

LEGITIMATE TYPES OF THE COURT ACCESSIBILITY RESTRICTION ACCORDING TO CIVIL PROCEDURE CODE OF GEORGIA

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Abstract

For the welfare of modern society and any state`s correct function it is very important to have straightened working court system and to ensure every person`s court accessibility. Each step of court case management is detailed in civil procedure code. The legislation of civil procedure of Georgia foresees some mechanisms and opportunities of the restriction of court accessibility, which must be studied. The meaning of this study is stipulated by huge importance of court accessibility itself and by need of due caution during its restricting. The access to the court right is reserved not only by national, but also by international law, as evidenced by Article 42 of the Constitution [1], ``The UN Convention for Protection of Human Rights and Fundamental Freedoms`` Article 6 [3]. As any study issue, this one also needs scientific, systemic approach. For fully demonstrating the issue it is advised to classify and define court accessibility restriction mechanisms. Here presented work is about this matter.

Keywords: Court access; classification; restriction of the right; limitation of the right

Introduction

The right of court accessibility as well as other human rights, may be framed within the legal limits. Obviously, this case refers to the restriction of this right in the context of Civil Procedure Code.

The aim of such restriction is not the violation of human rights. Legal analysis of Civil Procedure Code norms confirms that the civil proceedings are accomplished in the interests of each contending party and taking into account their way of consideration. In some cases, spreading one person`s undefined legal interests may inflict harm to another person`s legitimate interests. Thus, it is necessary to establish certain rules of conduct, which will determine the balance between implementation and limitation of the rights of the parties.

Discussing the ways of limitation of protection of one's legitimate interests in court, it is important to be thoroughly investigated any legal preconditions of such binding during which the research will contribute to the issues of classification, grouping certain legal characteristics.

The restriction of the right of access to the civil procedure law can be grouped into two main types - temporarily, for a certain period or permanently, for all types of restrictions.

Interest will not be deprived of such a general characterization of the types mentioned above, which is available in this study.

The temporary restriction of the right is characterized with a favorable legal situation for the person to whom this right is restricted, in particular, when the obstacles are eliminated, the person still has the right to apply to the court.

Practical examples of the temporarily restriction of accessibility to a court is denial of the claim registration. In this case the claim of refusal may be caused by the formal procedural defect, such as unpaid state tax; fixed material failure of the annexes referred to appeal documents or other statutory deficiencies, but the party is always able to repair the defect and re-apply to the court for the same demands.

Similarly, the party has the right to re-apply to the court, even when the claim's substantial compliance with the law is checked by the judge and it is believed that it should stay without consideration. For example, when in the divorce and alimony lawsuits is not indicated that the defendant refuses to divorce and make child support payment.

The above-mentioned statutory mechanism of temporarily limiting Court access is innovative in the civil procedural code.

From January 1, 2012 the change became effective in the Civil Procedure Code and on the basis of Article 183 was established regulation, according to which a formal complaint with the law compliance checks not the court, but the statutory officer of the Court Chancellery. The legal assessment of the issue needs to be discussed in the aspect, undermines the mentioned rule the court accessibility or not. [2]

Civil proceedings are based on the Civil Procedure Law's one of the most important principle-the principle of disposition, according to which a party may, by his own will start court dispute to defend his legal rights, for which he will appeal to the court. Thus, the first step is to file a complaint in court proceedings and acceptance of the court (of course, meant the beginning of legal proceedings and not to the physical delivery of the court).

An action takes place in the court by filing the lawsuit which is a petition of an interested person's subjective rights and interests protection. [4, p. 304] On the basis of the above-mentioned changes, the beginning of the

judicial proceedings is not the Court itself, but at this stage justice is carried out by an official of the State Chancellery.

In addition, the party is lacked of important procedural privilege, he can not complain about his refusal to accept his claim or to get it in writing.

Consequently, the Court of First Instance was replaced by the possibility of lodging in case of similar violations (eg non payment of state taxes, etc.) to identify the gaps and give the applicant a reasonable period of time to eradicate. In this case the plaintiff was entitled to remedy the defect, after that the court accepted the appeal. When according to the above-mentioned manner, the defect identified in terms of the abandonment of the claim, the plaintiff may have violated legal limitation period. Moreover, when such a limitation period for some disputes (eg labor dispute dismissed from the limitation period of one month) is quite small.

The changes are based on the English model of the Code of Civil Procedure, but his removal to Georgia, worsened because of the reasons discussed in this study. To take in consideration our country's socio-economic and educational problems (severe economic situation, the impossibility of making a lawyer's services, lack of awareness of legal education, etc.), we can say that introduction Georgian jurisdiction to such innovations is too early.

Thus, on the one hand, this kind of change serves to avoid the delay of judicial formalities, but the goal of civil proceedings is not to unload the work of judges. It is focused on the protection of interests of the parties. Access to the court is meant, that the party will appeal to the court proceedings of a highly qualified evaluation stage, which in this case could not be reached.

Temporarily restrict access to the court, unlike the sad side of the legal consequences of such a permanent limitation, in which case the proceedings are completed without any kind of renewal prospects. The very simple and banal example is to leave cassation appeal without consideration because of the missed procedural deadline (despite the existence of a valid reason for running procedural deadline), unpaid state tax within the deadline set by he court without a good reason, moreover, non submitted bill of paid state tax to the court on time.

On the basis of Civil legislation preemptory norms (Article 369, Article 396 of the Code), the party which has not fulfilled the above-mentioned proceedings, as the legal sanction, is deprived the right to make an application in the court dispute, and as a result he loses the dispute [2].

Talking about non-payment of state duty and its consequences must be noticed, that the amount of the duty and payment terms are regulated by the Civil Procedure Code, and the Georgian law "On State duty".

According to the content of Article 38 of the Civil Procedure Code, a party is obliged to pay the state duty at every stage of the proceedings. [2]

The provision of the law clearly shows that the amount of state taxes, according to the economical environment of Georgian society is quite high and, in some cases it is up to a few thousand Lari. Each instance of the passage the amount increases.

Thus, the impossibility of paying fee is often an insurmountable obstacle for parties.

Civil Procedure Code and the Law "On State Duty" stipulate some kind of incentives on a particular group of people, for example, the handicapped. Disputes developed by the legislator, whose proceedings are exempt from paying state tax suitors, such as the payment of alimony disputes, injury or other bodily defects, and more. A number of benefits are listed in the 5th paragraph of the law "On State Duty".

Civil Procedure Code empowers the court to grant state tax payment of benefits as well, as reflected in the Code of Civil Procedure 47th-48th paragraphs. [2]

It is interesting that, in parallel of State tax payment by the legislation instructions, the German Civil Procedure Law provides certain benefits to civil cases paid the fee, in particular, the Civil Procedure Code Article 114 by virtue of which his personal and economic circumstances, can not compensate for the production costs, the ability to cover the costs partially or allot their payments for a certain period.

It is also possible to separate the request of special cash assistance to cover the costs of the court in case of a dispute between the petitioner and the position will be considered a prospective party to be in good faith in connection with its insolvency. [5, 44]

Conclusion

Thus, in the legal field one of the most protected and the fundamental right of access to court is not absolute and is subject to the restrictions of other rights, selling and ensuring the fulfillment of the law provision. The process will undoubtedly require study and analysis.

Although the detailed discussion and accounting of restrictions are going beyond the scope of this study, however, the classification of the legal preconditions of court accessibility restriction is a step forward on the way of imposition the mentioned restrictions and the need to examine the legality, what will promote easing the ways to study them.

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