

# General overview of the transactions under the Georgian civil law

Zurab CHECHELASHVILI \*

## Abstract

This article examines in short the transactions (legal acts) under the Georgian law. According to the Civil Code of Georgia, the subjects of private law satisfy their property, personal or other kinds of interests by means of actions (inactions). If such actions (inactions) which consist of declarations of intention of a person result in the legal effect – i. e. arising, modification or termination of a legal relationship, they are considered as transactions.

**Keywords:** approval, attestation, causa, declaration of intention, notarial void, permission, transaction, voidable

## Introduction

The notion of transactions is not limited with only civil law. The provisions regulating the transaction are provided in the Book 1 of the Civil Code of Georgia – “General Provisions of the Civil Code” with the purpose that they are to be used for the transactions regulating other fields of private law. For instance, the property contribution by a sole shareholder into the capital of a limited liability company is subject to regulation by the corporate law but from a point of view of civil law it is a unilateral disposition transaction, on the basis of which the ownership is transferred from one person to another; entering into and fulfilment of an employment contract is regulated by the provisions of the labour law (the Labour Code of Georgia) but the employment contract is a bilateral transaction and the pre-conditions for validity of a transaction which are determined by the Civil Code, are to be applied to it.

## Notion of Transaction

A transaction is a unilateral, bilateral or multilateral declaration of intention which is directed to arising, modification or termination of a legal relationship.

As it is shown in the above definition, first of all, a transaction is a declaration of intention. It is not sufficient if a person wishes something or just has a will; it is necessary that this will be declared. It is clear that there is a person's inner will behind any declaration of intention; consequently, the declaration of intention shall always follow from the person's inner will and it shall not be merely an unconscious action.

Any declaration of intention is not sufficient for producing the legal effect. For instance, the declaration of intention of a mentally ill person or 3-year old infant is of no any importance from legal point of view. In order the declaration of intention to have the legal consequences it must be legitimate; i. e. **the declaration of intention shall be valid.**

For the legal consequences together with the valid dec-

laration of intention the law sometimes requires so-called **real actions**. For instance, the pre-conditions of transfer of ownership on movables in accordance with Article 186 of the Civil Code of Georgia are: 1) on the one hand, a real agreement and, on the other hand, a ground for real agreement – *causa* – i. e. an obligatory transaction, on which the real agreement is based and 2) delivery the movables in the acquirer's possession. The last is a real act with which the transfer of ownership on movables is connected.

The mere declaration of intention, even coming out from a person's inner mind, is not a transaction if it results in no legal effect. For instance, statement of sympathy in toast is a declaration of intention but it is of no importance and it produces no **legal effect**. However, if in the same toast a person promises the other person to lend money and this promise will be made in writing, then his declaration of intention becomes valuable from legal point of view and is considered as a transaction.

There are a lot of events, when there is a person's declaration of intention, which is directed to arising, modification or termination of a legal relationship but

a) **the content of declaration of intention cannot be ascertained** from its expression as well as other circumstances or

b) its participant's (participants') intention is **unclear** or **the words used by its participant (participants) do not express his (their) real intention.**

In the first case there is no transaction; it will not come into existence at all and consequently this declaration of intention the content of which is uncertain cannot produce any legal effect. In the second case there is a transaction but the participant's (participants') will is subject to **interpretation.**

While providing the rules of interpretation of the transactions the Civil Code of Georgia gives the general guiding principles. In particular, on the one hand, the attention should be paid to the participant's (participants') real will; the

\* Prof. Dr., Faculty of Social Sciences, International Black Sea University, Tbilisi, Georgia  
E-mail: zchechelashvili@ibsu.edu.ge

latter shall be ascertained as a result of reasonable deliberation and not only from the literal meaning of its wording (Article 52 of the Civil Code of Georgia). On the other hand, the ability of comprehension of the declaration of intention by its recipient – addressee shall not be disregarded during the interpretation; in this case the circumstances shall also be taken into consideration, in which the parties are at the moment.

## Types of Transactions

Transactions can be classified as follows:

First of all, transactions can be **unilateral, bilateral or multilateral** according to the number of persons whose declarations of intention are necessary to produce the legal effect.

If for the legal effect a declaration of intention of one person is sufficient there is **a unilateral transaction**. For instance, the unilateral transaction is **a will**. For its validity the testator's declaration of intention is sufficient (certainly, subject to the compliance with the appropriate form or other rules provided by law) and the transaction is deemed made despite the fact of acceptance of inheritance by the heirs in the future. It is noticeable that waiver of acceptance of inheritance by an heir is also a unilateral transaction. In addition, the example of unilateral transaction is an establishment of a company by one person. If, for instance, Georgian Railway LLC establishes JSC Freight Forwarding it is a sole founder and shareholder of the company, the company's founding documents are signed only by it and, consequently, its declaration of intention is sufficient for establishment of the company.

In unilateral transactions we can also separate out the group of the transactions, which are called **receipt-requiring transactions**. In case of receipt-requiring transactions there is another person – addressee of a transaction to whom this declaration of intention is directed. In this case the receipt-requiring transaction is effective from the moment when it reaches the addressee (Part 1 of Article 51 of the Civil Code of Georgia). There is no any indication of its approval by the addressee in this case or even other kind of participation in the transaction; of course the receipt-requiring transaction is not depended on any counter-declaration of intention from the addressee. But in order for it to become effective, it must be received by the other party, the latter shall become aware of it. The example of the receipt-requiring transaction is a rescission of the contract. In accordance with the Article 405 of the Civil Code of Georgia, if one of the parties breaches an obligation arising from a bilateral contract, then the other party may rescind the contract after the unavailing lapse of an additional period of time set by him for performance of the obligation. Rescission of a contract is exercised by notice to the other party and it does not require his approval. Here we would like to notice that there is a grave translation error in part 2 of Article 51 of the Civil Code of Georgia which substantially changes the provision's content: "2. A declaration of intention is not considered to be effective if the other party rejects it in advance or contemporaneously"<sup>1</sup>. In particular, the indication to advance or contemporaneous rejection by the other party is not correct. There is no similar wording in the (original) German version of the Civil Code of Georgia which from its part is a literal analogue of the last sentence of part 1 of par. 130 of the German Civil Code. The last provision is as follows: "It {declaration of intention} does not become effective if a revocation reaches the other previously

or at the same time". Thus, the law indicates to the revocation of the declaration of intention of the transaction's sole participant – the declaring party itself and in no case – of another person. If we imagine even for an instant the situation which may result in from the literal wording of the provision of the Civil Code of Georgia, we can easily conclude how fatal its consequences can be: unilateral transaction would depend on the other person's will and at the same moment it would lose its essence and objective. In case of rescission of a contract due to the current wording of the provision the good faith party of the contract would not succeed in exercising the right of rescission of a contract in case of grave violation of obligations undertaken by the other party if the latter would object to rescission. It is very unlikely that the violating party would give him such an opportunity.

What happens with the effectiveness of receipt-requiring transaction in case the participant (participants) of the transaction dies (die) or he (they) loses (lose) the legal capacity after making the declaration of intention until the latter reaches the addressee? Despite the fact that the participant (participants) of the transaction died or he (they) lost the legal capacity after making the declaration of intention until the moment when the latter reached the addressee the transaction is nevertheless effective for the reason that the person at the moment of making the declaration of intention was alive or legally capable.

Transactions are called **bilateral and multilateral transactions** if the declarations of intention of two or more persons are required for their legal effect. The great majority of bilateral and multilateral transactions are contracts. For instance, lease, donation, loan, deposit, suretyship are all bilateral transactions; partnership with more than two participants is a multilateral transaction. The example of multilateral transaction is also adoption of the joint decisions by more than two shareholders in a company.

As per fields, in which they are made the transactions are classified as **property, obligatory, copyright, family and hereditary law transactions**. Property transactions are, for instance, the transfer of ownership, agreement on encumbering a land plot with superficies, waiver of ownership, etc. Obligatory transactions are, for instance, sale, exchange, agricultural lease, gratuitous lending, donation, mandate, insurance, etc. Other examples: marriage contract, adoption, will, acceptance of inheritance, testamentary obligation (legacy), partition of inheritance, etc.

There is a commonly admitted strict difference between obligatory and disposition transactions; they are called causal and abstract transactions as well.

The core of obligatory transaction is a participant's promise to perform the obligation undertaken. In this case, there is no direct control on the rights, so-called "property law effect" which means creation, alienation, modification or cancellation of a right; this effect takes place only as a result of disposition transactions. The obligatory transaction is always causal, i. e. it has a specific legal ground – causa or the goal, reaching of which is intended by the participants while making the transaction. For instance, the parties of a sale-purchase agreement intend to make an onerous transfer of ownership; one contracting party – seller undertakes to transfer of ownership on goods to the other party – buyer; the latter shall pay to the seller the agreed price and accept the purchased property. The validity of causal transaction depends on the validity of causa. If the latter violates, for example, the law, the transaction is void.

Unlike the obligatory transactions, some of the disposition transactions are causal, while others are – abstract. **Ab-**

**stract transaction**, on the contrary, is not depended on the legal ground. For instance, transfer of ownership in accordance with the Georgian law is causal<sup>1</sup>; its effectiveness depends on the validity of obligatory transaction (for instance, the validity of sale, donation, exchange, partnership). If by reason of any ground (for example, because of its illegality) the latter is void, transfer of ownership shall be void as well and the transferee will not acquire the ownership. Abstract is, for instance, assignment of claim (cession). The assignment of claim strictly differs from a causal transaction used as its ground, which is an obligatory relationship between the assignor (alienator) and assignee (transferee) (sale, donation, mandate, etc.). If the causal transaction used as a ground for assignment of claim is void, it does not affect the validity of the assignment of claim. The latter is nevertheless valid and the claim is conferred to the assignee.

In addition to the above, the transactions may be classified as follows: **onerous and gratuitous transactions, transactions with fixed term and indefinite-term transactions**.

## Form of Transaction

Any transaction takes shape in a particular form. As a general rule, the participants of a civil law relationship are free to choose the form of a transaction; only in cases directly provided by law it is mandatory to comply with the specific form. Non-compliance with the form when a particular form is required by law, results the invalidity of the transaction; the transaction is legally deemed as never existed.

As a result of amendments made in the Civil Code of Georgia adopted on December 8<sup>th</sup>, 2006 the rule of **mandatory notarial attestation** of transaction in the great majority of cases was abolished. In accordance with the amendments, all transactions which formerly required a notarial attestation may be made in writing in such a manner that the notary or other person provided by law (for instance, for authentication of a will – chief physician, captain of a ship or commander of an aircraft, etc.) shall:

a) attest a content of the transaction (attestation of deal); in this case the notary is responsible for the content and lawfulness of the notarised transaction;

b) attest the parties' signatures on the document.

The transaction's participants may agree themselves on the written form of the transaction even in the case when compliance with such form is not required by law. Thus, according to the Georgian law, transactions may be made in the following forms:

a) **orally** and

b) **in writing** which comprises a simple written form and so-called strict written form – **a notarial attestation**.

A lot of oral transactions are made in everyday life: buying goods for everyday needs, transport service, public utilities, other kind of services, etc. Oral transactions are identical to the so-called **contracting bargains** where making the transaction is evidenced with the appropriate acts (for instance, payment of transport service price by inserting coin into the coin-operated machine).

In case of written form, the signatures of the participants are sufficient for the validity of the transaction (Part 3 of Article 69 of the Civil Code of Georgia). As usual the participant

(participants) personally or through his representative signs (sign) the document prepared beforehand. The Civil Code of Georgia allows to use for signing the mechanical means only in cases when it is admitted as a standard procedure (for instance, in case of signing the securities)

The Civil Code of Georgia provides making a transaction by **drawing several counterparts**. If more than one counterpart of the contract is drawn up each party's signature on the document intended for the other party is sufficient (Article 71 of the Civil Code of Georgia).

## Void and Voidable Transactions

### A. Void Transactions

The private autonomy of the subjects of private law – to make transactions at their discretion **is always limited**. Firstly, limitation follows from the requirements of law; however, a transaction can also be prohibited when it violates the **public order and morals**.

A transaction which violates the rules provided by law is void and produces no legal effect. Voidance of the transaction means that it is deemed as never made, i. e. it does not legally exist; it is not necessary that the validity to be confirmed by any governmental or other administrative body or even by the court. However, the final and absolute court decision is the very legal document, by which the unlawfulness and, consequently, – voidance of a particular transaction is confirmed. The law shall be understood in wide sense and it comprises not only the legislative acts but also – subordinate legislation (both public and private law legislation). Voidance is a result of the contradiction only to the mandatory provisions of law, i. e. such provisions which prescribe the necessary behaviour of the subjects of private law. Besides, in any case it is not necessary that each provision must declare exactly the voidance of a transaction contradicting it. In most cases it does not happen because of practical reasons and legal techniques. For instance, Article 260 of the Civil Code of Georgia provides that pledging of movables in a pawn shop is accomplished by way of written agreement between the parties and transferring the direct possession on the movables to the pawn shop. The provision of this Article is mandatory because it is evident from its text that the parties cannot change it or agree on different provisions: making the transaction in writing is necessary for the validity of the real agreement (pawn agreement). Non-compliance with the written form of the pawn shop agreement results in invalidity of the transaction despite the fact that there is no indication to the consequences of voidance in the provision. However, there are provisions in the Civil Code of Georgia where the law directly provides the voidance of a particular transaction. It is – in some way – like a warning from the legislator towards the user of the provision not to make a contradictory transaction. For instance, by encumbering a real property with a mortgage the owner's freedom of further alienation or mortgaging of the real property is not restricted. The transaction violating this provision is directly declared void by Part 4 of Article 294 of the Civil Code of Georgia: "An agreement by which the owner binds himself in relation to the creditor not to alienate the immovable property or not to use or further encumber it is void". There are similar provisions in the Law of Georgia on Entrepreneurs; for instance, par. 3.3 provides that the partners in a partnership are per-

<sup>1</sup> Unlike the German law where the transfer of ownership is abstract

sonally responsible towards creditors for the obligations of the company, i. e. each partner is directly responsible with his whole property. Any contrary agreement between the partners is void with regard to a third person.

Unlike the law, the **public order** and **morals** are not written and determined anywhere. Consequently, it is difficult to determine whether a particular transaction violates public order and morals or not. The Civil Code of Georgia fully entrusted this interpretation to the legal science and judicial practice. Here we shall try only to generally illustrate what exactly the Civil Code of Georgia means in the public order and morals.

First of all, it should be noted that the notions of public order and morals are so close to each other that in legislations of some countries they are united in one notion. For instance, the German Civil Code does not indicate to the public order as a ground for avoidance of a transaction and regards it as the morals. But on the other hand, the public order is provided separately by the French Civil Code<sup>2</sup> which is followed by the Civil Code of Georgia. The public order comprises the fundamental interests of state, society, economy and private person. The protection of these interests is necessary for sustaining the governmental system, functioning and developing of social and economical structures. For instance, it is deemed as contrary to the public order, and as a result, void – distribution of valuable gifts among the certain groups of citizens for their votes in the elections.

As to the morals it comprises the standard rules of conduct in a particular society which are generated in the course of time and become firmly established in the society on the basis of the opinions and tradition of either all or the majority the members. Therefore, the morals can be different in various societies. Any judge shall act as a member of Georgian society who grew up and lives in this society and is more or less aware of the morals in this society.

There are other grounds in the Civil Code of Georgia due to which a transaction shall be deemed void.

- First of all, a transaction, not seriously intended which is made in the expectation that its **lack of serious intention** will not be misunderstood, is void. However, a recipient of the declaration of intention shall be compensated for damages resulting from the fact that he trusted the seriousness of the declaration, provided that he did not know and could not have known of its non-seriousness (Article 57 of the Civil Code of Georgia).

- A transaction which has been made **only for the sake of appearance** without the intention to result in the appropriate legal effect, is void (sham transaction). If by means of a sham transaction the parties intend to conceal another transaction, then the provisions applicable to the concealed transaction shall apply (fraudulent transaction).

- A transaction made by **a minor or by a person who has been declared legally incapable by the court** is void. A declaration of intention made during a loss of consciousness or temporary mental disorder may be declared void. A declaration of intention made by a mentally ill person is void when the declaration is inconsistent with a correct perception of the reality of the situation, even if the court has not declared the person legally incapable (Article 58 of the Civil Code of Georgia).

- A transaction made **without observance of the form** prescribed by law or in the contract is void; likewise, a transaction is void when made without permission if the latter is

required for the validity of this transaction (Article 59 of the Civil Code of Georgia).

- A transaction may be declared void if the performance stipulated by the transaction is evidently disproportionate to the consideration in exchange of this performance, and the transaction has been made solely because one party of the contract maliciously abused his market power or exploited the hardship or inexperience (naivety) of the other party. A transaction that has been made as a result **of the abuse of influence** of one party over the other when their relations are based on exceptional confidence is void (Article 55 of the Civil Code of Georgia).

The Civil Code of Georgia knows the circumstances when a void transaction satisfies the requirements of another transaction; in this case the latter is deemed to have been entered into if it may be assumed that its validity would have been intended if there were knowledge of the invalidity. This rule is known as a **re-interpretation** (Article 60 of the Civil Code of Georgia).

There are various forms of avoidance. There are:

- **absolutely void (null)**,
- **shakily void** and
- **voidable** transactions.

**Absolutely void (null)** transaction is “dead” from the moment of its making and it results in no legal effect; it does not exist legally at all. Absolutely void transaction can be confirmed by the person who undertook it. In this case the confirmation is to be considered as a renewed undertaking. If a void bilateral transaction – contract is confirmed by the parties, then in case of doubt they shall transfer to each other what they would have transferred if the contract had been valid from the beginning.

Absolutely void (null) transactions differ from **shakily void transactions**. A shakily void transaction is also void but contrary to an absolutely void (null) transaction the participant (participants) of the transaction can eliminate the causes for avoidance. For instance, shakily void is a contract entered into by a person with limited capacity without the necessary consent of the legal representative. In this case the effectiveness of the contract is subject to the ratification by the legal representative except when this person gets a benefit as a result of the transaction. In addition, for the person with limited capacity the law provides the possibility to decide himself the validity of his own declaration of intention when he becomes fully capable (Article 63 of the Civil Code of Georgia). A shakily void is also a unilateral transaction that a person with limited capacity undertakes without the necessary consent of the legal representative. In accordance with part 2 of the Article 66 of the Civil Code of Georgia, such a transaction is likewise void if there has been consent by the legal representative but the person with limited capacity failed to present a written document confirming it, and for that reason the other party immediately rescinds the transaction. Such rescission shall not be allowed if the other party has been informed of the consent of the legal representative.

### B. Voidable Transactions

Contrary to the absolutely void (null) as well as shakily void transactions, the **voidable transactions** are not void from the moment of their making by the participant (participants) but subsequently they can be declared void by

<sup>2</sup> «Article 1133. La cause est illicite, quand elle est prohibée par la loi, quand elle est contraire aux bonnes mœurs ou à l'ordre public».

means of the participant's (participants') avoidance. Voidable transactions are as follows:

- **transactions made by mistake;**
- **transactions made by deceit;**
- **transactions made by duress.**

All kinds of transactions made by mistake are not voidable. A transaction may become voidable if the declaration of intention has been made on the basis of a **substantial mistake**. The Article 73 of the Civil Code of Georgia provides the grounds of substantial mistake. In particular, there is a substantial mistake when:

- a person intended to make a different transaction than the transaction, to which he gave his consent – i. e. **mistake in type of transaction**. For instance, when a borrower wished to encumber his plot of land with a mortgage for securing the credit taken, i. e. to make a mortgage agreement but in fact has entered into the sale-purchase agreement;
- a person is mistaken about the content of the transaction that he intended to make – i. e. **mistake in content of transaction**. For instance, there is a mistake in content of transaction when a person does not comprehend the certain expressions in the text of the transaction or comprehends them in other meaning than they have in reality (for instance, a person makes a suretyship agreement with joint and several liability and believes that the creditor's claim cannot be asserted against him without the attempt of enforcement against the debtor);
- the circumstances which the participant (participants) considers to be the grounds for the transaction according to the principles of good faith do not exist – i. e. **mistake in grounds of transaction**. For instance, a person has bequeathed his inheritance by a will to someone because he believes that his descendant is dead but in fact the descendant is alive.

The above list is not overall. In addition, the Civil Code considers as substantial mistake:

- the mistake **in the identity of other contracting party** - only in cases when the identity of the contracting party itself or taking into consideration his personal characteristics was the principal reason for making the transaction. For instance, the client wishes to order some photographs from the famous photographer but in fact he agrees only with an amateur;
- the mistake **in the basic characteristics of a thing** – only when these characteristics are significant in determining the value of the thing. For instance, a buyer believes that he buys a pure golden ring but in fact the latter is only of 14-carat;
- the mistake **in a right** – only when that right was the sole and principal reason for making the transaction; For instance, a person buys the privileged shares in a joint-stock company for the purpose of being privileged at the shareholders' meeting; but in reality according to the law, as a rule, the privileged shares do not grant voting right.

Mistake **in a motive** of a transaction shall not be deemed substantial except when the motive was the subject of the agreement.

Unlike the substantial mistake when the injured party is in error himself, in case of **deceit** there is an intentional false representation by one party towards the other with the purpose of inducing the latter to make a transaction. In order the deceit to become a ground for avoidance it should become the main incentive for making a transaction without which the transaction would never be made. The deceit is shown not only in an action; it can be done by omission when the

falsely representing party conceals those circumstances, in case of disclosure of which the other party would not make a transaction. The deceit may be committed not only by the participant of a transaction but also by a third party provided that the participant benefiting from the transaction knew or ought to have known of the deceit. If both participants of the transaction have acted deceitfully, then neither of them is entitled to demand avoidance of the transaction or compensation of damages for the reason of deceit (Article 83 of the Civil Code of Georgia).

The roughest form of voidable transactions, which are directed against the freedom of declaration of intention, is **duress**. Contrary to the mistake or deceit, there is no mistake of the injured party in case of duress but there is a direct force on his personality with the purpose of inducing the injured party to make a transaction. The duress may be physical as well as psychical influence. How intensive must the duress be and what is its nature? Avoidance of a transaction is resulted by such duress that by its nature it may influence a person and inspire a fear of real injury to his person or property. In assessing the nature of duress, the age, sex and life circumstances of persons are to be taken into consideration (Article 86 of the Civil Code of Georgia). The duress likewise constitutes the ground for avoidance of a transaction when it is directed against the spouse, other family members or close relatives of the participant of the transaction (Article 87 of the Civil Code of Georgia).

As we said above, the **voidable transactions** are not void from the moment of their making; they can be declared void by means of the participant's (participants') avoidance. Furthermore, the law provides special terms for avoidance. Particularly, avoidance of a transaction made mistakenly shall be accomplished within one month from the moment when the ground for the avoidance is revealed. In case of deceit the above term is extended to one year. The same period is provided for avoidance of a transaction made by duress but the period of time begins from the moment when the duress ended.

## Conditional Transactions

Transactions can be:

- a) unconditional ("pure"), i. e. made without any condition and
- b) **conditional**, i. e. it can be depended on a future or uncertain event so that the transaction either will come into effect at the occurrence of the contingency, or the transaction will be annulled with the occurrence of the contingency.

In the first case (a) the transaction is effective from the moment of its making and in the second case (b) we deal with a conditional transaction.

The legal definition of the conditional transaction is provided in Article 90 of the Civil Code of Georgia:

**"A transaction is deemed conditional when it depends upon a future or uncertain event so that the performance of the transaction is either postponed until the occurrence of the contingency, or transaction is annulled with the occurrence of the contingency"**. Unfortunately, the indication to **"the postponement of the performance of the transaction"** in this Article is not correct because in case of suspensive condition upon a future or uncertain event depends not on **the performance of the transaction** but on its legal effect<sup>3</sup>. As it is known from the Law of Obligations, "performance" means the performance

of the obligation under the legally effective transaction, which may be accomplished (and it frequently happens so) after lapse of time subsequently the making the transaction. As a result of wording of the Article 90, a borderline would be erased between a transaction made on the suspensive condition and a transaction made without this condition, under the stipulation of which the postponement of performance of the obligations undertaken because of the content of the transaction and agreement between the participants (parties). Consequently, the correct definition of a conditional transaction shall be as follows: **“Conditional transaction is a transaction when it depends upon a future or uncertain event so that the transaction either will come into effect at the occurrence of the contingency, or the transaction will be annulled with the occurrence of the contingency”**.

As it is apparent from the definition of the conditional transaction, there are 2 kinds of conditions:

- **suspensive condition** and
- **resolution condition**.

In case of suspensive condition the transaction comes into effect at the occurrence of a future and uncertain event or at the occurrence of an existing event but which is still unknown for the participant (participants). Because of that this condition is called suspensive condition: coming into effect of the ineffective transaction is postponed. For instance, A promised B to make a present of 200 GEL if his favourite football team wins the current championship. The transaction is considered to be made from the beginning but it is ineffective until the occurrence of the condition. If the condition does not occur, the transaction will never come into effect. If the condition occurs, the transaction comes into effect between the participants without any additional agreement.

Contrary to the suspensive conditional transaction, a resolution conditional transaction is effective at the moment of its making but it depends upon a future and uncertain event so that it will be annulled with the occurrence of the contingency. The resolution condition restores the state existing prior to making the transaction. For instance, A entered into a lease agreement with B on a land plot belonging to A. The parties agreed that the lease would be terminated and B would be obliged to return to the owner without any compensation if there were dry summers during at least 2 consecutive years. The suspensive condition as well as the resolution condition takes effect automatically without additional agreements.

The condition can be **positive** and **negative**:

In case of **positive condition** a transaction depends upon the condition that a future and uncertain event will occur in the specified time. If this time has elapsed and the event has not occurred, the condition shall legally be deemed ineffective. If the period of time is not specified, the condition may be satisfied at any time. The condition may be deemed ineffective when it is obvious that the occurrence of the event is already impossible (Article 93 of the Civil Code of Georgia).

In case of **negative condition** a transaction depends upon the condition that a future and uncertain event will not occur in the specified time. If this time has elapsed and the event has not occurred, the condition shall be deemed satisfied; the condition is also deemed satisfied when prior to the

lapse of the period of time it is obvious that the event will not occur (Article 94 of the Civil Code of Georgia).

Like transaction **a condition can also be void**. In particular, a condition that contravenes the requirements of law or the morals, or the accomplishment of which is impossible, shall be void. Furthermore, a transaction which depends upon the will of the participant (participants) is also void. A condition is deemed to be depended upon the will when its occurrence or non-occurrence depends only upon the participant (participants) of a transaction. The question is: what will happen with the transaction if a condition upon which the transaction is depended is void? The Civil Code of Georgia provides that the validity of the conditional transaction depends upon the validity of the condition itself; if the condition is void the transaction is void as well.

Before the occurrence of the condition the participant (participants) shall act **in good faith**; he is forbidden to influence to the condition. For violation of this obligation the law provides the adequate sanctions, in particular:

- if the satisfaction of a condition is prevented in bad faith by the participant to whose disadvantage it would be, the condition is deemed to have been satisfied;
- if the satisfaction of a condition is brought about in bad faith by the participant to whose advantage it is, the condition is deemed not to have been satisfied (Article 98 of the Civil Code of Georgia).

## Consent in Transactions

Transactions can be not only conditional but also depended on the consent of a third party. The example of a transaction depended on the consent of a third party is a contract entered into by a person with limited capacity without the necessary consent of the legal representative, as we have already mentioned above; the effectiveness of the contract is subject to the ratification of the legal representative (except when the person with limited capacity gets a benefit as a result of the transaction).

From legal point of view the consent is a **unilateral receipt-requiring transaction**; it must be received by one of the participants of the transaction or by all of them. As to the form of the consent, the law provides the principle of freedom of choice. The Civil Code of Georgia goes farther and provides that the consent does not need to be in the form as it is prescribed for the transaction. And again, we can apply to the example already shown above – a contract entered into by a person with limited capacity without the necessary consent of the legal representative: if the person with limited capacity enters into, for instance, a sale-purchase agreement of the real estate, the latter must be made in writing. But the ratification of the legal representative does not require such form and accordingly the oral declaration of the legal representative will be sufficient.

There are 2 kinds of consents:

- **the consent granted in advance or permission and**
- **the subsequent consent or approval.**

**Permission** is granted by the third party in advance, i. e. prior to making the transaction by the participant (participants). The law provides for the grantor of the permission the possibility to revoke his permission before making of

<sup>3</sup> In German: «Wirksamkeit» - legal effect, effectiveness. Unfortunately, this word is not correctly translated into Georgian as “validity” in the Civil Code of Georgia, which in the German language is expressed as “Gültigkeit”; for instance, Articles 51, 63 (1), 68, 79, 99 (3), 102, etc.

the transaction (unless otherwise agreed by the parties) but revocation shall be notified to the participant (participants).

**Approval** is declared by the third party after making transaction by the participant (participants). In accordance with Article 101 of the Civil Code of Georgia, approval operates retroactively from the moment when the legal transaction was undertaken unless provided otherwise. Therefore, despite the validity of the transaction between the parties depended upon the approval and without which the transaction is void, in case of approval the transaction is considered as valid from the moment of its making by the participant (participants).

The approval validates also the property dispositions made by an unauthorised person. In particular, in accordance with Article 102 of the Civil Code of Georgia, disposition of a thing by the unauthorised person is effective provided that it is done with the prior consent of the authorised person. The disposition becomes effective if the authorised person approves it.

## Conclusion

Above we have briefly reviewed the transactions (legal acts) under the Georgian law. We pointed out that transaction is a unilateral, bilateral or multilateral declaration of intention which is directed to arising, modification or termination of a legal relationship. Transactions can be unilateral, bilateral or multilateral according to the number of persons whose declarations of intention are necessary to produce the legal effect. The Georgian law provides strict difference between obligatory and disposition transactions, which are called causal and abstract transactions as well. As to the form of a transaction, the participants of a civil law relationship are free to choose the form of a transaction; only in cases directly provided by law it is mandatory to comply with the specific form. Finally, we have reviewed difference between void and voidable transactions.

## References

The Civil Code of Georgia, 2001, IRIS Georgia

### Additional Literature:

Australian Legal Information Institute, retrieved on June, 2012 from <http://www.austlii.edu.au/>

Austrian Institute of Technology, retrieved on July, 2012, from <http://www.arcs.ac.at/DissDB>

Colorado General Assembly, retrieved on August, 2012, from [www.leg.state.co.us](http://www.leg.state.co.us)

German Civil Code – BGB, Translation provided by the Langenscheidt Translation Service, 2009, juris GmbH, Saarbrücken Edition

German Law Archive, retrieved on June, 2012, from <http://www.iuscomp.org/gla/>

Literaturquellen zum deutschen, österreichischen und schweizerischen Privat- und Zivilprozeßrecht des 19. Jahrhunderts, [Literature sources for German, Austrian and Swiss Private and Civil Procedural Law] retrieved on 2012, from DIGITALE BIBLIOTHEK [Digital Library], <http://dlib-pr.mpier.mpg.de/>

Palandt, Bürgerliches Gesetzbuch [German Civil Code], bearbeitet von Bassenge, Diederichsen, Edenhofer, Heinrichs, 2008

University of Hull, retrieved on September, 2012, from <http://www.hull.ac.uk>