Unılateral Contracts [95]

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Abstract

Origin of the relations deriving from the law of obligations is grouped primarily according to the voluntary and involuntary grounds. Agreements and unilateral contracts are among the obligations emerged on the basis of demonstration of the will (intent). It is very difficult to find materials on unilateral contracts in the Georgian legal literature; however, analysis of the Georgian judicial practice proves that currently this is a challenging issue and it is important to conduct studies on it**.** The concept of unilateral contract does not imply the necessary fulfilment of the intent demonstrated by one person. It is necessary this unilaterally demonstrated intent be accepted by the other party. The phrase 'unilateral contract' and 'unilateral demonstration of intent' do not have identical meanings and therefore, it is a mistake to use them as synonyms. Unilateral agreements in the French law are the so called incomplete bilateral agreements where their bilaterality is hindered by the lack of the elements of bilateral agreements at the moment of concluding such an agreement – and specificity of such agreements should be taken into account during legal proceedings. The existence of nonhomogeneous judicial practice regarding unilateral contracts and agreements clearly proves that it is necessary to conduct further research in this field and also to ensure detailed simplification of legislative norms as well.

Keywords: Obligations; unilateral contracts; unilateral agreements

Introduction

Origin of the relations deriving from the law of obligations is grouped primarily according to the voluntary and involuntary grounds. Agreements[96] and unilateral contracts are among the obligations emerged on the basis of demonstration of the will (intent).

[95] In the English Translation of the Civil Code of Georgia, this term is referred as "unilateral transaction".

[96] A contract is a specific and private legal agreement. Study of the French legal doctrine makes it clear that the term "contract" as it is established in the Georgian language,

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We will try to offer a small essay on unilateral contracts and highlight key problems predominantly based on the comparative analysis of Georgian and French laws.

Unilateral contract is one of the specific grounds for the relations deriving from the law on obligations[97]. Perhaps, due to this specificity there are many different attitudes on recognizing the unilateral contract as source of obligation. Hence, for instance, the German, Italian and Swiss codes as well as the Georgian civil legislation recognizes the unilateral contract as a source of obligation. The French doctrine is nonhomogeneous – some scholars support Potie's opinion that the parties make promises in the agreement and impose obligations on themselves, as far as only the promises and agreements which are given based on prior intent give rise to legal obligation to fulfill them, and this is how the agreement is executed. However, there are other promises that should be kept in good faith, and as far as they derive from the intent of one party, without making an agreement, they do not generate legal obligations. Therefore, Potie rules out recognizing the unilateral contracts as a source of obligation, because the unilateral contract lacks the element of agreement between the parties, and the unilateral contract is an obligation which has emerged on the grounds of sole action of the debtor. We encounter the concept of a unilateral contract later. In the French doctrine of the 19th century it is considered as "a legal act which generates obligation of a person only with the willingness of this person."[98] However, there is also an opinion that "the French positive law is not interested in unfamiliar concepts. It seems it is not going to accept it yet, because the French law is based on the principle of agreeing the intents."[99]

As for the Civil Code of Georgia, it recognizes the unilateral contract as the grounds for emerging the obligation.[100] The most recent comment to the Civil Code of Georgia clearly defines the legal rule based on which there

corresponds to the French term 'convention', although the term 'contract', with its meaning, is more than the agreement.

[97] While working on the French Civil Code, the editors did not recognize unilateral contract as a source of obligation. However, the attitude changed in the twelfth century "the modern jurisprudence should recognize the unilateral contract as a source of obligation." See J. Mesre, Revue Trimestrielie droit civil, 1996 observation, page 143

[98] Najjar, Le droit d'option, contcibution a' l' étude du droit potestatif et de l'acte unilatéral, LGDJ, 1967

[99] H. et L.Mazeaud, J.Mazeaud, F.Chabas « Lecons de droit civil, T II, V I, obligation, 9e ed Montchrestien,1998

[100] See the Article 50 and Article 51 of the Civil Code of Georgia

have been and still are many legal disputes brought to court.[101] The comment to the provision on unilateral contracts reads: "as far as the legal consequence depends only on the willingness of one person, which may jeopardize the legal stability, the law stipulates a detailed regulation for unilateral contracts and preconditions for their application. The legal consequence caused by demonstrating the intent from one party may have to deal only with the person demonstrating the intent, or the third person […] Although the third person's consent is not necessary for occurring the legal consequence anticipated by the unilateral contract, still, s/he should at least learn about the intent[102] of the authorized person […] the moment of acceptance of the third party's intent (the contract's counteragent) has a constitutional significance […] this is why such contracts are valid from the moment when the recipient becomes aware of the demonstration of the intent."[103]

Indeed, only after the recipient learns about the intent, it becomes possible, based on the decedent's will, to transfer the assets to heirs according of the will and to receive the estate. It is noteworthy that such unilateral contracts are most often encountered in court judgments.[104]

We should also point out that the will is a dispositional unilateral contract, unlike making public promise on reward, which is a binding contract.

We also come across with the following content in the Georgian court judgments: agreement on the acknowledgment of the existence of a debt is a unilateral contract[105]; acknowledging the existence of a debt is a unilateral contract, i.e. one-sided demonstration of intent[106]; in accordance with the Article 341 of the Civil Code of Georgia, acknowledgement of the existence of a debt represents a unilateral, abstract contract; thus, the debt acknowledgment is characterized with all the features of a unilateral and abstract contract, considering the peculiarity which is given in the concerned provision".[107]

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[101] See the Civil Code of Georgia, comment to the Article 50, http://www.gccc.ge/wp-content/uploads/2015/06/152312_Artikel-50.pdf

[102] See the judgment of the Supreme Court of Georgia Nას-514-898-06; http://www.supremecourt.ge/files/upload-file/pdf/samoq2007-1-uni.pdf

[103] ibid, page 4; http://www.gccc.ge/wp-content/uploads/2015/06/152312_Artikel-50.pdf

[104] Judgment of the Supreme Court of Georgia - case №ას-745-707-2013; №: ას- 203-190-2014; case №ას-405-382-2014; №: ას-1698-1592-2012, etc. See http://www.supremecourt.ge/court-decisions/civil-cases/

[105] Judgment of the Supreme Court of Georgia Nას-81-779-03;

[106] Judgment of the Supreme Court of Georgia №ას 346-637-04

[107] Judgments of the Supreme Court of Georgia №ას-1621-1522-2012; №ას-699-658-2011; №ას-286-543-08;

There are several inaccuracies in these wordings. First and foremost, a contract cannot be unilateral from its classical understanding[108], as far as a contract is usually an agreement between two or more people on their involvement in binding relations and one-sided demonstration of the intent, which brings about the legal consequence, is a unilateral contract. This is why there is a famous saying – all the agreements are contracts, but not all the contracts are agreements. However, one of the court judgments – on pardoning the debt, provides a quite correct definition of the respective provision, and there is a conclusion deriving from the Article 448 of the Civil Code of Georgia – "Forgiveness of a debt by agreement between the parties terminates the obligation."[109] There is a circumstance here that we should take into account: it is necessary that the recipient learns about the intent demonstrated unilaterally by the other party.

It is also arguable whether it is right to prove the unilaterality of agreements on making gifts and loan agreements in the judicial practice.[110]

One of the court judgments reads: "making a gift is a unilateral contract. The offeror demonstrated the will of making a gift, which the offeree accepted. Thus, not speaking a language by the offeree cannot affect[111] the validity of the intent demonstrated by the offeror.[112]"

Undoubtedly, there will be more disputes about the opinion that the loan agreement is a unilateral contract. Legal theories on agreements are confronted with the opinion on unilaterality of any type of contract in general, not only on unilaterality of a loan agreement[113] in particular;

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[108] There is a term in the legal literature 'incomplete bilateral agreement', which is concluded as a unilateral one, but there may emerge such obligations during its fulfillment, which imposes liability on the party, which used to be only a creditor in this agreement. These agreements are referred to unilateral agreements in the French law, as far as they do not bear the signs of bilateral agreements when they are first concluded. - J. GAUDEMET, Arch. phil. droit 44 , p. 24

[109] Judgment of the Supreme Court of Georgia № ვ3-199-2000

[110] Although an agreement is a bilateral contract, from its side, the agreement can itself be a unilateral and bilateral. A unilateral agreement is the one, which imposes obligation, or grants the right to one party only, e.g. making a gift. See ibid, http://www.gccc.ge/wp-content/uploads/2015/06/152312_Artikel-50.pdf

[111] The offer and the acceptance both represent a demonstration of the will, but taken separately they do not result in any legal consequence. This is why neither the offer nor the acceptance are regarded as unilateral contracts. Simultaneous occurrence of the offer and the acceptance – the consensus – ensures the occurrence of a legal consequence. If there is difference between them, then no agreement will be concluded. See ibid http://www.gccc.ge/wp-content/uploads/2015/06/152312_Artikel-50.pdf

[112] Judgment of the Supreme Court of Georgia № ას-139-132-10

[113] Loan agreement – a unilateral contract or a synallagmatic agreement? There is a dissertation thesis aimed at studying the legal nature of this problem - Attard J., Le prêt d'argent: contrat unilatéral ou contrat synallagmatique ?, thèse Aix Marseille III, 1998.

correspondingly, when the court judgment reads – "loan agreement is a unilateral and valid agreement, where only one of the parties undertakes to carry out a certain act. This is the repayment of borrowed money. The other one, however, has a respective right, i.e. the lender is authorized to request the return of borrowed money from the borrower."[114] Besides, we need to specify that if we consider the gradual fulfillment, any other agreements may turn out to be unilateral at a certain moment which does not necessarily mean that it is not bilateral or multilateral; if the lender has the right to request the return of the money given to the borrower, when the due time comes for fulfillment of this obligation, then the borrower has the right, at the moment when the obligation enters into force, to request from the lender a thing without defects of right or clear title to it, i.e. both parties have their share of rights and obligations, and none of them has only the right or only the obligation. This opinion is also exercised in the judicial practice, which is proved by the court decision, which reads – "in case of bilateral relations deriving from the law of obligations, the participants in the relation are creditors and debtors at the same time. In this case we are facing the bilateral binding relation, and each party is a creditor and the debtor at the same time."[115]

Conclusion

- The concept of unilateral contract does not imply the necessary fulfilment of the intent demonstrated by one person. It is necessary, at least, that this unilaterally demonstrated intent be accepted by the other party.
- The phrases 'unilateral contract' and 'unilateral demonstration of intent' do not have identical meanings, and therefore, it is a mistake to use them as synonyms.[116]
- Unilateral agreements in the French law are the so called incomplete bilateral agreements, where their bilaterality is hindered by the lack of the elements of bilateral agreements at the moment of concluding such an agreement – and specificity of such agreements should be taken into account during legal proceedings.
- The existence of nonhomogeneous judicial practice regarding unilateral contracts and agreements clearly proves that it is necessary to

[114] Judgment of the Supreme Court of Georgia № ას-394-367-2010 ; case №: ას-212-204-2013

[115] Judgment of the Supreme Court of Georgia № ას-1610-1604-2011

[116] Jean Carbonnier, Droit civil, vol. 2 : Les biens. Les obligations, Paris, 2004 "An intent is not the only element; an agreement is a more global act. An agreement is also about joining, it is reasonable act of trust and it cannot be perceived as something separated for each party, under which there is an intent for everyone".

conduct further research in this fieldand also to ensure detailed simplification of legislative norms as well.

References:

Mesre J. Revue Trimestrielie droit civil. 1996 observation, p. 143.
Najjar, Le droit d'option, contcibution a' l' étude du droit potestatif et de l'acte unilatéral, LGDJ, 1967.
H. et L.Mazeaud, J.Mazeaud, F.Chabas « Lecons de droit civil, T II, V I, obligation, 9e ed Montchrestien,1998.
Civil Code of Georgia
Civil Code of Georgia. Comment to the Article 50, http://www.gccc.ge/wp-content/uploads/2015/06/152312_Artikel-50.pdf
See the judgment of the Supreme Court of Georgia Nას-514-898-06.
http://www.supremecourt.ge/files/upload-file/pdf/samoq2007-1-uni.pdf
http://www.gccc.ge/wp-content/uploads/2015/06/152312_Artikel-50.pdf; page 4
Judgment of the Supreme Court of Georgia - case №ას-745-707-2013; №: ას- 203-190-2014; case №ას-405-382-2014; №: ას-1698-1592-2012, etc. See http://www.supremecourt.ge/court-decisions/civil-cases/
Judgment of the Supreme Court of Georgia Nას-81-779-03.
Judgment of the Supreme Court of Georgia №ას 346-637-04.
Judgments of the Supreme Court of Georgia №ას-1621-1522-2012; №ას-699-658-2011; №ას-286-543-08.
Gaudemet J. Arch. phil. droit 44 , p. 24.
Judgment of the Supreme Court of Georgia. № 3ჯ-199-2000.
http://www.gccc.ge/wp-content/uploads/2015/06/152312_Artikel-50.pdf
id http://www.gccc.ge/wp-content/uploads/2015/06/152312_Artikel-50.pdf
Judgment of the Supreme Court of Georgi.a № ას-139-132-10.
J., Le prêt d'argent: contrat unilatéral ou contrat synallagmatique ?, thèse Aix Marseille III, 1998.
Judgment of the Supreme Court of Georgia. № ას-394-367-2010 ; case №: ას-212-204-2013.
Judgment of the Supreme Court of Georgia. № ას-1610-1604-2011.
Carbonnier J. Droit civil, vol. 2 : Les biens. Les obligations, Paris, 2004.