
The judicial power to reduce penalties in Georgian civil law


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Abstract---Judicial discretion in reducing contractual penalties is a fundamental mechanism for maintaining fairness and contractual equilibrium under the Civil Code of Georgia. Articles 417-420 of the Civil Code regulate the penalty institute, which serves as an additional tool for ensuring the fulfillment of obligations. While penalties are designed to protect the creditor's interests by sanctioning the debtor for non-performance or improper performance, the absence of strict statutory criteria for determining when a penalty becomes "disproportionately high" grants courts significant discretionary power. This discretion allows judges to evaluate each case individually, taking into account principles of proportionality, fairness, and the unique circumstances of the contractual relationship. This paper explores the scope and application of judicial discretion in reducing excessively high penalties.

Keywords---judicial discretion, court, civil code.

Annotation

Although there is extensive case law, a uniform framework for courts to determine what qualifies as an "excessively high" penalty is still lacking.

Aims: The purpose of this study is to examine Georgian court rulings to uncover common patterns and criteria used when reducing penalties under Article 420.

Results: The research shows that courts focus on principles of proportionality, fairness, and the particular circumstances of the violation, such as the degree of fault and the extent of unfulfilled obligations. Additionally, the financial standing of the parties and prevailing market conditions also influence judicial reasoning.

Main text

Articles 417-420 of the Civil Code of Georgia govern the legal framework of penalties. Under this legislation, the penalty mechanism functions as an auxiliary tool for enforcing claims, providing creditors with an additional means of securing compensation from debtors. As a supplementary safeguard for fulfilling contractual obligations, penalties may be applied to any form of agreement. The law imposes no specific limitations in this respect, except that such arrangements must be formally documented in writing. The contractual agreement itself forms the legal basis for imposing a penalty, and if the contract does not establish a penalty clause for non-performance or breach, no such penalty can be enforced.

Prerequisites for Imposing a Penalty

Article 417 of the Civil Code of Georgia outlines the conditions under which a penalty may be applied, stating that penalties are imposed in cases of either non-performance or improper fulfillment of an obligation. The law also requires that such agreements be formalized in writing.

When deciding on penalties, courts take into account several factors:

- a) the primary purpose of a penalty, as a sanctioning mechanism, is to deter further breaches of obligations;
- b) the seriousness and scope of the violation, as well as the potential risk it creates for the creditor;
- c) the degree of fault attributable to the party in breach;
- d) the penalty's role as a means of compensating for damages.

In calculating the penalty amount, courts also consider the duration of the debtor's failure to fulfill the obligation.

The decision to impose a penalty is made on a case-by-case basis. For instance, in one ruling, the court declined to impose a penalty on the defendant, reasoning that the contractual obligations had been fulfilled in good faith and with due diligence, which eliminated the grounds for applying the penalty.

Thus, for every individual case, the court evaluates the nature of the breach or improper performance before deciding whether to enforce a penalty. In this context, the practices of foreign courts also provide valuable insights.

Reduction of an Excessively / Inappropriately High Penalty by the Court

1. Concept and Scope

The Civil Code of Georgia authorizes courts to reduce a contractual penalty when, in light of legislative guidance, the agreed amount proves disproportionately (i.e., inappropriately) high relative to the underlying obligation. The statute, however, does not define when a penalty crosses that threshold; the evaluation is left to judicial discretion exercised within principles of fairness and contractual balance. Neither party should be placed at an unjust advantage or disadvantage through the court's use of this moderating power.

2. Case-by-Case Judicial Assessment

Whether a penalty is excessive is determined individually in each dispute. Georgian judicial practice offers orienting factors but no rigid formula. In reviewing a challenged penalty clause, courts generally weigh:

- the nature and scope of the unperformed or improperly performed obligation;
- the gravity and duration of the breach;
- the extent of risk or harm posed to the creditor;
- the degree of the debtor's fault; and
- the compensatory and deterrent functions of the penalty in the contractual setting.

These considerations help the judge decide not only whether to intervene but also to what extent the penalty amount should be moderated.

3. Illustrative Judicial Reasoning

Courts do not automatically enforce penalties: where a debtor substantially fulfilled contractual duties in good faith and with due diligence, judges have declined to impose the agreed penalty, finding insufficient grounds to sanction the

party further. Such rulings underscore that the penalty must remain connected to actual non-performance and its consequences, not operate as a windfall.

4. Contexts in Which Reductions Commonly Arise

Commentary in the literature notes that downward adjustment of penalty clauses arises most frequently in the context of standard-form (adhesion) contracts with consumers, where bargaining power is uneven and pre-set penalty rates may be harsh. Still, penalty provisions—and thus the possibility of judicial reduction—appear across a wide range of agreements in Georgian practice, including loan arrangements, public procurement contracts, and other commercial or civil transactions.

Conclusion

To conclude, when determining whether a penalty is excessively high, the court must evaluate specific factors, particularly the severity and extent of the contractual breach, as well as the reasons behind the debtor's failure to fulfill the obligation. Since non-performance may sometimes result from objective circumstances beyond the debtor's control, the criteria developed in judicial practice should serve as a guiding framework for all judges.

In exercising this discretion, the court must strike an equitable balance between the rights of the creditor and the debtor. It is impermissible to create an unjust advantage for either party. The judge should intervene and reduce the contractual penalty only when the stipulated liquidated damages are manifestly unreasonable, taking into account the debtor's reasons for non-performance.

From a practical standpoint, it would be advantageous to develop standardized calculation rules for particular categories of legal relations. For example, in the context of tenders or procurement contracts, recommendations could suggest that a fair penalty rate is approximately 0.02%. Moreover, the calculation of the penalty should be based on the value of the unfulfilled portion of the obligation, rather than the total contract value, as the breach relates specifically to that part of the contract that remains unfulfilled.

Ultimately, the principle of contractual balance must guide any judicial reduction of penalties. While safeguarding the debtor's rights, the interests of the creditor should not be undermined, and vice versa. The application of Article 420 of the Civil Code of Georgia plays a pivotal role in this respect, as it prevents potential abuse by creditors who might otherwise impose disproportionate penalty amounts.

References

Law of Georgia. (1997). *Civil Code of Georgia* (Art. 420). Retrieved September 11, 2024, from <http://www.matsne.gov.ge>

- Kurdadze, Sh., & Khunashvili, N. (2015). *Civil Procedural Law of Georgia* (2nd ed., completed and revised, p. 58). Tbilisi: Meridian Publishing House.
- Kurdadze, Sh., & Khunashvili, N. (2015). *Civil Procedural Law of Georgia* (2nd ed., completed and revised, p. 55). Tbilisi: Meridian Publishing House.
- Kurdadze, Sh., & Khunashvili, N. (2015). *Civil Procedural Law of Georgia* (2nd ed., completed and revised, p. 59). Tbilisi: Meridian Publishing House.
- Ioseliani, N. (2021). *Additional Means of Securing the Demand (Penalty, Earnest Money, a Debtor's Guarantee)* (p. 49). Tbilisi: Ivane Javakhishvili Tbilisi State University.
- Law of Georgia. (1997). *Civil Code of Georgia* (Art. 417). Retrieved September 11, 2024, from <http://www.matsne.gov.ge>
- Supreme Court of Georgia. (2018, March 23). Decision No. 60210016001420104, Case No. AS-272-272-2018.
- Supreme Court of Georgia. (2019, December 13). Decision No. AS-1597-2019.
- Law of Georgia. (1997). *Civil Code of Georgia* (Art. 418, Para. 2). Retrieved January 5, 2024, from <http://www.matsne.gov.ge>
- Supreme Court of Georgia. (2023, October 13). Decision No. AS-940-2023.
- Garcia, M. (2012). Enforcement of penalty clauses in civil and common law: A puzzle to be solved by the contracting parties. *European Journal of Legal Studies*, 5(1), 86. Retrieved from <https://cadmus.eui.eu/handle/1814/24818>
- Garcia, M. (2012). Enforcement of penalty clauses in civil and common law: A puzzle to be solved by the contracting parties. *European Journal of Legal Studies*, 5(1), 87. Retrieved from <https://cadmus.eui.eu/handle/1814/24818>
- Supreme Court of Georgia. (2023, September 28). Decision No. AS-1272-2022.
- Jorbenadze, S. (2019). *Commentary on the Civil Code, Book III: General Part of Obligatory Law* (Article 420, p. 802). In Chanturia (Ed.). Tbilisi: Ivane Javakhishvili Tbilisi State University, GIZ, USAID, EWMI.
- Jorbenadze, S. (2019). *Commentary on the Civil Code, Book III: General Part of Obligatory Law* (Article 420, p. 806). In Chanturia (Ed.). Tbilisi: Ivane Javakhishvili Tbilisi State University, GIZ, USAID, EWMI.
- Jorbenadze, S. (2019). *Commentary on the Civil Code, Book III: General Part of Obligatory Law* (Article 420, p. 809). In Chanturia (Ed.). Tbilisi: Ivane Javakhishvili Tbilisi State University, GIZ, USAID, EWMI.
- Ioseliani, N. (2021). *Additional Means of Securing the Demand (Penalty, Earnest Money, a Debtor's Guarantee)* (pp. 86-87). Tbilisi: Ivane Javakhishvili Tbilisi State University.
- Ioseliani, N. (2021). *Additional Means of Securing the Demand (Penalty, Earnest Money, a Debtor's Guarantee)* (p. 92). Tbilisi: Ivane Javakhishvili Tbilisi State University.
- Supreme Court of Georgia. (2001, June 27). Ruling No. 3k/467-01, Civil, Entrepreneurial, and Bankruptcy Chamber.

20. Jorbenadze, S. (2019). *Commentary on the Civil Code, Book III (Article [Field Number], p. 804)*. In Chanturia (Ed.). Tbilisi: Ivane Javakishvili Tbilisi State University, GIZ, USAID, EWMI.
21. State Procurement Agency. (2024). Recommendation on determining the amount of penalty. Retrieved January 18, 2024, from <http://procurement.gov.ge/files/showfiles?id=d70fffe0-7a93-41bc-9984-8ead10f7114b>
22. Supreme Court of Georgia. (2018, February 15). Decision No. AS-1488-1408-2017; and (2016, June 22) No. AS-214-204-2016.
23. Supreme Court of Georgia. (2022, March 30). Decision No. AS-1336-2019; and (2018, October 31) No. AS-1928-2018.