Ia Kharazi
Doctor of Law,
Affiliated Professor at Sokhumi State University

Tamar Gardapkhadze
Doctor of Law,
Affiliated Professor at the New Higher Education Institute- NEWUNI

THE INTEREST ON MONETARY OBLIGATION AS A FORM OF RESPONSIBILITY (THEORETICAL AND PRACTICAL ASPECTS)

Abstract

The article highlights the legal nature of the monetary obligation, which ensures the performance of the debtor's obligation solely in monetary form. In the execution of the monetary obligation, a distinction is made between public-law obligations (when the obligated party is an entrepreneurial entity – a resident or non-resident, and the monetary obligation is fulfilled before the state) and private-law obligations (when the obligated party is a participant in civil turnover, and the obligation is only owed to another private party). The study examines the fundamental articles 403 and 625 of the Georgian Civil Code, which are key norms in civil law relations, in connection with other provisions. The article presents the idea that, prior to changes in civil legislation, there were no norms determining the interest in using another's funds in the case of delayed monetary obligations. Therefore, when a breach of monetary obligations occurred under a contract, the aggrieved party (the creditor) often had to be compensated only by the imposition of a fine, which was determined by setting the annual interest rate.

When determining the interest rate limits, it is important to consider that penalties also serve a sanctioning function, ensuring the debtor's disciplined behavior. Therefore, maintaining a balance is crucial. The article discusses the idea that, in recent years, in arbitration and court practice, interest charged on monetary obligations has often been treated as a penalty. This approach is most notably reflected in some interpretations of arbitration courts, according to which "compensation for the penalty for delayed payment can reach up to five percent annually." In certain cases, arbitration courts have treated the interest on the use of another's funds as a loss in the form of lost profits. However, in this case, it is impossible to explain the legislator's position regarding the correlation between interest rates and losses. Interest is the cost of using funds, a certain equivalent of their value in economic circulation, which, by its legal nature, represents a specific measure of civil law. Legal responsibility, which cannot be attributed to either penalties or damages. Collecting interest for the use of another's funds does not prevent creditors from satisfying their claims regarding legal actions or enforcement. Contractual penalties imposed on the debtor, including continuously **enforced** fines; the court cannot reduce the amount of interest payable on the grounds of disproportional results.

In judicial decisions and enforcement documents, the amount on which interest is calculated, the amount of interest, and the date from which it must be calculated must be indicated. The specific amount on which interest will be calculated should be determined by the relevant bank on the actual enforcement date of the court decision. In other words, the amount collected according to the court's decision should be deducted from the debtor's account and transferred to the creditor.

Another note regarding the application of the rules of liability for non-fulfillment of monetary obligations in arbitration and court practice. The excessively narrow and formal interpretation of these norms has been recognized as unacceptable, which has manifested in practice. The concept of "foreign funds" not only includes money belonging to another person but also money intended for the counterparty, which is an obligation for

supplied (sold) goods, completed work, or services rendered, even though the funds are not formally "foreign" to the debtor, etc.

Keywords: Compensation for damage and penalty collection; interest on non-fulfillment of monetary obligations; Free Industrial Zone (FIZ); interest rate; use of capital; annual interest; effective interest rate; fine.

Compensation for damages and the collection of fines do not exhaust the measures that a creditor may take against a debtor who has failed to fulfill or improperly fulfilled an obligation. The Civil Code of Georgia assigns special importance to Article 403 ("Payment of interest in case of delay in payment of a sum of money") and Article 625 ("Lender's obligations and interest for the loan").[1]

The interest rate is the fixed or indexed annual interest rate specified in a credit or deposit agreement for a defined period. There are both fixed and variable interest rates. The interest benefit can be variable, which may be adjusted by the lender, making it difficult for the borrower to predict in advance. The reasons for changes in the variable interest rate can be diverse. For example, in practice, it may depend on the long-term nature of the bank credit, periodic changes in interest rates fixed in credit auctions, and so on.[2] Interest is a periodic compensation for the use of capital.[3] Clearly, interest does not exist without a monetary obligation, which means that the interest obligation is accessory, it constitutes an additional obligation, and cannot exist without the primary obligation. Furthermore, it should be noted that the obligation to pay interest arises only if the parties have agreed on it. Nevertheless, the parties are required to determine the interest rate on the basis of fairness, ensuring that no party is given an unfair advantage. As for the interest rate in banking relationships, when a loan agreement is in place, the variability of the interest rate should align with the discount rate set by the National Bank of Georgia or the interest rate fixed in the interbank credit auction.

A monetary obligation is an obligation in which the debtor ensures the fulfillment of their obligation solely in monetary form. In Georgia, the currency for monetary obligations is only the lari, except in the case of the Law of Georgia on Free Industrial Zones, where the fulfillment of monetary obligations is regulated by the Tax Code and the Customs Code of Georgia. This means that within Free Industrial Zones, the fulfillment of monetary obligations can be done in any currency.

When fulfilling a monetary obligation, it is important to distinguish between public law obligations (when the obligor is a business entity—either a resident or a non-resident individual—and fulfills the monetary obligation to the state) and private law obligations (when the obligor is a participant in civil turnover and the obligation is owed solely to another private party).

According to the instruction of the President of the National Bank of Georgia dated April 7, 2011 (No. 2 4/04) on "Approval of the Instruction on Opening Accounts in Banks and Conducting Foreign Currency Operations," Article 11 lists the types of foreign currency operations permissible in Georgia, including: personal transfers between individuals for personal purposes not related to the fulfillment of monetary obligations; operations related to imports, when the recipient is a non-resident; foreign currency inflows from abroad; and payments made by enterprises registered in Free Industrial Zones, etc.

If the foreign currency transfer operation exceeds 3,000 GEL or its equivalent in another currency, the bank is required to demand additional documentation from the paying business entity to verify the basis for the transfer. This restriction is due to the objectives of the Law of Georgia on "Prevention of Money Laundering and Terrorist Financing."

The fulfillment of monetary obligations is regulated by Articles 383-389 and 403 of the Civil Code of Georgia, as well as Article 625 and other provisions related to loan agreements. These provisions also address issues such as the interest in monetary obligations and the responsibility for failure to fulfill such obligations. For example, according to Article 403 of the Civil Code, "A debtor who exceeds the due date for payment of a monetary sum

[1] The final amendment to the aforementioned provision was made on June 10, 2023.

[2] Gabisonia, Z. (2017). Banking Law. Tbilisi, p. 174.

[3] Dzlierishvili , Z, Robakidze, I., Svanadze, G., Tsertsvadze, L., Janashia, L. (2014). Contract Law. Tbilisi, 2014, p. 254.

is obligated to pay the interest determined by the parties for the overdue period, unless the creditor is entitled to demand a higher amount based on other grounds. Payment of interest on the overdue sum is allowed only if expressly provided in the contract." Here, the legislator refers to late payment interest (penalty).

Article 403 of the Civil Code of Georgia is one of the key provisions in civil legal relationships. The relevance of this provision is determined by its content. The purpose of the provision is related to the legal consequences of breaching a monetary obligation. The vast majority of court cases primarily concern disputes arising from monetary obligations. It should also be noted that the specified article regulates not only loan and credit relationships but also any monetary obligations arising from various legal relations, such as sales, barter, and service agreements, among others. Article 403(II) allows for the accrual of interest on interest (anatocism). With this provision, the legislator extends the scope of contractual freedom, which, under the previous version of the law, was narrower (before 2007).

The Supreme Court made an important interpretation regarding Article 403, specifically noting the factual circumstances of a case in which a loan and mortgage agreement was signed between P.S. D. and G.K. on July 30, 2009. According to the agreement, the loan amount was set at 50,000 USD for a term of three months, with a 5% monthly interest rate. The borrower failed to fulfill the obligation within the agreed term, prompting the plaintiff to request the payment of the principal amount of the loan, interest from the filing of the claim, and a penalty for each overdue day until the enforcement of the decision, at a rate of 0.3% of the amount owed to G.K.

The defendant partially acknowledged the claim and stated that 27,875 USD had already been paid, which should be deducted from the principal amount of the loan. The appellate court did not accept the defendant's position and noted that the amounts paid monthly by the defendant corresponded to the 5% rate stipulated in the agreement. Therefore, the court believed that G.K. had been paying interest until September 30, 2010.

The cassation court did not accept this evidence and clarified that the obligation to pay interest, as stipulated by the parties in the loan agreement, can only exist during the term of the contract. The court referred to Articles 625 and 403 of the Civil Code and explained that the interest provided for in Article 625, which is essentially compensation for the benefit derived from the loan, differs from the interest in Article 403, which is compensation for the damage suffered by the creditor due to the breach of the monetary obligation. Additionally, the cassation court pointed out that for the plaintiff to succeed under Article 403, the following conditions must be met:1. The debtor must have a monetary obligation to fulfill; 2. The due date for the fulfillment of the monetary obligation must have been violated; 3. There must be an agreement between the parties regarding the interest for the delay in payment. The court concluded that in this case, although the defendant had breached the obligation, there was no agreement between the parties to pay interest for the breach of the obligation. Since, under Article 403 of the Civil Code, the payment of interest requires an additional agreement, the plaintiff's request to impose a 5% interest on the principal amount from October 2010 until the loan was fully paid was without legal basis.

When it comes to non-performance of an obligation and the associated responsibilities on the part of the debtor, which involves the interest on a monetary obligation as a form of liability, the issue is not only about the relevance of the corresponding norms in times of payment crises. On the one hand, the delivered goods, completed works, or rendered services are not always paid for, while on the other hand, dishonest sellers, contractors, and other parties who have received advance payments from buyers and customers for their own benefit, fail to fulfill contractual obligations.

After all, the development and implementation of legal remedies to combat such phenomena is the task of the current legislation, but not the Civil Code, which is designed for stable, long-term use. The inclusion of Article 403 in the Civil Code aimed at protecting the rights and legitimate interests of participants in property turnover who fulfill their obligations in good faith, against the illegal and often fraudulent actions of contractors, and compensating for the damage caused.

Under the current legal framework, the Civil Code no longer guarantees compensation for "minimal damage" but instead makes it dependent on the agreement between the parties. In the absence of such an

agreement, the creditor is left with no option but to claim the "interest on the deposit" as an unjustified income (Article 411)[1]. According to established case law and the "deposit fiction," money is considered a circulating asset, and any unreasonable delay automatically generates the right to claim the hypothetical income that would have been generated from the deposit, treated as unjustified income (Article 411).

Moreover, this concept does not require proof; however, proving the amount of deposit interest is necessary. If we conduct a brief comparative analysis with tax legislation, we will see that a debtor is required to pay any amount due to the state from their assets, with the possibility of asset seizure and the transfer of the proceeds to the state budget. However, as indicated below, this should not apply to vulnerable individuals as specified in Article 45 of the "Law on Enforcement Proceedings."

The first part of Article 403 of the Civil Code of Georgia, as it existed before June 29, 2007, mirrored the content of Article 288 of the German Civil Code, with the distinction that the German Civil Code itself defined the rules for calculating interest. Specifically, according to the first part of Article 288 of the German Civil Code, when the deadline for fulfilling a monetary obligation was exceeded, interest was added to the obligation, and the interest rate for the overdue period was calculated as the base rate plus an additional 5% annually. The base rate was defined in Article 247 of the same code, which established the base interest rate at 3.62%. As a result, the interest rate set by Article 288 of the German Civil Code was 8.62% annually, fluctuating according to changes in the base rate[2].

It should be noted that prior to the amendment of the Civil Code, there were no provisions in the law establishing the interest in the use of another's funds in the case of a delay in monetary obligations. As a result, when a monetary obligation was violated under a contract, the affected party (the creditor) often had to be compensated only by the debtor through a penalty in the form of annual interest.

Moreover, if relationships involving the use of another person's funds arose in the absence of an agreement, these were classified as obligations arising from unjust enrichment, and interest was charged on the amount in question for the use of another's funds. The interest rate in such cases was generally set based on the average banking interest rate available to the creditor at the time.

Thus, in such situations (for example, when goods are delivered to the buyer, but payment is delayed), the creditor's position, who acted without entering into a formal agreement with the debtor, proved to be more favorable than that of a creditor who had formalized their relationship with the debtor through an agreement.

Article 625 of the Civil Code has undergone several amendments. Specifically, in its original version, the law did not explicitly require exact compliance with the statutory interest rate. The "agreed-upon interest" could be slightly higher than the limit set by the National Bank or the interbank credit auction, provided that it remained within the bounds of reasonableness.[3] The violation of this rule made any agreement regarding interest considered invalid. The regulation regarding the determination of interest in monetary obligations has undergone significant changes. Specifically, Article 384, which previously established the procedure for determining the maximum annual interest rate through a special regulatory act in the case of interest-bearing obligations, was abolished. With the removal of this norm, the statutory interest institution was also abolished[4].

The Order No. 194/04 of the President of the National Bank of Georgia, dated August 27, 2018, titled *"On the Explanation of the Effective Interest Rate for the Purposes of Article 625 of the Civil Code of Georgia, the Calculation of the Loan's Current Remaining Principal Balance, Commission Fees, Financial Costs, Penalties, and/or Any Form of Financial Sanctions"*[5], According to Article 1, for the purposes of the 5th paragraph of Article 625 of the Civil Code of Georgia (hereinafter – the Civil Code), in cases where financial sector representatives and

[1] Meskhishvili, K. (n.d.). Payment of interest in case of delay in payment of a monetary sum (Theory and case law), p. 32. Retrieved from http://www.library.cuortge/upload/prorents_gadaxda.pdf.

[2] Meskhishvili, K. (n.d.). Dashes [unsure], p. 103. Also see: Kropholer, J. (2014). German Civil Code, Study Commentary, Tbilisi, p. 288, paragraph 179.http://www.library.court.ge/upload/giz2014-ge-BGB-Komm-Translation.pdf.

[3] Tchetchelashvili, Z. (2010). Contract Law, Tbilisi, p. 283.

[4] Dzhgvilishvili, Z. (2010). Legal Nature of Property Transfer Contracts, Tbilisi, p. 363.

[5] https://matsne.gov.ge/ka/document/view/4312325?publication=0

loan issuing entities issue loans: a) The calculation of the amount of 1.5 times the amount prescribed/charged to the borrower, as established by the 3rd sentence of the 5th paragraph of Article 625 of the Civil Code, will begin from the day the borrower's loan becomes overdue and will not take into account any commissions or financial costs (including those included in the calculation of the effective interest rate) accumulated up to that date, due to any violation of the loan agreement terms by the borrower.[1] Due to any breach of the terms of the loan agreement, the borrower shall be subject to penalties and/or any form of financial sanction as stipulated in the agreement; b) When calculating the amount set by the 1.5 times factor as specified in the third sentence of Article 625, paragraph 5 of the Civil Code, the current remaining principal amount of the loan is defined as the remaining principal balance of the loan on the day the overdue period begins, and any changes to the remaining principal balance of the loan are not taken into account until the full elimination of the overdue period; c) If the full elimination of the overdue period is achieved through loan restructuring, refinancing (if refinancing occurs with the original lender), or deferment, in accordance with the fifth sentence of Article 625, paragraph 5 of the Civil Code, the increase in the remaining principal balance of the loan (the difference between the remaining principal balance of the loan after the full elimination of the overdue period and the remaining principal balance of the loan on the day the overdue period began) shall not be considered in the remaining principal balance of the loan. Naturally, the question arises: what led to the fundamental changes in Article 625 of the Civil Code? First and foremost, it is important to highlight the fact that in the context of the global market economy, when a significant portion of the population lacks sufficient financial resources to meet their economic needs, they are often driven to resort to banking products (loans). However, in the age of financial technologies, the use of banking loans is associated with certain risks, since it is accompanied by the creditor's interest, which is not insignificant and represents a considerable financial burden for the borrower. This can lead to situations where the borrower may eventually become unable to repay the loan (this is compounded by the low financial literacy of the population, which often leads borrowers into a dead end), resulting in debt accumulation. The super-creditor (the lender) lawfully demands repayment — both the debt and the interest. As a result, the number of borrowers with overdue payments increases. This trend presents a significant problem for the country's economy and is undesirable for the long-term development of the financial sector. Additionally, the issuing of online loans to individuals, which, unfortunately, is not properly controlled in Georgia, adds to the problem.

In 2016, a change was made to the Georgian Civil Code, setting a 100% limit on the effective interest rate on loans, which significantly reduced the aggressive marketing of so-called online loans and, in general, the growth of this segment. However, it was soon replaced by analogous banking products. Commercial banks, due to their scale, have much higher efficiency, possess more detailed information about their numerous clients, and have stronger sales channels, allowing them to generate a desirable profit even when issuing high-risk

[1] Effective Interest Rate of a Loan – The annual interest rate of a loan, the calculation of which includes all necessary financial costs, taking into account the period during which the borrower incurs these costs.

In order to calculate the effective interest rate of the loan, the present value of the payments made by the borrower must equal the present value of the amounts received and expected by the borrower from the lender. It is expressed as an annual percentage and is calculated by taking into account the financial costs incurred by the borrower on the loan. The formula for calculating the effective interest rate of the loan is as follows:

Explanation of the terms used in the first paragraph of this article: a) k – the serial number of the disbursement (received from the lender); b) k' – the serial number of the payment (paid to the lender); c) Ak – the amount of the loan disbursed in the k-th installment;d) A'k' – the amount paid in the k'-th installment (financial costs);

e) Σ – the summation symbol; f) m – the total number of disbursements; g) m' – the total number of payments; h) tk – the time interval expressed in years or fractions of a year between the first disbursement and the subsequent disbursements from the first to the m-th payment; i) tk' – the time interval expressed in years or fractions of a year between the first disbursement and the payments from the first to the m'-th payment;

j) i – the effective interest rate of the loan.

See the President of the National Bank of Georgia's Order No. 15-04, dated February 17, 2022, "On the Explanation of the Effective Interest Rate for the Purposes of Article 625 of the Civil Code of Georgia, Calculation of the Current Remaining Principal Balance of a Loan, Commission Fees, Financial Costs, Penalties, and/or Any Form of Financial Sanctions", and amendments made in the President of the National Bank of Georgia's Order No. 194/04, dated August 27, 2018. https://matsne.gov.ge/ka/document/view/5384792?publication=0.

loans — even in cases where 95% of the credit is issued[1]. In many cases, borrowers lose the property pledged as collateral for the loan, which may be their only source of livelihood. As a result of the above-mentioned, the goal of protecting consumers from over-indebtedness, for which the 100% limit on the effective interest rate was introduced, is at risk. Therefore, it is advisable to reduce the limit on the effective interest rate in order to better address current challenges and promote the establishment of responsible lending practices. Furthermore, a trend has been observed in the market where, under limited interest rates, creditors attempt to balance their desired income with high penalties. The existing limits in this regard also require review to ensure that borrowers facing financial difficulties are not burdened with excessive penalties. Although changes introduced in January 2017 set a maximum daily limit on the financial charges imposed on loans—150% annually (about 0.41% per day)—it does not limit the duration over which such charges can be imposed. It is logical that if a consumer cannot service a loan over an extended period, additional financial charges should not be imposed indefinitely. When determining interest rate limits, it should also be considered that penalties and surcharges have a sanctioning function, ensuring disciplined behavior from the borrower. Therefore, maintaining balance is important. It should be noted that, with the changes implemented in the Georgian Civil Code in January 2017, alongside the limitations on loan interest rates and penalties, the issuance of foreign currency loans up to 100,000 GEL to individuals, including individual entrepreneurs, was prohibited. To ensure a unified approach and protection of particularly vulnerable segments of the population from currency risks, it is advisable for this same restriction to apply to leasing and installment sale agreements, and the law should stipulate that, in the case of an installment sale, the seller's receipt of the purchase price, and in the case of leasing, the lessor's receipt of the compensation, from physical persons (including individual entrepreneurs), should not be linked or indexed to foreign currency.

In addition to the above, it is worth noting that the security measures under Georgian Civil Code law—pledge and mortgage—do not define a legal protection mechanism for the debtor in cases of abuse by the creditor. In the current reality, pledge and mortgage have become not tools for securing claims, but rather the primary interest of creditors (so-called "usurers" and pawnshops). In many cases, the creditor is directly interested in the debtor's breach of contract, as it grants them the possibility to acquire real estate encumbered with a mortgage and movable property or intangible assets encumbered with a pledge. Given all of the above, in order to address the problem of over-indebtedness among the population, the issue of regulating credit relationships in consideration of consumer rights protection interests has become urgent. Additionally, it is necessary to refine the regulations regarding the security measures for loans/credits issued to individuals under property law[2].

The judiciary is attempting to correct this imbalance, as reflected in certain interpretations and recommendations from arbitration courts. For example, **the principle of proportionality has been violated.** In practice, there are frequent cases where the penalty or interest rate imposed by the arbitrator is so high that it is immediately apparent, even to the untrained eye, that the principle of proportionality has been breached. For instance, in the decision of the Austrian Supreme Court on January 26, 2005, the issue was examined as to whether the imposed penalty contradicted Austria's public order. In this case, the tribunal imposed an agreed penalty of 0.2% of the total amount (DM 41,125.47) for each day of delay. In assessing the issue of recognition and enforcement of the arbitral award, the court determined that, based on the agreed interest, the annual penalty was 73%, while the effective penalty was 107.35%. The court considered that setting such a penalty amount in the contract constituted an abuse of the principle of private autonomy. Additionally, in the court's view, the arbitral award not only violated Austrian Civil Code Article 879(1), which invalidates immoral contracts, but also, due to the magnitude of the penalty (which exceeded the principal amount), it contradicted Austria's public order.

[1] The explanatory note for the draft law of Georgia on "Amendments to the Civil Code of Georgia", https://info.parliament.ge/file/1/BillReviewContent/186591.

[2] The explanatory note for the draft law of Georgia on "Amendments to the Civil Code of Georgia", https://info.parliament.ge/file/1/BillReviewContent/186591.

It is important to accurately define the legal nature of interest charged in the case of non-fulfillment of a monetary obligation. In recent years, arbitration and court practice have often treated interest charged on monetary obligations as a penalty. This approach is most strikingly reflected in some interpretations of arbitration courts, which state that "penalty compensation for delayed payment can be up to five percent annually." In some cases, the interest in the use of another's money has been viewed as a loss in the form of lost profit. However, in this case, it is impossible to explain the legislator's position regarding the ratio between interest and damages. Interest is the price for the use of funds, their value as an equivalent in economic circulation, which, by its legal nature, is a specific measure under civil law. Legal liability, however, cannot be attributed either to penalties or damages. Charging interest for the use of another's funds does not prevent creditors from fulfilling their claims in accordance with the law or through enforcement. Contractual penalties imposed on the debtor, including those in the form of a continuously applied fine, cannot be reduced by the court based on disproportionate motives.

First and foremost, the debtor's obligation to pay interest for the use of another person's funds is now established for all cases of unlawful retention, evasion of repayment, as well as unjustified receipt or saving at the expense of another, including with regard to monetary funds. These obligations arise from the contract. **Secondly,** the amount of interest for the use of another person's funds is determined by the discounted bank interest rate that applies in the creditor's place of residence (for individuals) or location (for legal entities). Currently, arbitration courts use the unified refinancing rate of the Central Bank of the Russian Federation. **Thirdly,** with respect to damages, the interest on the use of another person's money is compensated. If there is a basis, the debtor's liability for compensating damages to the creditor is only for the part that exceeds the interest on the use of another person's funds. Fourthly, the period during which interest is charged for the use of another's funds ends on the date the debtor pays the debt to the creditor, unless a shorter period is established by law, another legal act, or the agreement.

According to the court's decision, the interest for the use of another person's funds should also be charged from the day the relevant decision is made by the court until the actual day of enforcement. This approach significantly changes the practice of arbitration courts, which previously, when collecting interest or continuing penalties, would typically capitalize the payable amount[1].

In court decisions and enforcement documents, it is necessary to specify the amount on which interest is calculated, the interest rate, and the date from which the interest must be calculated. The specific amount on which the interest will be calculated must be determined by the corresponding bank on the actual enforcement date of the court decision, i.e., the amount collected according to the court's decision should be deducted from the debtor's account and transferred to the creditor.

Another important note regarding the application of liability rules for the non-fulfillment of monetary obligations in arbitration and court practice: The excessively narrow and formal interpretation of these norms has been deemed unacceptable, as it is reflected in practice. The concept of "foreign funds" includes not only money belonging to another person but also funds intended for the counterparty, which represent obligations for delivered (sold) goods, performed work, or services rendered, regardless of whether the money is formally considered "foreign" to the debtor.

Additionally, regarding monetary obligations and foreign currency monetary interest (Civil Code Article 389), in accordance with currency regulation and foreign currency control legislation, when a monetary obligation is denominated in foreign currency: "If, before the due date of payment, the currency unit increased or decreased (the exchange rate) or the currency was changed, the debtor is obligated to pay according to the exchange rate that corresponds to the time of the obligation's creation. In the case of a currency change, the exchange relations should be based on the exchange rate that existed on the day the currency change occurred between these monetary units."

Furthermore, according to the fair view of some authors, certain arbitration and court practice documents

[1] Vityriansky Vasily Vladimirovich, "Interest on Monetary Obligations as a Form of Liability," Economy and Law, 1997, No. 8, pp. 54-74. http://www.civilista.ru/articles.php?id=91.

fail to address the main question that essentially predefines all other issues that arise when applying the rules for creditors' interests. This pertains to the legal nature of the annual interest.

Some authors, who do not recognize the annual interest as a penalty or damage, nevertheless consider that the interest for the use of another person's funds should fall under civil liability and represents a category of atypical (special) measures of property responsibility. In this regard, Puginsky argues that, along with penalties and damages, "there is a whole range of property impact measures which, due to their inherent characteristics, can be singled out as an independent group of atypical liability measures. Specifically, the obligation of the party that has unjustifiably used someone else's money (or sometimes property) to pay interest to the other party for the entire period of use**... The annual interest** cannot be attributed to a penalty. Their goal is to compensate the creditor for the damage, although they have an obvious secondary aim — to punish the wrongdoer. The total limitation period applies to the collection of annual interest, rather than a reduced period, as is the case with penalties and fines"[1].

In practice, when an entrepreneur takes a loan from a bank and invests it in a business that does not turn out to be profitable, the situation becomes quite interesting. The borrowed funds must, of course, be repaid to the lender, which is often a banking institution. This repayment is usually subject to an annual interest rate. The creditor's costs in this case represent a loss caused by the debtor's failure to fulfill their financial obligations. The debtor is obligated to compensate for these losses by paying interest on the outstanding debt.

Moreover, the creditor is not required to prove the amount of income the debtor earned from the illegal use of their funds. The creditor's right to compensation for the loss in the form of interest on the unpaid amount is also not dependent on how the debtor used the funds, i.e., whether or not the debtor generated income from it.

The mere existence of an obligation to pay a certain amount does not automatically imply the obligation to pay interest; this requires a separate legal basis. The source of the obligation to pay interest—i.e., the necessary foundation—could be a contract or law. Russian civilists did not doubt that the flow of interest could be determined by law not only in cases arising from statutory obligations or unlawful acts but also as a result of non-performance (or delay) of contractual obligations. The goal of the commented norms was to establish the debtor's obligation to pay interest in addition to the principal debt, whenever it seems fair or appropriate.

It is also undoubted that "the parties are granted full freedom to determine the amount of monetary growth through mutual agreement. The funds (interest rate) must be provided to all contracting parties in general, regardless of which contract includes the interest agreement. It was equally clear that the rule of legal interest applies to all contractual and non-contractual obligations."

From the above, it follows that the payment of interest for the use of borrowed or other financial obligations is regarded as an **additional obligation** based on law or agreement, the necessity of which is driven by the characteristics of money as the subject of obligations, which increases the circulation of assets. It is interesting to note that the legislated interest rate should have been justified by the conditions of the Georgian money market, in which case, the legalized interest is, of course, presented as payment for the use of funds.

Before fixing a position on the annual interest rate for the use of other people's funds, I would like to emphasize that when examining the nature of interest, it is essential, first and foremost, to focus not on a hypothetical interest but on the annual percentages that have the form derived from the norms of the current civil law. It is also impossible to abstract from the generally accepted approaches of legislative technique based on the reasonableness of the legislator's actions. For this reason, for example, it is not reasonable to aprioristically adopt the position of authors who attribute interest to a type of damage[2]. The determination of the nature of

[1] Puginsky B.I. Civil Law Means in Economic Activity, p. 140. See also: Vitryansky V.V. Problems of Arbitration and Judicial Protection of Civil Rights of Participants in Property Turnover. Dissertation. - Moscow, 1996, pp. 29-30. https://urait.ru/book/izbrannye-trudy-537312.

[2] Should we not distinguish the type of loss defined by law, whether it is significant or insignificant, but rather the loss suffered by the creditor (for example, not receiving the profit they were supposed to receive, e.g., the amount that should have been "invested" by the debtor)?

interest (also in relation to penalties) and the establishment of rules for compensating damages not accounted for by interest is a significant issue. The legislator, through rational actions, could not have derived from the fact that interest is a form of damage. This also applies to many other provisions of the Civil Code, where the concepts of loss, interest, and penalty are used as separate, independent categories (see Articles 403, 404, 625, and others).

Regarding another viewpoint on the nature of the annual interest rate, where interest is recognized as payment for the use of funds or as an atypical (special) measure of liability for breach of an obligation, I believe all of these views to some extent are reflected in the Civil Code of Georgia. It is evident that in various provisions of the Civil Code, where annual interest payments are mentioned, they imply various measures of influence on the debtor.

The analysis of the nature of annual interest cannot be conducted separately; it must include the rules for paying interest. Moreover, the interest charged for non-performance of a monetary obligation cannot be recognized as a penalty, both for legal and formal reasons, as well as essentially. In the differentiated regulation of these legal categories, there are formal and legal circumstances that do not allow the qualification of the annual interest as a penalty.

If we are discussing the essence of the problem, then despite the external similarities (especially in terms of calculation) with fines (particularly penalties), the annual interest on the use of other people's money, unlike fines, cannot be recognized as a means of securing the performance of obligations. Additionally, recognizing the annual interest as a fine would require applying all grounds for exemption from the debtor's responsibility: **force majeure, the absence of criminal intent in relevant cases, etc., which fundamentally contradicts the generally accepted ideas regarding monetary obligations and annual interest.**

The annual interest on the non-fulfillment (or delay) of monetary obligations is an independent form of civil liability, alongside compensation for damages and the payment of fines. Moreover, the characteristics of the annual interest that distinguish it as an independent form of civil liability should be sought not so much in the specifics of their calculation, proof, and application (as is the case with damages and fines), but rather in the very essence of the monetary obligation itself.

Money is a special object of civil rights; it is interchangeable because it is always in circulation and does not lose its properties when used in property turnover. On the contrary, it tends to increase in value. Therefore, monetary obligations exclude the impossibility of performance, and the debtor's lack of the necessary funds cannot, under any circumstances, even in the presence of situations that could be classified as force majeure, become a reason for the debtor's exemption from liability for non-performance of monetary obligations.

Since the basis for the termination of a monetary obligation is generally its proper performance, the debtor cannot be exempted from liability for non-performance, including in cases of force majeure. Thus, the annual interest, as a special form of liability, should be applied to monetary obligations with these factors in mind. This is the specificity of this form of civil liability, which is manifested in the fact that, when interest is accrued for non-fulfillment of monetary obligations, it reflects the inherent nature of these obligations.

At the same time, there are other general provisions that regulate responsibility in civil obligations, including: debtor's responsibility for actions of its employees; debtor's responsibility for actions of third parties; creditor's fault; debtor's delay; creditor's delay (Civil Code Articles 400-404) – all of which are also subject to annual interest for non-fulfillment (or delay) of monetary obligations under common grounds.

At the same time, there may be situations where the annual interest is subject to collection from the debtor as an independent form of civil liability. This applies to cases where, regardless of the type of contractual obligation, the debtor has a delayed obligation to pay for goods delivered (provided), work performed, or services rendered, meaning they are liable for non-performance or delay in the execution of a monetary obligation.

The proposed approach to determining the nature of annual interest logically leads us to several general conclusions that have significant practical importance.

Firstly, in all cases where the Civil Code establishes liability for the violation of a non-monetary obligation, we are dealing with a legal sanction, even though the Code may define the scope and procedures for such

liability. Secondly, the provisions of the Civil Code that provide for liability due to non-fulfillment or delay of monetary obligations should be applied in accordance with the relevant norms of the Civil Code.

In the absence of norms that specifically define annual interest, the legislator did not intend to recognize the independent liability of a monetary obligation (in the form of annual interest) in such cases. Annual interest, in this context, should be treated similarly to a fine. Furthermore, this approach is consistent with the principle of prohibiting the application of two independent measures of responsibility for the same breach of obligation.

In a situation where the creditor demands not only the payment of annual interest for the non-fulfillment or improper performance of a monetary obligation, but also compensation for damages, the operation of this principle is evident in the compensatory nature of the interest charged by the debtor in relation to the recoverable losses.

In all cases involving a commercial loan (Article 623 of the Civil Code), the debtor is required to pay interest at the rate of the Central Bank's refinancing rate for the entire period of using another party's money. The actual payment of the corresponding amounts is made as part of the commercial loan repayment, starting from the moment of delay in the performance of the monetary obligation.

Conclusion

Interest can be defined as a monetary gain that the debtor receives from the unjustified saving or use of the creditor's funds. As for annual interest, the collection of interest must occur regardless of the debtor's fault, due to the unjustified acquisition or saving of another person's property. The basis for such a claim for interest is the debtor's unlawful actions, which are manifested in the unjustified receipt of income from saved funds.

When it comes to the non-fulfillment of obligations and the related duties of the debtor, which are followed by monetary obligations as a form of liability, it is not just the relevance of the corresponding norms during payment crises that matters. On one hand, provided goods, completed work, or rendered services may remain unpaid, and on the other hand, dishonest sellers, contractors, and other parties who receive advance payments from buyers and then use those funds for their own interests without fulfilling contractual obligations, must be held accountable. After all, developing and implementing legal remedies to combat such phenomena is a task for existing legislation, not the Civil Code, which is designed for stable long-term application.

At present, the Civil Code no longer provides for a guaranteed compensation of "minimal damage," instead making it contingent on the agreement of the parties. In the absence of an agreement, the creditor can only demand an unacceptable income in the form of interest (411). According to the established judicial practice of the "deposit fiction," money is so fluid and versatile in circulation that any unjustified delay naturally creates the right to demand income loss as unacceptable income (411). Furthermore, the aforementioned point does not require proof, but the amount of deposit interest does need to be proven.

If we make a brief comparative analysis with tax legislation, we can see that the debtor is required to pay the state's obligations from any amount in their account, by seizing their property and transferring the proceeds to the state budget. However, as noted below, this does not apply to vulnerable individuals under Article 45 of the "Enforcement Proceedings" law.

In some cases, arbitration courts have considered the interest in the use of another's funds as a loss in the form of lost profits. However, it is difficult to explain the legislator's position on the correlation between interest and loss in this case. Interest is the cost of using funds, a certain equivalent of their value in economic turnover, which, by its legal nature, represents a special measure in civil law. This legal responsibility cannot be attributed to either fines or damages. The collection of interest for the use of another's funds does not hinder creditors' ability to satisfy claims regarding legal or enforcement proceedings. Contractual fines from the debtor, including those in the form of continuously applied penalties, may not be reduced by the court on grounds of disproportionate results.

In court decisions and enforcement documents, the amount on which interest is calculated, the amount of interest, and the date from which it must be calculated must be specified. The specific amount on which interest will be calculated must be determined by the relevant bank on the day the court decision is actually

enforced, meaning that the amount collected according to the court decision must be deducted from the debtor's account and transferred to the creditor.

Another note regarding the application of rules for liability for the non-fulfillment of monetary obligations in arbitration and court practice: An excessively narrow, formal interpretation of these norms has been recognized as unacceptable, which was reflected in practice. The concept of "foreign funds" includes not only money owned by another person but also money designated for the contractor, which is the obligation for provided (sold) goods, performed work, or rendered services, even if the funds are not formally "foreign" to the debtor.

Some authors, who do not recognize the annual interest as a fine or damage, still believe that the interest on the use of other people's funds should belong to civil liability and represents a separate category of atypical (special) measures of property responsibility. Thus, Puginsky argues that, alongside fines and damages, "there is a whole range of measures for property impact, which, due to their inherent characteristics, can be distinguished as an independent group of atypical liability measures. Specifically, the obligation of a party who unjustifiably used someone else's money (sometimes property) to pay interest for the entire period of use**... The annual interest** cannot be attributed to a fine. They aim to compensate the creditor's loss, although they have a **clear secondary goal – to punish** the wrongdoer. The general limitation periods are used for the accrual of annual interest, not the shortened ones as with fines and penalties."

The payment of interest for the use of borrowed or other monetary obligations is considered an **additional obligation** based on law or agreement, the necessity of which is dictated by the characteristics of money, which acts as the subject of obligations, increasing the turnover of property. It is interesting to note that the legislated interest rate should have been justified by the conditions of the Georgian money market; in this form, the legalized interest, of course, is presented as the payment for the use of funds.

Before fixing a position regarding the nature of annual interest on the use of other people's funds, it should be noted that when examining the nature of interest, it is necessary, first and foremost, to act not from a hypothetical interest rate but from the annual percentages that have the form derived from the current civil law norms. It is also impossible to abstract from the generally accepted approaches of legislative techniques based on the rationality of the legislator's actions. For this reason, for example, the position of authors who attribute interest to the type of damage cannot be accepted aprioristically[1]**.** Determining the nature of the interest charged on damages (including fines) and establishing the rules for compensating damages not accounted for by the interest is crucial. The legislator, acting reasonably, cannot deduce from the fact that interest is a form of damage. This also applies to numerous other provisions in the Civil Code, where the concepts of loss, interest, and fines are used as separate, independent categories (see Articles 403, 404, 625, etc.).

The annual interest for non-performance (or delay) of monetary obligations is an independent form of civil liability, alongside compensation for damages and payment of fines. Moreover, the characteristics of annual interest, which differentiate it as an independent form of civil liability, should not be sought so much in their calculation, evidence, and application specifics (as is the case with damages and fines), but in the specific subject matter of the monetary obligation itself.

Money is a special object of civil rights; it is interchangeable because it is always in circulation and, when used in property turnover, it does not lose its properties, but rather tends to grow. Therefore, monetary obligations exclude the impossibility of performance, and the debtor's lack of the necessary funds cannot, under any circumstances, even in the presence of events that could be qualified as force majeure, serve as a basis for the debtor's exemption from liability for the non-performance of monetary obligations.

[1] Should we not distinguish the type of damage as defined by the law, whether significant or minor, but the damage suffered by the creditor (e.g., the profit they should have received, such as the amount they should have received from the debtor being "invested" in the business)?

Referred Normative Acts, Literature, Judicial Practice, and Web Resources

Normative Acts

Legislative Acts:

- Civil Code of Georgia
- Law of Georgia on "Free Industrial Zones"
- Law of Georgia on "Prevention of Money Laundering and Terrorist Financing"

Sub-Legislative Acts:

- Decree of the President of the National Bank of Georgia, dated April 7, 2011 (No. 24/04), "On Approval of the Instruction for Opening Accounts in Banking Institutions and Conducting Transactions in Foreign Currency," Article 11.https://matsne.gov.ge/ka/document/view/1279467?publication=0.
- Decree of the President of the National Bank of Georgia, August 27, 2018, No. 194/04 - Amendmentshttps://matsne.gov.ge/ka/document/view/5384792?publication=0.

Literature:

- Gabisonia Z.; *Banking Law*, Tbilisi, 2017.
- Dzlierishvili Z., Tseretadze G., Robakidze I., Svanadze G., Tseretadze L., Janashia L.; *Contract Law*, Tbilisi, 2014.
- *Commentary on the Civil Code*, Book III, General Part of Obligatory Law, 2019.
- Meskhishvili K.; *Interest Payment upon Delay of Payment of Monetary Amount (Theory and Court Practice)*, 32. http://www.library.cuortge/upload/prorents_gadaxda.pdf.
- Tchetchelashvili Z.; *Contract Law*, Tbilisi, 2010, 283.
- Dzlierishvili Z.; *Legal Nature of Property Transfer Contracts*, Tbilisi, 2010.
- *Commentary on the Civil Code*, Book III, 647-648, Tbilisi, 2019.
- Kropholer Jan; *The German Civil Code, A Study Commentary*, Tbilisi, 2014, http://www.library.court.ge/upload/giz2014-ge-BGB-Komm-Translation.pdf.
- Palandt, *Bürgerliches Gesetzbuch*, C.H.Beck, 73rd Edition, 2014, §289, Rn.; Source: Meskhishvili K.; *Current Issues of Private Law, Theory and Court Practice*, Volume I, 2020.
- Vitryansky Vasily Vladimirovich, *Interest on Monetary Obligations as a Form of Responsibility*, *Economy and Law*, 1997, No. 8, pp. 54-74. http://www.civilista.ru/articles.php?id=91.
- Lunts L.A.; *Money and Monetary Obligations* – Moscow: Financial Publishing House NKF USSR, 1927. https://www.consultant.ru/edu/student/download_books/book/lunc_la_dengi_i_denezhnye_obyazatelstva_v_grazhdanskom_prave/.
- *Civil Code. Practical Commentary on the Civil Code*, edited by A.I. Vinaver and I.B. Novitsky. Prof. I.B. Novitsky. Obligatory Law. Commentary on Articles 106 - 129. – Moscow: Law and Life, 1925.
- See: Vilkova N.G. *Annual Interest on Monetary Obligations from Foreign Trade Contracts* // Materials from the Section of Law of the USSR Chamber of Commerce and Industry, Issue 34. – Moscow, 1983.
- Rosenberg M.G. *International Sales Contract. Modern Practice of Conclusion. Dispute Resolution*. – Moscow, 1996.
- Sadikov O.N. *Ensuring the Execution of Foreign Trade Contracts. Textbook*. – Moscow, 1979. https://cyberleninka.ru/article/n/k-voprosu-o-sootnoshenii-bankovskih-protsentov-s-ubytkami-i-neustoykoy.
- Puginsky B.I.; *Civil Law Tools in Economic Activity*, p. 140. See also: Vitryansky V.V. *Problems of Arbitration and Judicial Protection of Civil Rights of Participants in Property Circulation*. Dissertation. – Moscow, 1996, pp. 29 - 30. https://urait.ru/book/izbrannye-trudy-537312.
- *Civil Code Project*. The Second Volume of the Project of the Most High Commission for Drafting the Civil Code. Edited by I.M. Tyutryumov. – St. Petersburg.
- *Principles of International Commercial Contracts* // Translated from English by A.S. Komarov. – Moscow, 1996. https://www.unidroit.org/wp-content/uploads/2021/06/Unidroit-Principles-2010-Russian-bl.pdf .

Court Practice:

- Supreme Court of Georgia, Civil Chamber, Clarification on October 22, 2012, in Case #as-1701-1685-2011 (http://www.supremecourt.ge/files/upload-file/pdf/ganmarteba29.pdf).
  See: *Important Clarifications of the Supreme Court*, Tbilisi, 2016, p. 50. https://old.supremecourt.ge/files/upload-file/pdf/mnishvnelovani-ganmartebebi-2016.pdf.
- Supreme Court of Georgia Decision of 15.03.2002, Case #3k/1224-01. https://old.supremecourt.ge/ganmartebebi/ .
- Tbilisi Court of Appeal Decision of 12 September 2012, Case #2b/2747-11; Tbilisi Court of Appeal Decision of 30 June 2011, Case #2b/2220-11. https://old.supremecourt.ge/ganmartebebi/ .
- SUSG (Case #as-570-541-2015). https://old.supremecourt.ge/files/upload-file/pdf/n84-mnishvnelovani-ganmarteba.pdf .
- Supreme Court of Austria, Decision of 26 January 2005, Case #3 Ob 221/04b.

Web Resources:

- Explanatory Note on the Draft Law of Georgia on Amendments to the Civil Code of Georgia, https://info.parliament.ge/file/1/BillReviewContent/186591.
- Tkemaladze, Sofio, "Public Order" as a Ground for the Annulment or Refusal to Recognize and Enforce an Arbitral Award (A Brief Review of Georgian Practice), Georgian Business Law Review (2013), 2nd Edition, pp. 27-28. Source: Guide for Judges of the Appeal Courts of Georgia on Arbitration, author: Kol. 179, https://www.undp.org/sites/g/files/zskgke326/files/migration/ge/UNDP_GE_DG_Arbitration_Guide_for_Appeal_Court_geo.pdf.