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The court practice existing with respect the legal relations arisen out of the provisions of unjust enrichment

The acting Civil Code of Georgia has been in force as of 26 June 1997 and consists of six books. Out of these six books the largest and voluminous is the law of obligations. One of the chapters of the Law of Obligations, in particular, Chapter 3 of the Title Two (Articles 976-991), regulates unjust enrichment in the Civil Code.

It is known that the obligations arisen out of an unjust enrichment are the obligations that have condictional nature, where the creditor may be a person, on whose account the other person was enriched and the obligor is a person, who was enriched on the account of creditor. The enrichment implies not only unjust acquisition of property or other tangible good by one person from another but also those cases when one person saved his/her property on the account of other's and thus gained benefits.

According to Section 1 of Article 976 of the Civil Code of Georgia "a person who transferred something constituting performance of an obligation to another person may claim from the pseudo creditor (recipient) its return."

As of 1997 - when the Civil Code of Georgia came into force - up to the present moment, the court practice related to the legal relations arisen out of the provisions of unjust enrichment has been established in Georgian court system. It is stated in the operative part of one of the decisions of the Chamber for Civil, Entrepreneurial and Bankruptcy Cases of the Supreme Court of Georgia that "legislation does not introduce the direct notion of unjust enrichment, however, based on the significance and content of this institute unjust enrichment regulates those relations, which are arisen as a result of acquisition by a persons without legal grounds of the property belonging to the other person."

In order to rightly qualify as an unjust enrichment, several conditions have to be jointly met, in particular:
1. Enrichment of the recipient has to occur on the account of the performer;
2. The acquisition of the property lacks the legal basis;
3. As a result of an unjust enrichment of the recipient the performer has to incur damage, which is demonstrated by the reduction of his/her property and loss of profit;
4. There shall be causal link between the unjust enrichment and the damage caused to the performer.

The present paper analyses several judgments of the Supreme Court of Georgia. These judgments clearly demonstrate how the provisions of the Civil Code of Georgia on the unjust enrichment shall be applied and interpreted.

a. one of the judgments of the Supreme Court states that an unofficial written agreement (manuscript) was concluded between two persons, according to which, one person gave to another a part of sums in the form of earnest money for buying an apartment owned by the latter and agreed to transfer the rest of the amount before 31 December of that year and, therefore, to re-register the apartment. On 26 December of the same

year another unofficial written agreement (manuscript) was concluded between the parties and agreed sum was paid additionally. According to the new unofficial written agreement the parties agreed that the rest of the amount was to be paid before the end of the January of the next year. In February the buyer applied to the court and requested the return of the double amount of the earnest money paid to another party claiming that the respondents failed to fulfill their obligations by leaving for abroad and avoiding the re-registration of the apartment. The court of the first instance dismissed the claim and by the decision of the court of second instance the appellate suit of the claimant was dismissed since the non-performance of the obligations had not taken place. The decision in question was appealed in the Court of Cassation, which partly upheld the decision. In the operative part of the judgment the chamber indicated that "since the form of making the transaction prescribed by the legislation is not observed, the claim of the claimant as regards the return of double amount of the earnest money was not satisfied, however, on the basis of Subparagraph "a" of section 1 of Article 976 of the Civil Code of Georgia the respondents were imposed the obligation to return to the claimant the sums transferred to them."

As the above court judgment shows the claimant based his claims on the Section 2 of Article 423 of the Civil Code according to which "if non-performance of the obligation is caused by the fault of the party who received the earnest money, then this party must return to the other party double amount of the earnest money. In addition, the party who gave the earnest money may demand compensation for any damages". In the given case the Supreme Court did not apply the above article, since the requirement of the law regulating the transfer of the ownership of an immovable thing was not observed as the agreement was not notarized (323 Civil Code of Georgia) and partly satisfying of the claim of the claimant has became possible only on the basis of Subparagraph "a" of Section 1 of Article 976, which stipulates that "a person who transferred something constituting performance of an obligation to another person may claim from the pseudo creditor (recipient) its return if the obligation, due to voidness or other grounds does not exist, will not arise, or was terminated later". At the same time in the given case all necessary terms for unjust enrichment are jointly present, namely:

1. Enrichment of the respondent occurred on the account of the claimant;
2. The receipt of the property was lacked the legal basis, i.e. the requirements of the then acting norm on the existence of notarized mandatory contract for the transfer of the ownership of an immovable thing was not observed;
3. As a result of receipt of the property by the respondent the property of the respondent has been reduced;
4. There is a causal link between the unjust enrichment of the respondent and damage to the performer.

It should be mentioned here, that as of 15 March 2007 changes have been introduced to Article 323 of the Civil Code of Georgia according to which for carrying out transactions with respect to the immovable property the observance of the notarization rules is not obligatory any more.

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b. In accordance with the one of the decisions of the Chamber for Civil, Entrepreneurial and Bankruptcy Cases of the Supreme Court of Georgia, a natural person lodged an application against a bank on the compensation of the deposit account and the interest accrued on it. The claimant asserted that he had deposited certain money with the bank for the period of 90 days with annual interest amounting to 19% added to the deposit account. In accordance with the contract the interests were added to the deposit amount, which was issued by the expiry of the term of the contract. According to the claimant the respondent has violated requirements of Articles 874 and 170, when the money was not returned and claimed the imposition on the respondent of the obligation of payment of principle amount as well as the 19% interest accrued on it, 0,05% interest provided for the deposit contract for 50 days of delay of payment and state taxes. The respondent did not admit the claim and lodged counterclaim against the claimant and stated that in July 2002 the bank received massage on the transfer of money. As it became known to the bank later, the transferred amount had two addressees. The big part of the amount belonged to the other person and the rest to the claimant. However, the bank by error transferred the whole amount to the claimant but later based on the legal request of the addressee the bank has paid to him not only the principal amount but also interest. According to the respondent the claimant has deposited the amount received by error with 19% interest rate, from which he received the income and undertook to cover gradually the amount received by error. However, he failed to do so and accordingly the bank suspended transactions on his account. The Respondent in his counterclaim pointed to Section 2 of Article 189, Subparagraph "a" of Article 976, Paragraphs 1 of Articles 979 and 981 and Article 170 and requested the imposition on the claimant the obligation of payment in the bank's favor of the amount transferred by error and the received profit, 3% of the lost profit and interest paid by the bank as a result of guilty conduct of the claimant to the authorized person. As a result of the decision of the court of first instance the initial claim was dismissed and counterclaim was partly upheld and the claimant was imposed the obligation of payment of principle amount, costs of representative and state taxes. The remainder of the claim was dismissed as unsubstantiated.

The above judgment was appealed by the claimant in the Appellate Court. By the judgment of the Appellate Court the appealed judgment was annulled and by the new judgment both, the principle claim and counterclaim, were dismissed.

By the decision of the Cassation Court the part of the appealed judgment concerning the dismissal of the claim of the claimant was annulled and was remitted to the appropriate chamber of the same court for reconsideration. By the judgment of the Appellate Chamber the judgment of the district court was party annulled and the initial claim of the claimant was upheld. The part of the judgment by which the counterclaim was upheld remained unchanged and the bank was ordered to pay USD 10 to the claimant as a result of setoff. The judgment was appealed in cassation by the claimant who requested the partly invalidation of the judgment because of satisfying of the counterclaim. The Cassation Chamber refused to satisfy the cassation claim since it was unsubstantiated.

The operative part of the decision points to Subparagraph "a" of Section 1 of Article 976 of the CCG and states that "in the given case it is established that the claimant received the amount from the bank without any legal grounds. The obligation of the bank as regards the transfer of the money to

the claimant is not established. Something obtained without legal or contractual basis shall be returned by the recipient in accordance with the above provision." In addition, the Cassation Chamber considered referral by the Appellate Court to Article 442 of the CCG to be proper and stated that counterclaims between two persons may be terminated by setoff if these claims have become due.

The decision shows that the protection of the interest of the aggrieved party and satisfying of counterclaim became possible only under Section 1 of Article 976 of the CCG. In the given case the respondent applied to the court with a counterclaim and based his claims on the provisions concerning unjust enrichment, namely, Subparagraph "a" of Section 1 of Article 976, Article 979 and Paragraph 1 of Article 981.

Under first section of Article 979 of the CCG "the revendication claim shall extend to things acquired, and benefits received, as well as to everything that the recipient has acquired as compensation for the destruction, deterioration or seizure of the received thing". Section 1 of Article 981 states that "if the recipient knew of the defective legal ground at the time of receipt, or if this was unknown to him because of his gross negligence and he became aware of the defect later, or if the claim with respect to [revendication of the] transfer is taken under consideration in court, then the recipient shall be liable from the time of receipt of information on the defect or from the time of submission of the claim for consideration in court – under Sections 1 and 2 of Article 979 and Article 980 and the rules defined below." In the given case the bank applied to the court with a counterclaim in order to protect its interest and requested the imposition on the claimant of the obligation of the payment in favor of the bank of not only the principle amount but also: the lost profit, the interest paid with the principle amount to the authorized person as well as obligation of compensation for damages caused as a result of ruining of business reputation and payment of the profit gained by the claimant. These claims were based by the bank on the above provisions, however, eventually among the claims of the respondent the only claim concerning the return of the principle amount was upheld (if we do not count the sums paid in the form of the representative costs and the state taxes), i.e. the bank was actually compensated for only the loss which it has incurred as a result of the action of the claimant and not for the amount which the bank has additionally paid as a result of its guilty action (the amount which was paid additionally was the amount which was paid by the bank to the authorized persons in the form of interest along with the principle amount), the guilty action of the bank is demonstrated by the fact that the bank initially transferred to the claimant the sums intended for the other person and did not paid attention to the fact that the big portion of these sums had a different addressee. It should be taken into consideration that the bank has not appealed any of the judgments and decisions of any instance courts in the court of the higher instance.

c. In one of the decisions of the Supreme Court the subject of the dispute is the reparation for the damages.

Pursuant to the decision high voltage distribution device, which ensured the power supply of the claimant and because of which he became subscriber, was put into operation in 1988. The above distribution device was on the balance of (belonged to) the respondent, however, when the later suspended the supply of the power, in order to improve power supply the claimant deemed it reasonable to join to another supplier. For this reason the claimant applied to the district court and requested se¬cu¬ring of an ac¬ti¬on. The court upheld the request of the claimant and ordered the respondent not to interfere with the claimant to join to the high voltage device on the balance of (belonged to) other supplier.

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The Court of Cassation by the operative part of the decision found established the fact that the claimant joined the high voltage distribution station by which it actually became the direct costumer. However, during 2 month period from the day of factual connection the claimant did not possessed the status of direct customer under the law, but in fact it was the direct costumer, since it was receiving the power supply directly from the transmission network, high voltage device, which constituted the property of the second supplier and at the same time the property of the enterprise holding the license of transmission. In addition the Cassation Court shared the opinion of the claimant that under Subparagraph "d" of Paragraph 3 of Article 36 of the law of Georgia "On Power Industry and Natural Gas" the distribution licensee has to provide distribution service to the customer. The provision of service of distribution of power without receipt of power from the supply point by the distribution licensee and delivery of power to the customer through its distribution network is impossible.

The court also considered it established that the claimant was paying for the electricity charges during 4 months at a relatively high price. The price in question was set for the customer to whom the respondent provides the distribution service. As a matter of fact the respondent has not provided to the claimant the distribution service during the 4 months, since the claimant was receiving the power from other transmission licensee. According to Subparagraph "l" of Article 2 of the law "On Power Industry and Natural Gas" the direct customer is a person who receives power directly from distribution network or production licensee. According to Article 12 of the ordinance No.12 of National Commission of Power Regulation of Georgia of 15 October 2002, the relatively lower tariff is established for the direct supplier. Since the claimant has made payment at the higher tariff, the difference between the money actually paid and money that was to be paid was huge and eventually claimant requested its return.

Finally, the court has upheld the claim of the claimant under paragraph "a" of Section 1 of Article 976 and Article 991 of the CCG.

From the above it is clear that the court has applied Article 991 of the CCG according to which "a person who was unjustly enriched at the expense of another by methods other than those defined in this Chapter shall be bound to return the received [benefit]." The given provision also stipulates the cases, when the enrichment implies unjust receipt of the property by different methods or/and saving the property of one person at the expense of another.

Hence, from the three judgments discussed above, the protection of the interest of the party became only possible on the basis of the provisions on the unjust enrichment and in these three cases all four necessary conditions mentioned above for unjust enrichment are jointly present.

It is known that very often changes and amendments are introduced to the legislation of Georgia for its improvement; however, it is clear that in legal relations arising out of norms on unjust enrichment the interest of the aggrieved party will be necessarily protected.

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