

# Certain Issues Related to Annulment of Final Court Decisions According to the Civil Procedure Legislation

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## Abstract

The Civil Procedure Code of Georgia is a codified normative act which meticulously defines the general principles of the legal procedure, the court's departmental subordination and judgment, the parties participating in process, their legal capacity, proceedings at all instances of the court, appeals of court decisions, etc. Generally, norms of procedural law are of imperative character. Participants (parties) of these legal relations do not have right to transform or change them. In other words, participants (parties) of formal relations are equipped with only those rights and obligations that are imposed on them only by the legislation or the court practice. Thus, exactly the procedural law determines the degree of democracy and freedom of the state legal system. It does not matter how broad an individual's rights are; these rights lose sense if they are not protected and realized by the state enforcement mechanisms. That is why, when disputes concerning infringement of the Article 6 of the European Convention on Human Rights arise, the European Court of Human Rights always examines whether the applicant's formal procedural rights are protected and how the rights recognized by the national legislation are in line with the standards of human rights.

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**Keywords:** Annulment, final decision, time limit

## Introduction

Right to fair trial is a common European fundamental element of the constitutional state.

The Article 42 of the Constitution of Georgia is a key norm regulating the right to fair trial that comprises state-legal procedural guarantees<sup>55</sup>.

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<sup>55</sup> Comment on the Constitution of Georgia. Chapter 2. Citizenship of Georgia. Basic Human Rights and Freedoms. Tbilisi: LTD Petiti, 2013. Pp. 513-523.

The Article 2 of the Constitution of Georgia also determines one of the most important fundamental principles of the procedural legislation of Georgia – protection of a person’s rights in the court.

According to the constitutional court of Georgia, the right to fair trial implies not only the possibility to appeal to a court (register a claim), but also ensures a human’s legal protection. The right to appeal to a court also implies the right to claim against the decision made by a court.

Though the Civil Procedure Code meticulously defines the certain issues of the legal procedure, among them the rules of appeal to a court for restoring violated rights, after adopting this law it has to be found out how effective the procedural norm is, whether it requires amendments and additions. The section XI of the Civil Procedure Code is on issues and rules of reopening the proceedings terminated by a final judgment or decision.

The presented paper aims to analyze the norms referring to the terms of application for annulment of the final decision; it also aims at forming the viewpoint in order to protect the rights of an individual applying for annulment.

### **The object of reopening proceedings based on annulment**

The Civil Procedure Law considers the special rule of annulling final decisions by reopening proceedings.

According to the paragraph 1 of the Article 421 of the Civil Procedure Code, Proceedings terminated by a final judgment or decision may be reopened when there are prerequisites for an action for annulment (Article 422) or for an action for retrial of the case due to newly discovered circumstances (Article 423).

Thus, the object of reopening proceedings (restitution of proceedings) can be only the case proceedings of which were completed and the court’s decision or judgment on terminating proceedings or dismissing an appeal is final.

The same can be said about cases completed by decisions and judgments made by courts of appeal. It refers to the appeal and cassation court decisions by which impugned decisions were annulled and new decisions were made. Thus, proceedings and not appeal (cassation) proceedings were terminated.

The object of reopening cannot be separate procedural actions which were completed and court decisions were final<sup>56</sup>.

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<sup>56</sup> T. Liluashvili. Civil Procedure Law. Tbilisi, 2005. P. 539.

## **Reopening of proceedings on the basis of the appeal for annulment of decision**

The court decision, in its sense, is an act of justice administered in the name and on behalf of the state and its main purpose is to provide law and order determined by the act.

The court decision, considering the objective and subjective limits, after entering into force, deprives the parties of the right to apply again to a court with the same claim on the same grounds and dispute the facts and legal results determined by the court decision (Article 266, Civil Procedure Code of Georgia).

The only exceptional case when the completed proceedings may be reopened by annulling a final decision is considered by the section 11 and, due to its purpose, is not just a possibility of appealing against the final decisions or other legal acts; it is directed to the party's right to demand reopening of the proceedings according to the procedural rules and cases strictly determined by law, inobservance of which will have unfavorable results for the party.

Reopening of the proceedings is not the next step of appealing against court and accordingly, it is not a procedural mechanism of examining legality of the decision.

The proceedings which were followed by the final decisions may be reopened only in exceptional cases when there are preconditions strictly determined by law.

As it was already mentioned, the Civil Procedure Code of Georgia provides two types of reopening of proceedings:

- 1) Annulment of the court decision
- 2) Reopening of the case due to newly discovered circumstances

Article 422 of the Civil Procedure Code of Georgia depicts grounds for reopening the proceedings when there is a demand of annulling the court decision.

According to the mentioned norm a final decision can be annulled on the basis of an action filed by an interested person appeal if:

- a) A judge who was involved in decision-making did not have right to participate in decision-making according to the law;
- b) One of the parties or its legal representative (if such a representative is needed) was not invited to the hearing;
- c) A person, whose rights and legal interests are directly related to the decision, was not invited to the hearing.

d) These grounds may not be used for annulling a decision if it was possible for the party to declare those grounds during the hearing to the court of the first instance, the court of appeals or the court of cassation<sup>57</sup>.

To determine the grounds necessary for annulment of the final decision (judgment), violation of the rules given in the Articles 70-78 of the Civil Procedure Code of Georgia while inviting a party to the hearing shall be proved.

Hearing held in absence of one of the parties (or a legal representative) who was not notified according to the rules established by law creates absolute grounds for reversing a decision by means of appeal (cassation) procedures (Article 394, Civil Procedure Code of Georgia). But if a decision entered into force, and it cannot be appealed, the question of its annulment arises (article 422, part 1, subparagraph b).

Thus, a notification shall be delivered according to the rules established by law (Articles 70-78 of the Civil Procedure Code of Georgia). If the notification is delivered in the abovementioned way, absence of one of the parties cannot impede the hearing and cannot serve as grounds for annulment of the final decision<sup>58</sup>.

### **Time limits for filing an action for annulment of a decision**

An action for annulment or an action for retrial due to newly discovered circumstances shall be filed within one month and this period cannot be extended (Article 426, Civil Procedure Code of Georgia).

The period shall commence on the day when the party becomes aware of the grounds for annulment or retrial due to newly discovered circumstances.

If an action for annulment of a decision is based on Article , part 1, subparagraph “b”, the time limit for filing the application shall commence on the day when the party, or its legal representative if the party is legally incompetent, were notified of the decision.

An action for annulment or an action for retrial due to newly discovered circumstances may not be filed after five years have elapsed after the decision entered into force, except for cases under Article 422, part 1, subparagraph “g” and Article 423, part 1, subparagraphs “z” and “t” of the Civil Procedure Code.

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<sup>57</sup> Decision of October 2, 2009 of the Chamber of Civil Cases of Kutaisi Court of Appeal on the civil case № 2/ბ-539-2009; Judgment of the Chamber of Civil Cases of the Supreme Court of Georgia. Case N ლ-418-396-2012. 23.04.2012.

<sup>58</sup> Cf: Liluashvili T., Khrustali V. Comment on the Civil Procedure Code of Georgia. Tbilisi, 2007. P. 747.

According to the indicated norms, a legislator determines special time limits that commences after the decision enters into force.

Another approach shall be taken when the party learned about the grounds for annulment of the decision before the decision entered into force and this happened when he/she still had the opportunity to file an action to the appeal or cassation court. In such cases, the court shall refuse to accept and proceed the application due to the violation of time limits.

Reopening of proceedings is possible only in cases when the appeal against the decision is not admitted<sup>59</sup>.

Besides determining a one-month deadline for filing actions, procedural law (Article 426, part 4) also determines the maximum time limit - 5 years - after the enforcement of a decision. If this period of time is exhausted, reopening of proceedings is impossible even in cases when the ground for annulment of a decision is evident.

Time limitation determined by the indicated norm became a subject of dispute at the constitutional court of Georgia several times.

According to the decision made by the constitutional court of Georgia (April 30, 2003) the application on retrial of the decision after 5 years of its enforcement is not admissible and it does not contradict the Article 42 of the Constitution.

The aforementioned decision indicates that revising decisions for a long time threatens interests of the third parties' who acquired this right on the basis of the court decision.

It is inadmissible to keep a final court decision constantly in doubt, otherwise the credibility of the court will become suspicious<sup>60</sup>.

On November 5, 2013 the Constitutional Court of Georgia, upheld the constitutional claim №531 of the Israeli citizens - Tamaz Janashvili, Nana Janashvili and Irma Janashvili against the Parliament of Georgia and according to the Article 42, part 1, declared the normative content of the Article 426, part 4 unconstitutional. i.e. the provisions of the Article 426(4) under which the persons provided in Article 422(1)(c) of the Civil Procedure Code of Georgia are not allowed to file an action for annulment once five years have elapsed after the decision has become final, has been declared invalid.

The Constitutional Court explained that the persons provided in Article 422(1)(c) of the Civil Procedure Code of Georgia should be able to file an action for annulment of a decision made in favor of the state. They may submit circumstances/evidences that could have changed a final

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<sup>59</sup> Liluashvili T., Khrustali V. Comment on the Civil Procedure Code of Georgia. Tbilisi, 2007. Pp. 754-755.

<sup>60</sup> Decision №1/3/161 of April 30, 2003 of the First Board of the Constitutional Court of Georgia.

decision in their favour if they had been submitted to the court during the hearing of the case. Demanding annulment of a final decision is vital for protecting and restoring the rights of these people.

Interested parties should be given an opportunity to protect their rights and file an action for annulment a final decision regardless of a 5-year limitation period.

Restriction on retrial of the case shall be admissible only when the court is practically unable to correctly solve the dispute and avoid violation of particular persons' rights<sup>61</sup>.

In certain cases, restriction of the person's right to apply to the court is admissible according to the European Human Rights Court. Restriction is in line with the Article 6 of the first part if it depicts a legitimate aim and there is a reasonable correlation between the use of this means and a legitimate aim<sup>62</sup>.

### **Legislative Problems related to Annulment of a Final Decision**

In order to determine if the case can be proceeded under the Article 422(1)(b) of the Civil Procedure Code of Georgia, it should be clarified if a party was notified by a judicial summons according to the rules established by the articles 70-78 of the Civil Procedure Code of Georgia.

There are strictly defined rules for notifying judicial summons to a party. Particularly, a party or its representative shall be notified by a judicial summons of the date and location of a hearing. The summons shall be deemed served on a party or its representative if it has been served on either of them (under Article 70.1 of the Civil Procedure Code of Georgia).

If the location of a party is unknown or it is impossible to serve judicial summons in any other way, the court may, by its judgment, approve service by publication (Article 70.1 of the Civil Procedure Code of Georgia).

If the location of a party is unknown or it is impossible to serve judicial summons in any other way, the court may, by its judgment, approve service by publication. Service by publication shall be implemented by hanging notification on a prominent place in the court building concerned or by placing it on a web-site, or at the request of an interested party, by publishing, at the party's expense, in the newspaper widely circulated in the administrative-territorial unit where the party resides, or by publishing in other media.

In the cases specified in the first paragraph of this article, judicial summons shall be deemed served on the party on the seventh day after the

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<sup>61</sup> Decision №3/1/531 of November 5, 2013 of the Constitutional Court of Georgia.

<sup>62</sup> Decision of November 30, 2005 of the European Court of Human Rights on the case - Iedemski and Iedemska against Poland.

summons are placed at a prominent place in the court building concerned, or on a website, or published in a newspaper or other media.

Analysis and judicial practice of the indicated rules (the Articles 70-78 of the Code) shows that public judicial summons causes problems.

The Article 78 stipulates that "public notification" is based on juridical fiction, since there is no doubt that publications (including the summons) are not directly delivered to the parties but in order to administrate justice, the court assumes that the parties received them. The content of the norm considers judicial summons delivered.

At the same time, it is obvious that it is not reasonable to suppose that parties who were delivered summons by publication will know about it, especially, when the claim is proceeded under the Article 15, part 2 of the Civil Code of Georgia which considers that who were the subject of the public notice of these messages will be introduced. If defendant's location is unknown, then a claim may be filed according to his/her last place of residence.

Thus, by the time of filing a claim and hearing a defendant may have changed his/her last place of residence (especially, when a defendant's location is unknown), what excludes sending judicial summons to a party about an action filed against a defendant and possibility of filing an action within time limits established by the Civil Procedure Code.

For this reason, a 5-year time limit for annulment of the decision may not be enough for a party to realize the right to a fair trial. The purpose of civil litigation is to make timely, lawful and fair decision while proceeding a dispute. If a party is not notified about the proceedings according to the established rules, the decision made against the party shall not be fair. Therefore, such a party shall not be restricted by a 5-year time limit on filing an action for annulment of the decision.

It is noteworthy that this view is in line with the decision of the Constitutional Court of November 5, 3013 as well as with legislations of other democratic countries. For instance, under the Article 586.1 of the Civil Procedure Code of Germany, reviewing of the enforced decision is inadmissible after a 5-year time limit expires. Though, under the Article 586.3, this decision time limit does not apply to annulment of the decision when a party was presented by an unauthorized representative (the Article 579.4) or when a dispute concerns a suit on establishment of paternity and appointment of a trustee (the Article 641.4)<sup>63</sup>.

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<sup>63</sup> Thomas/putzo, ZPO, Kommentar 28. Auflage, Verlag C.H.BeckMunchen. 2007. S.771-781.

## **Conclusion**

Under the Article 422, part 1, subparagraph “b” of the Civil Procedure Code of Georgia, a party has a right to file an action for annulment of the decision if a party or its legal representative (if the party needs such a representative) has not been invited to the hearing. Though, submitting such an application is admissible within 5 years after the decision enters into force. Even if a claim is well-grounded, the application cannot be submitted after the time limit expires.

To protect the right granted by the Article 42 of the Constitution of Georgia and the Article 2 of the Civil Procedure Code, the party shall be given the opportunity submit an application for annulment of the final decision even after a 5-year time limit expires if a party is not informed about the court trial against him/her or the party was sent public notification to the hearing.

To sum up, amendments in the Procedure Legislation regarding the discussed issue will greatly contribute to realization of the right to a fair trial.

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