

PRIMARY VALUES OF ENFORCEMENT

Nino Gogelashvili

PhD student, Caucasus International University

ABSTRACT

The article outlines the core values of enforcement, examines international standards and principles of enforcement proceedings and its congruency with the system implemented in Georgia. It raises the question regarding different enforcement systems for a protection of fundamental values. In the conclusion of the article, it is stated that the fundamental standards and principles of enforcement, as well as foundational approaches toward parties and their rights, should be taking into the consideration, regardless of the configuration of the enforcement system.

Different states have varied organizational structures for their enforcement systems and procedures. While harmonization is not mandatory, it would be beneficial to establish common standards and principles to assist states with refining their legislation and practices.

Keywords: enforcement system, enforcement agent, parties.

Introduction

Enforcement (within the scope of the work, enforcement refers to activities regulated by “Law of Georgia on Enforcement proceedings”) represents the most significant institution in terms of its purpose and matters it regulates. The modern factual and judicial diversity have further outlined the significance of this field

It is of great importance to put an emphasis not only on the court decision, but on its enforcement as well. A well-organized enforcement system is the only and unconditional guarantee for the existence of justice.

The relevance of the topic stems from objectives of the enforcement system and its practical applications. The importance of enforcement of decisions has not been adequately perceived not only in Georgia, but also on a scale of whole Europe. The attention was further drawn on a reform and a development of the judicial system. Popularization of the enforcement system began following several decisions issued by the European Court of Human Rights, establishing, that the right to a fair trial under Article 6 of the European Convention on Human Rights also includes enforcement proceedings, and the legal process should focus not only on the court decision, but also on developing an effective enforcement system for its enforcement.

Within the scope of the study, the fundamental values of enforcement were determined; international standards and principles of enforcement were researched, and their compatibility with Georgian reality was underlined. Although the question was which system guarantees the maximum protection of core values of enforcement.

Materials and Methods

In order to analyze primary standards and principles, the Global Code of Enforcement (which is a collection of international standards in the field of enforcement) was researched. The study also consists of several international and “Council of Europe Commission on the Efficiency of Justice (CEPEJ)”-guidelines, recommendations, and resolutions. The article is based on primary normative acts, as well as the Ministry of Justice of Georgia and the LEPL National Bureau of Enforcement's internal normative acts; scientific literature and court decisions, as well as Georgian and foreign articles and information obtained from internet sources. The methodology of the article involves a general scientific method that combines a combination of theoretical and practical aspects. The important and necessary literature was studied and analyzed for research purposes. Within the scope of the article, the factual material was processed and a complex analysis was conducted.

3. Discussion of Findings

3.1. General Standards and Principles

Over the past decade, the level of activity in the enforcement sector has changed significantly. Nowadays, more people are present in enforcement proceedings. Same applies to Georgia, where there has been a significant increase in terms of number of people involved in enforcement processes. Therefore, it is crucial to have appropriate enforcement mechanisms that are adjusted to human rights.

The way procedures of enforcement is structured, vary from one country to another, regardless of this diversity, it is essential that general standards exist in the enforcement field. Developed and adopted recommendations, allow countries to create simple and effective mechanisms of enforcement that align with the rule of law, improve enforcement procedures and define principles and goals which are in congruency with international standards. These recommendations and guidelines are based on efficiency, transparency, and perception. They do not present an ideal system, as an ideal enforcement system does not exist. These documents aim to establish the foundational bases of enforcement.¹

Enforcement proceedings are accompanied by coordination and cooperation of public interests and respect of legal security and fundamental rights, all of it playing a significant role in enforcement processes.² Enforcement itself is a complex relation between at least three interests: the creditor, the debtor, and the enforcement body. It is notable that the enforcement agent is involved in the process not out of personal interests, but to ensure the enforcement of

¹ Uitdehaag A. An overview of enforcement matters in Europe. 2017. P. 12

² Perez-Ragone I. Constitution, Fundamental Rights and Law of Enforcement 2014. P. 600.
<https://www.ufrgs.br/caar/wp-content/uploads/2014/10/Session-4.2.pdf> (accessed 14.05.23.)

established legal rights of a creditor, which must be achieved through equal treatment of involved parties, satisfying creditor's claims while taking into account debtor's interests.

Enforcement systems vary from state to state, but regardless of these differences, the existence of general standards in the enforcement field is essential. From a practical standpoint the harmonization is not imperative, although it would be beneficial to establish common standards and principles that assist states in refining their legislations and practices and enforcing judicial decisions.³ A country should have an enforcement system that suits its history and culture. Furthermore, regardless of differences between varying systems, the established fundamental standards and principles of enforcement must be protected.

In 2014, the International Association of Judicial Officers, which, represented by 88 member states and being one of the biggest judicial organizations in the world, issued the Global Code of Enforcement,⁴ which is a compilation of international standards in the enforcement field. It specifies that enforcement means the implementation of decisions by judicial and other non-judicial institutions in accordance with the law, which obliges parties to take certain measures, refrain from certain actions, or pay established amounts of funds.⁵

3.2. Participants in the Process

The Global Code of Enforcement also defines the fundamental rights of enforcement for disputing parties. According to the Enforcement Code, any creditor with a writ of execution, without discrimination and regardless of the amount of the claim, has the right to effective access to enforcement against a debtor, who fails to fulfill obligations.⁶ The similar definition of a creditor is presented in the Law of Georgia „on enforcement Proceedings” „In enforcement proceedings, the creditor is a natural and legal person, other organizational formations, the union of persons as a legal entity, state bodies and municipalities / relevant bodies of the municipality, in whose favor and/And the enforceable decision provided for in Article 2 of this Law shall be taken into account.” The definition of a debtor in the law is articulated as follows: „In an enforcement proceedings, the debtor shall be a natural person, a legal person, any other establishment, an unincorporated association of persons, a state body and a municipality/municipality body that are bound by the enforceable decision under Article 2 of this Law to perform certain actions, or refrain from performing certain actions.”⁷ While carrying out enforcement proceedings it is crucial for the process to be oriented on protecting the balance between parties and ensuring the satisfaction of a creditor's claim without creating a risk.

³ Gogelashvili N. Right to Enforcement, International Scientific Journal Intellectual. No. 36, Tbilisi, 2018. 87. p.

⁴ International Union of Judicial Officers https://uihj.com/archive-uihj/en/global-code-of-enforcement_2165010.html (accessed 22.01.2023.)

⁵ COUNCIL OF EUROPE COMMITTEE OF MINISTERS . Recommendation (2003) 17 of the Committee of Ministers to member states on Enforcement. (Adopted by the Committee of ministers on 9 September 2003 at the 851st meeting of the Ministers' Deputies) 2003. https://uihj.com/archive-uihj/en/ressources/21628/65/council_of_europe_recommendation_17_on_enforcement.pdf (accessed 22.05.2023.)

⁶ Global Code of Enforcement. Article 1. https://uihj.com/archive-uihj/en/global-code-of-enforcement_2165010.html (accessed 22.05.2023.)

⁷ Law of Georgia "On Enforcement Proceedings" Chapter IV Persons participating in enforcement proceedings. Article 15.

The 2009 CEPEJ guidelines specify that there must be an effective, yet fair, enforcement process; enforcement can be realized when the defendant has means or opportunities to comply with the decision; enforcement must maintain a proper balance between the rights of parties; the state must conduct supervision of enforcement proceedings and take appropriate measures to ensure procedural equality for all parties involved.⁸

Regardless of their status, parties in enforcement proceedings, whether they are physical persons, legal entities, or other types of organizational entities, and even if they are state agencies involved in the enforcement procedures, should benefit from equal rights. However, it should be noted that under Georgian legislation, in cases where the state is a debtor, different regulations apply, including different timeframes for a compliance. When a debtor is a state budget organization, is granted extended timeframe for a compliance compared to cases when a debtor is not the state itself.⁹ The state, as a debtor, is in a privileged position, which significantly reduces trust and expectation in the enforcement system.¹⁰ Such enforcement procedures do not conform to European enforcement standards. Cases, where the state is a debtor, should be enforced at a faster rate and there should not be a necessity for a non-voluntary enforcement. Typically, in European countries, cases against the state that require forced enforcement are rare. The state usually complies voluntarily and fulfills requirements of the final judicial decisions. Unfortunately, the situation is different in Georgia.

It is also important for parties to cooperate during the enforcement proceedings and to fulfill the rights and obligations prescribed by law to aid the enforcement process. It is noteworthy, that international standards outline an active involvement of parties in the enforcement process. Parties are obligated to cooperate during the enforcement process; meanwhile, the relevant structures are responsible for supporting such cooperation among the parties.¹¹ Besides a debtor and a creditor, other parties may also participate in the enforcement process. It is important that every participant in the enforcement process has been given appropriate authority, so that they can assist the enforcement agent in completion of the decision if needed. The enforcement process itself should be flexible, clear, and transparent. This also allows parties to understand their roles and perform their obligations with a greater effectiveness.

The enforcement process involves an enforcement agent, who carries out enforcement proceedings. The CEPEJ's recommendations on the effectiveness of the European Commission for the Efficiency of Justice (CEPEJ) define the enforcer as a professional involved in enforcement, "“Enforcement agent” means a person authorized by the state to carry out the enforcement process irrespective of whether that person is employed by the state or

⁸ EUROPEAN COMMISSION ON THE EFFICIENCY OF JUSTICE (CEPEJ) Guidelines for a Better 2009. P. 6-
[Guidelines - European Commission for the Efficiency of Justice \(CEPEJ\) \(coe.int\)](#) (accessed 22.05.2023.)

⁹ Law of Georgia "On Enforcement Proceedings" Chapter XVI Rules of enforcement in certain categories of cases. Article. 904.

¹⁰ Uitdehaag A. Review of the enforcement system of Georgia. 2013 p. 89

¹¹ EUROPEAN COMMISSION ON THE EFFICIENCY OF JUSTICE (CEPEJ) Guidelines for a Better 2009. P.
[Guidelines - European Commission for the Efficiency of Justice \(CEPEJ\) \(coe.int\)](#) (accessed 22.05.2022.)

not¹² Enforcement agents engage in activities as public officials as well as on a licensed basis as private, independent individuals

During the execution of enforcement activities, the enforcer must be impartial, and the authority granted to them are considered to support the effectiveness of the enforcement process. Compliance with the enforcer's requests is mandatory, and this is defined by the appropriate state's legislation, including the Georgian law "On Enforcement Proceedings," which states: „A bailiff’s requests related to the performance of official duties shall be binding upon all natural and legal persons irrespective of their subordination and organization-legal status.”¹³ This issue is also addressed in the Global Code of Enforcement, which specifies that: "States must make provision that all relevant bodies, both public and private, shall disclose as quickly as possible to the professionals instructed with enforcement all information that they hold about the domicile, registered office or principal place of business of the debtor, as well as about the elements constituting its assets. These bodies may not withhold information by invoking professional confidentiality."¹⁴

To aid effective enforcement, the 2009 CEPEJ guidelines recommend that every state structure possessing a database containing necessary information for the enforcement process should provide this information to the enforcer within established deadlines, with protection of data privacy laws.¹⁵ Naturally, this includes taking into account requirements necessary for the protection of personal information.

Access is a fundamental matter in enforcement process, and the 2009 CEPEJ guidelines require the geographical distribution of enforcement agents across the country to ensure the possible broad coverage of parties. This pertains to countries where the enforcer is a public officer, as well as to those where enforcement is carried out by private enforcers. Also, it is important that there is an adequate communication between an enforcement agent and parties, which means both direct communication and the existence of appropriate methods of notification. It is crucial that accessibility of information regarding the ongoing enforcement process is ensured. Enforcers must ensure access to information related to the enforcement proceedings, a good system of communication, and transparency of actions at all stages of the enforcement procedures, under the condition that the rights of all parties are adequately protected.

The administration of enforcement procedures should be of no problem for enforcement agents. Primarily, enforcement agents must have pertinent independence, including the discretion to

¹² COUNCIL OF EUROPE COMMITTEE OF MINISTERS . Recommendation (2003) 17 of the Committee of Ministers to member states on Enforcement. (Adopted by the Committee of ministers on 9 September 2003 at the 851st meeting of the Ministers’ Deputies) 2003. https://uihj.com/archive-ihj/en/ressources/21628/65/council_of_europe_recommendation_17_on_enforcement.pdf (accessed 22.05.2022.)

¹³ Law of Georgia "On Enforcement Proceedings" Chapter IV Persons participating in enforcement proceedings, Article 17.

¹⁴ Global Code of Enforcement. Article 2. https://uihj.com/archive-ihj/en/global-code-of-enforcement_2165010.html (accessed 22.05.2023.)

¹⁵ EUROPEAN COMMISSION ON THE EFFICIENCY OF JUSTICE (CEPEJ) Guidelines for a Better 2009. P. 43. [Guidelines - European Commission for the Efficiency of Justice \(CEPEJ\) \(coe.int\)](https://www.cepej.europa.eu/en/Commission_for_the_Efficiency_of_Justice_(CEPEJ)_coe.int) (accessed 22.05.2023.)

select measures, which in the case of a private enforcement system, appears to be more applicable. This includes Georgia, where private enforcer's activity is less involved, whereas in the case of a public establishment, the enforcement agent has several supervisors.

3.3 Time Limits of the Process

The time limits of the enforcement process are of great importance. Legislation within the state should fully describe the time limits for enforcement activities. Neither the enforcing officer nor the parties involved should have the ability to interpret these time limits. The CEPEJ guidelines highlight the need for procedures related to enforcement actions to be carried out within reasonable time limits and at the same time, member states should not set such short deadlines that artificially rush the enforcement process.¹⁶ The Global Code of Enforcement stipulates that enforcement must be carried out within the times prescribed by law, beyond the time limits established by national legislation, no other enforcement actions should take place.¹⁷

The conduct of enforcement for both sides should not be maliciously exploited by any party. For example, artificially prolonging the process, which can often be expressed in appealing of enforcement activities, poses a challenge to states for implementation of mechanisms that prevent the misuse of the process. The European Council's Committee on Efficiency of Justice (CEPEJ) also addresses this topic and indicates that enforcement should not be delayed, except instances when there are legally justified reasons. Delays can be subjected to judicial scrutiny.¹⁸ Also, in certain cases, the necessity for stopping enforcement arises, which is mainly caused by objective circumstances independent from the enforcement agent and the party, which impedes enforcement proceedings. After stoppage, the moment reasons for the interruption are resolved, enforcement procedures continue.

Georgian legislation recognizes both the stopping and postponing of the enforcement process. It is noteworthy, that the Georgian law "On Enforcement Proceedings" in a particular circumstance, allows the stoppage of enforcement through the decision of the chairmen of the National Bureau.¹⁹ Another noteworthy occurrence was the decision of the Georgian Constitutional Court where the subject of the dispute was precisely the constitutionality of the mentioned issue, according to Article 42 of the Constitution of Georgia. The constitutional complaint was satisfied and the normative content, that considers the possibility of stopping

¹⁶ EUROPEAN COMMISSION ON THE EFFICIENCY OF JUSTICE (CEPEJ) Guidelines for a Better 2009. P. 63. Guidelines - European Commission for the Efficiency of Justice (CEPEJ) (coe.int) (accessed 22.05.2023.)

¹⁷ Global Code of Enforcement. Article 7. https://uihj.com/archive-uihj/en/global-code-of-enforcement_2165010.html (accessed 22.05.2022.)

¹⁸ COUNCIL OF EUROPE COMMITTEE OF MINISTERS . Recommendation (2003) 17 of the Committee of Ministers to member states on Enforcement. (Adopted by the Committee of ministers on 9 September 2003 at the 851st meeting of the Ministers' Deputies) 2003. https://uihj.com/archive-uihj/en/ressources/21628/65/council_of_europe_recommendation_17_on_enforcement.pdf (accessed 22.05.2022.)

¹⁹ Low of Georgia "On Enforcement Proceedings" Chapter VII Postponement, Termination, Suspension, Return of Enforcement Document Article 36

the enforcement of decisions without judicial control, was declared unconstitutional.²⁰ This once again highlighted how important judicial control is during the enforcement of decisions. Stopping enforcement procedures is a possibility but it must have its valid reason. For example, the financial status of the debtor and the fact that they may be insolvent, however, this should not be a reason for a non-compliance with the decision. The European Court of Human Rights in the case of V. Burdov against Russia established that the insolvency of a debtor may be a justifying factor for delaying enforcement, but it cannot be a reason justified by the court's decision for a non-payment of the debt.²¹ When talking about a prolonged enforcement process, attention should also be drawn to the fact that procedures related to enforcement procedures should be carried out within reasonable time limits and not set such short deadlines that artificially complete the enforcement process. The law must define clear and precise criteria related to the duration of enforcement, which may vary depending on the nature and complexity of the case.²²

In the Georgian law "On Enforcement" we find a record, where the stages of enforcement activities are defined: initiation of enforcement, attachment of property, conducting an auction, and transferring money to the creditor.²³ The enforcement process does not consist of only of these actions, although these stages might be considered in categories involving monetary claim enforcement cases. Behind each of these stages are procedures, timeframes of which are also prescribed by law, but there are instances where the legally prescribed timeframes are violated, indicating a scenario where the bureau is overloaded with various enforcement cases. It has to be noted, that the law does not contain norms defining the timeframes for conducting enforcement activities. The timeframes of enforcement procedures are determined by the enforcement officer and the parties involved in the enforcement proceedings may also participate.²⁴ Thus, it is important that legislative regulations are shaped in such a way, that their execution is feasible for the enforcement agent and additionally it does not infringe upon parties' rights.

3.4. Maintenance of Balance and Mediation between Parties

It is crucial in the enforcement process to ensure a balance of rights protection among the parties, allowing them to conduct the process and conclude the process based on the best decisions regarding their interests. The balance must be maintained in the enforcement process,

²⁰ Constitutional Court of Georgia, September 30, 2016 No. 1/2/596;

²¹ EUROPEAN COURT OF HUMAN RIGHTS, 7 May 2002 Strasbourg. Case Burdov v. Russia №59498/00

²² EUROPEAN COMMISSION ON THE EFFICIENCY OF JUSTICE (CEPEJ) Guidelines for a Better 2009. P. 63. Guidelines - European Commission for the Efficiency of Justice (CEPEJ) (coe.int) (accessed 22.05.2023.)

²³ Law of Georgia "On Enforcement Proceedings" Chapter V Enforcement Article. 251

²⁴ Kurdadze Sh. Kurdadze G. Khunashvili N. and Chkhonia Z. Commentary on the Law of Georgia on Enforcement Proceedings Part I. Tbilisi. Davit Agmashenebeli University of Georgia. 2018 p. 258.

taking into account the best interests of the parties in line with Articles 6 and 8 of the Convention on Human Rights and Fundamental Freedoms.²⁵

For a rational decision-making in an enforcement process, it is essential that there a confrontation of debtor's and creditor's interests. The creditor approaches the enforcement body for the prompt enforcement of the decision. He has a legal expectation and trust in enforcement institutions. The debtor's interest is that the enforcement process considers the position he is in to its maximum, for his property rights not to be unduly restricted beyond his obligations, and for him to be involved in processes such as planning the timing of enforcement actions, primarily deciding from which properties' can obligations be fulfilled and others.

It is important to note the environment where one of the leading experts in the field of enforcement indicates that based on the historical experience of various countries (especially former socialist countries), we can conclude that in most of these countries, there is an imbalance between the interests of a debtor and a creditor. It is easier for a debtor to interfere with enforcement process using legal mechanisms to their advantage.²⁶ Therefore, it is crucial in the enforcement process that the balance of interests is not violated and no party suffers unjust damage.

Balancing interests also implies a balance of proportionality. During enforcement proceedings, the principle of proportionality must be protected. The principle of proportionality relates to the interests of a creditor and a debtor, but may also extend to the enforceability of the actions. The practical activities of enforcement must be proportional to the amount of demand. The Supreme Court of Georgia on February 21, 2021, noted in its decision, that the enforcement body should try to minimize the severe disproportion of enforcement results. Decisions within the discretionary authority require the administrative body to choose the most acceptable decision from several options based on the protection of public and private interests under the law, taking into account the rules of using discretionary authority and observing the proportionality of the enforcement measures.²⁷ This relates to the Global Code of Enforcement, in which is indicated, that the execution of enforcement must be proportional to the amount of demand.²⁸

During the enforcement process, we encounter fundamental rights such as property, freedom, residential and personal life inviolability. Therefore, we must always remember the principle of proportionality, which must be an integral part of the legal state that embodies this principle

²⁵ Council OF EUROPE COMMITTEE OF MINISTERS . Recommendation (2003) 17 of the Committee of Ministers to member states on Enforcement. (Adopted by the Committee of ministers on 9 September 2003 at the 851st meeting of the Ministers' Deputies) 2003. https://uihj.com/archive-uihj/en/ressources/21628/65/council_of_europe_recommendation_17_on_enforcement.pdf (accessed 22.05.2023)

²⁶ Uitdehaag A. Review of the enforcement system of Georgia. 2013 p. 89.

²⁷ Decision of the Supreme Court of Georgia of February 21, 2021 Nbs-881(K-19) <https://www.supremecourt.ge/ka/cases> (accessed 06.04.2023.)

²⁸ Global Code of Enforcement. Article 27, 28. https://uihj.com/archive-uihj/en/global-code-of-enforcement_2165010.html (accessed 22.05.2023.)

in the Convention for the Protection of Human Rights and Fundamental Freedoms²⁹. The scope of rights restriction must meet the objective; in enforcement actions, the interests of both a creditor and a debtor must always be considered.

During an evaluation of the proportionality of enforcement actions, we can guide ourselves with four main components: 1. The restriction must have an appropriate goal; 2. The measures taken must be rationally connected to achieving this goal; 3. The measures must be necessary, as there are no less harmful alternative measures; 4. A balance must be achieved between the importance of achieving the goal and the social significance of the fundamental rights restriction³⁰. Such comparisons make it possible to determine the proportionality of restricting fundamental rights.

International norms highlight the importance of mediation in enforcement. From the CEPEJ 2009 guidelines, we can deduce that the role of the enforcement agent in enforcement actions is not limited to enforcement. The enforcement agent may also have the function of "post-judicial mediation" at the stage of enforcement activities.³¹

In Georgia, the institution of mediation is getting increasingly refined. A law on mediation was adopted, defining that mediation is a process in which two or more parties attempt to resolve a dispute with the help of a mediator, regardless of whether this process is initiated by the parties' initiative or based on a legal basis and order.³² The National Bureau of Enforcement's structural unit represents the interests' protection and mediation department, aiming to minimize instances of rights and legal interest violations during the bureau's activities, and the implementation of obligations defined under the Georgian law "On Social Work," and the development and implementation of flexible social policy.³³ Introducing and implementing these elements at the stage of enforcement proceedings will raise the rate of voluntary compliance and resolving disputes, with the process conducted protecting the best interests of the parties. It is commendable that this policy should explicitly ensure the reduction of instances of rights and legal interest violations by the National Bureau of Enforcement during enforcement procedures, and improve the protection of the balance between existing rights and interests of the parties.

Priority should always be given to reaching agreements between the parties. The CEPEJ's 2009 guidelines state that no procedure should hinder the implementation of such agreements when parties agree on enforcement terms³⁴ The "On Enforcement Actions" law of Georgia

²⁹ Convention on the Protection of Human Rights and Fundamental Freedoms. Article 18

³⁰ I. Constitution, Fundamental Rights and Law of Enforcement 2014. P. 607.

<https://www.ufrgs.br/caar/wp-content/uploads/2014/10/Session-4.2.pdf> (accessed 14.05.23.)

³¹ Uitdehaag A. Review of the enforcement system of Georgia. 2013 p. 99.

³² Law of Georgia on Mediation. Chapter I; Article 2.

³³ Regulation of the Department of Protection of Interests and Mediation of the structural unit of the National Bureau of Enforcement, a legal entity of public law operating in the sphere of governance of the Ministry of Justice of Georgia. Article 2

³⁴ EUROPEAN COMMISSION ON THE EFFICIENCY OF JUSTICE (CEPEJ) Guidelines for a Better 2009. P. 70. Guidelines - European Commission for the Efficiency of Justice (CEPEJ) (coe.int) (accessed 22.05.2023.)

recognizes the distribution of obligations,³⁵ where it is stated that the distribution of obligations is possible only up to a 12-month period. This directly contradicts international approaches and restricts the parties from expressing their will. It is desirable for this norm to be aligned with international standards, giving parties the opportunity to independently determine the terms of obligation distribution within the overall duration of enforcement. The bureau's policy should be strengthened to protect the parties' interests and support mediation in the stage of enforcement proceedings, which should also be supported by normative acts. In the reality of Georgia, problems are encountered at the stage of enforcement proceedings – both in terms of balancing the rights of the parties, as well as in protecting human rights and fundamental freedoms. For a debtor, it is possible to interfere with enforcement procedures using legal mechanisms that suit their own interests, thereby harming a creditor's right to swift enforcement. At the same time, a creditor also has the opportunity to misuse the legally granted authority. It is important to have an adequate enforcement system that ensures the conduct of the enforcement process with the protection of balance and supports the development of enforcement mediation, which is more developed in countries with private enforcement institutions.

4. Conclusions

Based on the study, it can be summarized that the fundamental standards and principles of enforcement, as well as foundational approaches to considering the parties and their rights, are applicable in all cases, regardless of the enforcement system's structure. It is fundamental to doubt that achieving exhibited standards will be more challenging in the case of a private enforcement system than in a public one, as the process tends to be more centralized in such cases. It is also significant to understand that the term "private" indicates the enforcer's status and is broadly used; it is of great essence that this term is correctly understood. However, it can be speculated that the term "private" creates a negative perception towards the profession. The public might associate the enforcement agent's activity with "private justice," demanding the fulfillment of obligations without any legal basis and oversight. The use of "private" could negatively impact the public's trust and confidence in the legal system. It must be clear that an enforcement agent is an individual authorized by the state to conduct the enforcement proceedings.

Regardless of whether it is private or public, it is crucial to note that the state must ensure, that the fundamental values of enforcement are adequately protected, including prioritizing the rights of the parties, protecting their interests, and facilitating mediation. This should be regulated within a strict legislative framework, applicable to any systemic structure.

³⁵ Law of Georgia "On Enforcement Proceedings" Chapter IV Persons participating in enforcement proceedings Article 184.

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