

The Role and Significance of Fundamental Principles in the Civil Procedural Law of Georgia: A Comparative Legal Analysis

Abstract

The field of legal science is constantly evolving, driven by ongoing assessments and enhancements. Within legal doctrine, the principles of disposition, competitiveness, and party equality stand as cornerstones. These principles underpin the legal framework governing procedural systems across various types of legal proceedings, including constitutional, civil, administrative, criminal, and arbitration cases. They are crucial in ensuring the court's independence and impartiality, with the direct correlation between objectivity, equality within the state, and the application of these principles. Advancing these principles through further legislative efforts will solidify their integration within distinct legal relationships.

This research paper aims to explore the foundational concepts of competition and equal rights among parties, particularly focusing on their application in civil proceedings. To achieve a comprehensive understanding and conclusive insights, it will examine the concept and essence of the principles of competition and equality among parties. This includes investigating the functional characteristics of these principles within civil proceedings as a procedural mechanism for addressing the objectives of such proceedings. The court's role in upholding these foundational principles is significantly impactful, offering a lens through which the quality of court operations in civil proceedings can be evaluated. Additionally, this paper will uncover the methods of consolidating and actualizing the principle of competition and equality within the civil process. The Civil Procedure Code, which has been meticulously developed to embody the principles of disposition and competition, will be analyzed for its norms that regulate procedural actions and relations arising from civil case deliberations in a manner distinct from earlier versions of the Code.

Keywords: fundamental principles, civil procedure.

Introduction

The disintegration of the Soviet legal system and the subsequent shift towards a free-market economy have significantly influenced the development of private legal relations. This transformation is epitomized by the enactment of civil procedural and substantive law codes. The civil procedure code is characterized by a thorough incorporation of the principles of disposability and adversariness, introducing norms that, in contrast to those of the previous Civil Procedure Code, distinctively govern the procedural dynamics involved in the adjudication of civil matters.¹

1. Principles Governing the Implementation of Civil Justice According to the 1964 Code of Civil Procedure of the Georgian SSR

The 1964 Code of Civil Procedure was founded upon specific guiding principles, notably the principles of disposability and adversariness. Although these principles were formally recognized by the code, their effectiveness was significantly curtailed by the overarching principle of objective truth. This principle mandated that the court exhaust all legally prescribed measures to uncover the factual circumstances of the case comprehensively and objectively, alongside the rights and obligations of the parties involved.²

Principles serve as the foundational framework underpinning the entire legal system, acting as a legislative guide that influences the preparation and issuance of normative acts. This underscores the critical importance of all principles of civil procedural law in ensuring justice, upholding democracy, and maintaining stability in civil matters. In adjudicating civil cases, courts are guided not merely by the specific statutes of civil procedure but also by the underlying principles of procedural law. The interpretation of civil procedural law norms, taking these principles into account, enables courts to grasp the true intent behind the rules. This approach significantly aids in rendering decisions that are both lawful and judicious.³

¹ Liluashvili, T., Khrustali, V. (2007). Commentary on the Code of Civil Procedure, p. 7.

² Khoperia, N. (1999). The Adversarial Principle in Civil Procedural Law, pp. 18-19.

³ Landsman, S. (1983). A Brief Survey of the Development of the Adversary System, Ohio State Law Journal, Vol. 44, p. 713.

Procedural principles are solidified through legal norms, indicating that courts must adhere to these principles while deliberating and resolving civil cases. Any neglect or infringement of procedural principles during the examination and resolution of particular civil cases, or the issuance of a ruling by a judge who was not present at the case hearing, constitutes a significant breach of civil procedural principles. Such violations are grounds for the annulment of the court's decision. This framework ensures that the integrity of the judicial process is maintained, emphasizing the critical role of procedural principles in the fair and lawful administration of justice.⁴

The principle of law embodies an idea that mirrors the public's vision of an ideal, guiding the manner in which legal regulation ought to be implemented. At the heart of every legal principle lies a societal value, which demands preservation and protection through legal mechanisms. The principles of civil law are categorized based on their significance and function in the administration of justice.

In the realm of civil procedural law, a variety of concepts, definitions, and categories have been developed over time, forming the theoretical foundation of civil procedural law. Among these legal categories are the principles of civil procedural law. The term "principle" originates from Latin, conveying several meanings, including "basis," "initial," "general provision," "set-aside concept," and "mainly starting (guiding) provision" of any theory, doctrine, or science, serving as a guiding idea.

According to Professor Avdyukov, the principles of civil law must be firmly embedded in specific legal norms or be abstracted from the norms of existing law, ensuring that these foundational ideas are consistently reinforced and reflected within the legal framework.⁵

2. The Principle of Dispositionality

The principle of dispositionality in civil proceedings reflects one of the core principles of civil substantive law: the autonomy of will. This principle encapsulates the freedom of parties to not only manage their material rights but also their procedural rights. Civil procedural legislation is fundamentally structured around the principle of dispositionality.⁶

French administrative law expert Guy Breban highlights the principle of written proceedings, which dictates that a case should be considered solely based on the circumstances outlined in

⁴ Семенов, В.М. (1982). Конституционные принципы гражданского судопроизводства, р. 110.

⁵ Kurdadze, S., Khunashvili, N. (2015). Civil Procedural Law, pp. 89-91.

⁶ Kazhashvili, G. (2018). Procedural Provision as a Prerequisite for Enforceable Decision-Making, p. 20.

the application or claim, and only through the documents and requirements formally presented in writing. Consequently, under this principle, the court is restricted from conducting additional investigations or addressing governance issues or concerns of other parties not explicitly mentioned in the case documentation. This underscores the principle of dispositionality, emphasizing the controlled scope within which parties can exercise their rights and the limitations placed on the court's ability to expand its inquiry beyond the presented claims.⁷

3. The Principle of Dispositionality in German Civil Procedural Law

In German civil procedural law, the principle of dispositionality stands as a cornerstone, mirrored in a plethora of legislative measures. This principle, akin to its counterpart in Georgian civil procedural law, enjoys an expansive application in Germany, applying from the initiation of proceedings to the definition of the dispute's subject matter. The establishment of legal procedures under German civil procedural law predominantly falls within the judge's responsibilities.⁸ The German Code of Civil Procedure, however, imposes certain limitations on the principle of dispositionality. These constraints are partly rooted in legislative directives and partly in judicial precedents.⁹

4. The Principle of Dispositionality in Action

The principle of dispositionality, as outlined in the Civil Procedure Code of Georgia, is exemplified through the following mechanisms:

A) Agreement of the Parties as a Manifestation of Dispositionality - The agreement between parties represents a key expression of the principle of dispositionality. Parties have the right to define the terms of an agreement, which, once ratified by an enforceable act (ruling), allows them to conclude the dispute through a settlement.¹⁰

B) Refusal of the Lawsuit - The ability to reject a claim is an aspect of dispositionality, granting the plaintiff the dispositional right to withdraw their claim at any stage.¹¹ This right extends to both the entire claim and parts thereof. Importantly, the court is obligated to inform the

⁷ Ghamichava, A. (2017). Admissibility of Cassation Appeal in the Administrative Process, p. 49.

⁸ Hagenloch, U. (2020). Comments on the Code of Civil Procedure Featured Articles, pp. 15-16.

⁹ Ibid, p. 20.

¹⁰ Gogishvili, M., Sulkhaniashvili, M., Meskhishvili, S. (2010). Relations in the Courtroom.

¹¹ Supreme Court of Georgia (2012). Ruling on the case No. as-47-45-2012, dated March 2.

plaintiff about the legal ramifications of withdrawing a claim. Furthermore, the court must ascertain the genuine intent of the party, clarifying their requests and the legal outcomes they anticipate from exercising their procedural rights.¹²

C) Notice of Claim and the Principle of Dispositionality - Dispositionality, embodying the procedural manifestation of the autonomy of will, grants an individual the right to independently decide, including through judicial procedures, the specific nature of a dispute and to designate the party accountable for it. Furthermore, it permits the plaintiff the option to withdraw the claim. It is significant to note that the majority of these rights are afforded to the plaintiff. Nonetheless, civil procedural law, grounded in the principle of equality among parties, ensures analogous conditions for the defendant. This includes the defendant's right to conclude the dispute through a settlement if an agreement is reached or to acknowledge the claim, thus highlighting the balanced approach of civil procedural law in facilitating dispute resolution.¹³

D) Refusal of Lawsuit - Although Article 3 of the Civil Procedure Code of Georgia does not explicitly name the right to refusal as a separate entitlement, the right to refusal nonetheless constitutes an aspect of the principle of dispositionality. In this process, the plaintiff opts to discontinue the claim proceedings initiated by them. However, this discontinuation is provisional, preserving the plaintiff's right to revisit the claim.¹⁴ The procedural essence of a refusal is delineated by the legal outcome it precipitates: following an appeal, the claim remains active, thereby granting the party the opportunity to reapproach the court with the same claim at a later time. This is distinctly different from the procedural-legal institution of claim withdrawal, where subsequent disputes between the same parties over the same subject and grounds are deemed impermissible.¹⁵

5. The Principle of Adversariality in Civil Procedure

The adversarial principle, a concept that traces its origins back to Roman practice, is encapsulated in the maxim "audiatur et altera pars," signifying the equality of parties involved in a legal process.¹⁶ The distinction between adversarial and inquisitorial principles can be traced back to 12th-century European law. One manifestation of the adversarial principle is

¹² Supreme Court of Georgia (2011). Ruling on the case No. as-1368-1206-2010, dated February 24.

¹³ Supreme Court of Georgia (2015). Ruling on the case No. as-64-58-2015, dated April 8.

¹⁴ Supreme Court of Georgia (2018). Ruling on the case No. as431-431-2018, dated June 22.

¹⁵ Meskhishvili, K., (2020). Comments on the Code of Civil Procedure Featured Articles.

¹⁶ Kola Tafaj, F., Fokshi (2018). "Civil Procedure", Part 1, Edition 2, p. 32.

that proceedings could only be initiated through the submission of a claim by a private individual, in contrast to inquisitorial proceedings which could be initiated by the judiciary, for example, "ex officio" or through an "inquisitorial process." The interpretation of these concepts evolved in later medieval Europe, leading to a contemporary understanding that emphasizes distinct features, particularly in the context of fact-finding during trials.¹⁷ These differences have become key determinants in the procedural stages of establishing facts in court.

6. The Interplay Between Adversarial and Inquisitorial Principles

Until the adoption of the new Civil Procedure Code, the inquisitorial principle predominantly guided legal proceedings in Georgia. This approach was evident in the 1922, 1932, and 1964 Civil Procedure Codes of Georgia, including the period of the Georgian SSR, which were all structured around the inquisitorial principle. In contrast stands the adversarial principle, which fundamentally differs from the inquisitorial approach. With the establishment of the Democratic Republic of Georgia and the drafting of a Civil Procedure Code for the newly independent state, it was a pivotal decision to base the Georgian civil process on the principles of civil procedure, ultimately favoring the adversarial system.

Georgia's experience with the procedural codes of the Soviet era highlighted several critical issues, which were identified by Georgian scholars. These issues include: a) a significant reduction in the activity and responsibility of the parties involved, who were less concerned with providing a comprehensive and detailed account of the facts supporting their claims and defenses. This was primarily because the responsibility for the precise and complete determination of these facts fell to the court. As a result, parties were not motivated to actively seek and present evidence, expecting the court to undertake this task; b) the proceedings were often subject to excessive delays due to the court's overwhelming burden of having to seek, request, and examine evidence; c) there was a frequent overturning of decisions by higher courts because the initial court failed to ascertain the objective truth of the case.¹⁸

An interesting perspective comes from the esteemed proceduralist of the 19th and 20th centuries, Vaskovsky, who noted that "the principle of adversariality could be beneficial and appropriate only when the disputing parties are equal, and both are equally informed and capable opponents. In such cases, the court's role is merely to observe their 'duel' silently and

¹⁷ Glaser, E., Shleifer, A. (2001). *Legal Origins*. Cambridge, p. 99.

¹⁸ Liluashvili, T. (1977). *Questions of Civil Procedural Law*, pp. 104-110.

to impartially determine the winner. However, if the parties are not equal—for instance, if one is educated and the other is not, or if one party is represented by a lawyer while the other must represent themselves without any legal experience or is navigating the process for the first time—then the adversarial principle can actually contradict the principles of justice."¹⁹

The Federal Constitutional Court of Germany encapsulates the essence of the principle of equal opportunities as follows: The principle of equal procedural opportunities represents a cornerstone of the legal state and equality within both the civil process and the constitution, ensuring that all parties have an equal procedural standing before the judge. Moreover, it is incumbent upon the judge, in adherence to the constitutional and legal guarantees of a fair hearing, to afford all parties involved in the process an equal chance to present all relevant circumstances pertinent to the court's decision. This includes the opportunity to independently assert counterclaims against the opponent's demands within the bounds of procedural law.

Aligned with this perspective is the judge's duty to safeguard the equality of the parties through an objective and just proceeding. This includes maintaining an impartial stance while processing and evaluating the parties' statements, applying the law without bias, and properly exercising other procedural authorities. Consequently, this underscores the imperative for equality in the procedural status of the parties before the judge, ensuring that the administration of justice is fair and equitable for all involved.²⁰ For a comprehensive and foundational understanding of the adversarial principle, it is crucial to delineate its interplay and conjunction with the dispositive principle. Established doctrinal views suggest that participants in private legal relations possess complete autonomy to manage their personal interests within the boundaries of rights and freedoms granted by legislation. This autonomy manifests in the civil process through the adversarial principle. Conversely, the essence of the dispositive principle lies in restricting a judge's ability to interfere with the autonomy of the parties in a civil case. This restriction naturally entails a significant transfer of the burden of proof and responsibility onto the shoulders of the disputing parties, thereby emphasizing the importance of their active participation in the process.²¹

7. An exceptional Case as Stipulated by Legislation Deviating from the Adversarial Principle

¹⁹ Треушников, М. (1996). Хрестоматия по гражданскому процессу, pp. 71-72.

²⁰ Beschluss vom (2018). 1 BvR 1783/17-NJW 2018, 3631, dated September 30.

²¹ Schneider (1888). Über richterliche Ermittlung und Feststellung des Sachverhalts im Civilprozess, p. 18.

In Georgian civil procedural law, the institution of family affairs is governed distinctively, characterized by unique forms of legal protection. Family-related disputes are particularly sensitive in nature. In resolving these disputes, judges exercise significant caution to reach objective, accurate, and fair decisions. The welfare and rights of the child hold a paramount position in these considerations. Elements of inquisitorial proceedings are evident in such disputes, as judges are committed to achieving the most favorable outcome, taking into account the best interests of the child and the family as a whole. The principle of investigation is employed more extensively in family matters than in other types of disputes. According to Article 4(2) of the Civil Code of Georgia and Article 354(I), judges are endowed with extensive authority to independently assess the evidence provided by the parties, and to initiate the determination of the subject matter of the evidence, aiming for an impartial verdict in the case. Article 354 serves as a specific provision and takes precedence over the general rule outlined in Article 103. In matters concerning the welfare of the child, particularly in cases of divorce and alimony payments, the court is required to independently assess the involvement of the defendant in the financial support of the children. Should the defendant fail to meet this responsibility, in accordance with Article 355, the court is empowered to issue a decision in the form of a provisional order.²²

8. Scope of Inquisitorial Rights of the Court

The Civil Procedure Code of Georgia allows the court, for the purpose of elucidating case details, to independently initiate actions as prescribed within the code. However, judicial practice adheres to a more restrained interpretation of this rule, limiting the court's discretion to autonomously engage in procedural activities aimed at clarifying case facts, contrary to the extensive permissions that might seem to be granted by the Civil Procedure Code. For instance, the court is not permitted to independently question witnesses, determine the scope of evidence required for the case, request documents from external entities, or ask the Enforcement Bureau to verify facts. This norm specifically empowers the judge to undertake procedural steps on their own initiative, within the boundaries established by legal provisions. Irrespective of the case being conducted under adversarial or inquisitorial principles, two critical aspects remain central: the safeguarding of party equality and the judge's authority. This echoes the ancient Roman legal maxim "Lex uno ore omnes alloquitur" ("the law speaks

²² Gagua, Y. (2013). Burden of Proof in Civil Procedural Law, p. 159.

to all with one voice"), underscoring the principle of equal rights for all parties within contemporary legal frameworks.²³

9. Principle of Equality Before the Law in Civil Proceedings

The significance and necessity of the principle of equality before the law, a cornerstone concept, were recognized by the luminaries of Roman law. Indeed, Roman law holds a place in the annals of civilization comparable to the discovery and utilization of fire by humans. It is destined to remain an invaluable asset to human civilization for as long as humanity itself exists. There is a well-known adage that Rome conquered the world three times: initially, through the might of its legions; subsequently, with the embrace of Christianity; and finally, when feudal Europe began to recite Roman law. It was then that numerous civilized states began to establish the foundations of their civil legislation on the principles of revived Roman law.²⁴ Today, it's hard to grasp the monumental leap forward represented by the adoption of the Universal Declaration of Human Rights. Following World War II, a time marked by pervasive fear, colonial divisions, and widespread inequality, the introduction of the first Universal Declaration on a global scale—affirming the inherent dignity and equality of all individuals, irrespective of skin color, beliefs, or origins—was an undeniably audacious initiative, whose success was far from assured at the time. It is important to recognize that the principle of equality is echoed in administrative law as well. Alongside the adversarial principle, it is crucial to delineate the principles of equality before the law for all parties involved. This equality means that both the plaintiff and the defendant stand on equal footing throughout the administrative process. As is commonly understood, administrative-legal relationships typically occur between parties at inherently unequal levels, with subordination being a defining feature of these relationships. Nonetheless, in the context of an administrative case, the two unequal entities—an administrative body and a citizen—are considered equals.²⁵

10. Continental-European and Anglo-American Litigation

²³ Dekanosidze, R. (2017). Adversarial Principle and Its Limitation Cases in Georgian Civil Procedural Law, p. 130.

²⁴ Digests of Justinian (2000). Monuments of Roman Law, pp. 5-7.

²⁵ Kopaleishvili, M., Skhirtladze, N., Kardava, E., Turava, P. (2016). Manual of Administrative Procedural Law, p. 24.

The Corpus Juris Civilis of Justinian I significantly influenced the formation and development of the legal systems in Continental Europe. This influence is evident in the active role the court assumes in legal disputes. From the initiation of a lawsuit, the judge not only presides over the proceedings but also takes charge by summoning witnesses and setting priorities. This approach contrasts markedly with the Anglo-American legal system, where the judge's role is more about overseeing the process rather than directly guiding it. In the Continental-European model, the parties contribute to defining the case's circumstances, which then informs the court's decision-making. The court, within its jurisdiction, resolves and clarifies issues, with the judge providing legal interpretation on facts that have been reviewed and are pending consideration, as highlighted by Boeling H. in "Methodology of Decision-Making in Civil Case, Judges' Seminar."

The differences between the legal families of Continental Europe and Anglo-America are both vast and structural, encompassing legal and methodological aspects. A noteworthy distinction lies in the profound impact of Roman law on Continental European law, a legacy to which numerous lawmakers have contributed.²⁶

Conclusion

Despite the principles of adversarial proceedings and equality of parties enshrined and safeguarded by procedural legislation, Georgia's civil procedural laws exhibit characteristics of inquisitorial processes, including provisions for judicial initiative. This aspect of the Georgian judiciary is largely attributed to the influence of German procedural law. While proceedings should adhere to the adversarial principle, the court's role must be defined within bounds that do not infringe upon the principle of dispositionality. Resolving issues necessitates striking a delicate balance between the principles of adversarial proceedings, equality of the parties, and judicial activity. It is this equilibrium that defines the extent of the court's powers and the rights of the parties, ensuring that the court maintains a neutral and nominal role in examining the case's facts.²⁷ Improving the quality of justice, achieving a prominent position in practice beyond just the letter of the law, and enhancing the practical application of laws are critical steps toward legal advancement. This necessitates adopting proven legal experiences from other jurisdictions. The foundation of a robust legal society lies in the leadership by principles, the establishment of sound practices, and the accurate enforcement of laws, with the aim of

²⁶ Cypelius, R. (2009). *Doctrine of Legal Methods*, p. 11.

²⁷ Tbilisi Appellate Court Civil Cases Chamber (2014). Ruling on the case No. 2b/550-14, dated June 9.

making legal personhood a significant objective for lawmakers. Clarity, simplicity, and the ability to adapt legislation to the realities of legal practice are paramount. To mitigate communication challenges, adopting the formulation of paragraph 278(5) from the German Code of Civil Procedure into Georgian legislation is essential. This particularly pertains to situations where, following unsuccessful settlements, cases involving bias and lack of objectivity are assigned to a special judge who is not involved in other legal disputes. This paper explores the Anglo-American, Continental, and Georgian legal systems. Drawing from American and European experiences, it argues that courts should possess mechanisms for maintaining active oversight of cases, as losing control over the parties can lead to procedural stagnation.²⁸

²⁸ ABA Standards Related to Court Delay Reduction (2010), p. 71.

