started struggling to keep up with loan repayments. This became a real problem to majority of people. Population got divided into two. Debtors vs Creditors. Creditors would require the contract to be fulfilled and if debtors didn't pay up they required their collateral to be sold on a public auctions and proceeds used to cover the debt. Six years have gone by since this issue arouse. Although, some steps have been taken to get past this issues, but the problem still stays. And recently it has become very relevant. A large number of people, who were left without homes, are asking for government benefits and for a shelter, insisting that the government is responsible for everything. They blame the government for creating a situation where they could lose their properties to "loan sharks", that is how they call the banks. This part of the population wouldn't blame themselves for making wrong business decisions.

This problem is in a whole country, not just in one city or in one social class. A very large number of families from everywhere around Georgia have been affected. Even a number of suicides were seen in some cases.

Unstable financial situation has led a large number of people taking loans that they are unable to repay. Current issue becomes very difficult and unmanageable. That is why it needs prompt resolving. Actuality of the population is a consequence of factual reality which left the majority of them without a shelter. They are demanding some alternative that will not take away their shelter.

How can this issue be sorted out in the way that rights of debtors have been protected? Just writing off their debt will most likely antagonize creditors and breach their rights. Would it be a wrong precedent for government to do that?

Firstly, when we are trying to protect rights of the debtors we should think about the counterparts: creditors. The beneficiaries of the enforcement order. Not protecting the rights of the creditors will take this issue to a different level where both parties will be antagonized. Today the main problem of law enforcement agencies is divided into two parts. 1) Revoking the rights of the owner of the house and 2) selling the property via a public auction. During the first period the debtor loses the ownership De Juro, and during the second part he loses the ownership De Facto. It is very important to highlight attention on the rights of the debtors while not forgetting rights of the creditors.

Let us look at the statistics provided by the national bureau of enforcement. Revoking the right of illegal ownership of the property is the part we are interested in. This encompasses enforcements of court orders that include confiscating property of debtors and transferring the rights of ownership to the creditors.

From August 2008 to August 2013 there were 676 instances of confiscating properties by national bureau of enforcement.

If we divide it by years we will have the following. 2008 – 129; 2009 – 138; 2010 – 120; 2011 – 90; 2012 – 111; 2013 – 88. According to the information provided by the national bureau of enforcement the majority of the cases are not connected to the creditors at all.

According to their information, since 2011 private enforcement agencies have started to do the same job as national bureau of enforcement. However, we need to take into account that using national bureau of enforcement is chargeable while using private enforcers is free for the creditors. This could be one of the reasons why since 2011 number of enforcements has steadily decreased.

Rights of creditors and debtors overlap in many aspects. We need to be very careful when sorting out this issue. We cannot under any circumstances make a decision with a

benefit of one party while the other party will suffer losses. Georgian law on “Law Enforcement” does not support in any ways rights of the debtors and all the procedures highlighted are towards forcing the debtor to pay off the debt.

However, certain mechanisms need to be in place that will not only support rights of creditors but will encompass a large circle of players. Otherwise we are standing at the brink of destruction and this difficult situation that Georgia finds itself in will become a complete chaos.

What can be done in order for such situations are avoided all together and rights of debtors are supported as well as rights of creditors are supported: First of all enforcing enforcement notices in the “right” way. And Secondary informing population on consequences of not repaying debts before credit agreements are signed.

This topic is very important for every social class of the society. Reality is much worth then statistics. In order to sort this issue out we need to try preventative methods instead of using reactive methods that will definitely harm rights of one of the sides or money of taxpayers will be spent. To use preventative methods what needs to be done is educating people on loan contracts. Suggesting making this a part of high school curriculum shouldn't be gross. Since this will avoid a lot of troubles in future for pupils themselves as well as for creditors and wider society. However, this shouldn't take a form of smear campaign against taking on a loan o against banks. It should educate pupils on negative sides of taking loans and being unable to repay it as well as on positive sides of taking loans that are very beneficial for debtor as well as for wider economy.

Also, these pupils will educate their parents on the subject. This will give quite a large chunk of population some education on pros and cons of taking a loan.

Also, adverts, that show only positive side of loans and happy faces of debtors, should strictly show consequences that may follow if they don't make their repayments on time. Government should make it a legal requirement for banks and other financial institution to add such a warning to any advert or any contract that is signed by the debtor. And in credit agreement it should not be a small print but a largest print on the first page.

Regulations can be issued by National Bank of Georgia. According to these regulations banks should take a full responsibility on informing clients on consequences of not being able to repay a loan on time. On the other side National Bureau of Enforcement should take charge of educating new generations of Georgians. This is mutually beneficial for creditors as well as for people who will be taking loans in the future. All banks prefer their loans repaid on time and not having to use services of law enforcement agencies.

Government at the moment sees only two ways of sorting out a current situation In Georgia. Restructuring the loan which will most certainly lead to the same finale, and second – government give out loans on a very small interest rate to the debtors, so, they can pay off their debts and save their shelter. Both of the solutions need a lot of work and contemplating.

Let me show you in a few words my alternative vision of sorting out problems with AgroCredits. This issue has become very topical in recent times. This is cause by a surge of AgroCredits being taken out recently. If we follow a line of public insurance of these loans, this will give us two benefits: firstly it will reduce a risk factor for creditors, so, interest rate will automatically decrease giving a debtor more chance of developing their business and being able to repay the loan. And secondly, in case he still defaults on his loan he will not lose his shelter and insurance will pay off his debt.

Concerning educating population on credits – this is very important part of sorting out these issues for the future. Educating population will lead to two positive effects. Firstly population will have a full knowledge that they might lose their collateral in case they default on any kind of debt. This knowledge will ease the tensions when it comes to worst. And debtor who has knowingly taken the risk should blame himself for bad decisions. And

secondly many prospective debtors will not take any loans when they know consequences that may follow.

Protecting rights of the debtors is linked with protecting rights of creditors. And any change in equilibrium may lead to a feeling of inequality in either of the parties. Topic of this paper is: Decreasing the feeling that rights of debtors will not be protected. Educating population to the level that every single person, before taking a loan, will be fully aware what consequences may follow if he defaults on it. Preventative actions in sorting out this issue are prevalent.

Conclusion

At this stage based on the current law, current socio-economic problems, statistics, ways on sorting out the problem, this object of studies is very important and has a very high intrinsic value in its theoretical part as well as in its practical part. If the right approach is taken it is possible to minimise the need to protect rights of creditors or debtors in the futures, because every party will be fully aware of their abilities and punishments for failures to fulfil their obligations, before signing the contract.

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