

AN ACTION FOR ACKNOWLEDGEMENT AS AN EFFECTIVE CIVIL PROCEDURAL REMEDY FOR THE RESTORATION OF RIGHTS

Khurtsilava Robizon

Doctor Of Law, Associate Professor

Department of Law, Akaki Tsereteli State University, Kutaisi, Georgia

Address: 41/32 David Agmashenebeli Avenue, Kutaisi 4600, Georgia

Khurtsidze Daviti

Department of Law, Akaki Tsereteli State University, Kutaisi, Georgia

Address: 40 Vasil Barnovi Street, Kutaisi 4600, Georgia

[DOI: 10.5281/zenodo.20068814](https://doi.org/10.5281/zenodo.20068814)

Abstract

The present article provides an overview of the action for acknowledgement and its relationship with civil procedural remedies for the effective restoration of rights.

The restoration of disputed or violated rights of individuals falls within the competence of the courts. Clear and foreseeable procedural institutions further enhance the practical realization of the right to a fair trial. An action for acknowledgement constitutes an effective procedural instrument for applying to the court, the proper use of which may lead to outcomes that cannot be achieved through other legal means. Accordingly, the relevance of studying the action for acknowledgement and the necessity of defining its legal nature are evident.

The paper analyzes the types of action for acknowledgement. It also examines the necessity of defining the subject matter of the lawsuit with precision and the exclusion of abstract legal issues from the scope of judicial review. At the same time, particular attention is given to the subsidiary nature of the declaratory lawsuit.

The study reflects the challenges existing in Georgian legal practice and doctrine. It analyzes the case law of the Supreme Court of Georgia, as well as the judicial practice of Germany and other European countries. A significant part of the research is devoted to the concept of legal interest as a primary prerequisite for the admissibility of an action for acknowledgement, along with its defining criteria based on case law and legal doctrine.

The paper is based on a comparative analysis of Georgian, German, and Austrian law. The article evaluates the action for acknowledgement as an effective procedural mechanism that contributes both to the protection of individual rights and to the efficient functioning of the civil justice system.

The research employs several methods: the method of analysis and synthesis, the method of logical analysis, and the comparative legal method.

Keywords: Civil procedure, Action for acknowledgement, Legal interest, Subsidiary nature.

• Introduction

Civil procedure law encompasses the body of rules governing the organization and functioning of the system of justice.¹ Civil procedure determines the procedural mechanisms for the protection of rights granted to legal subjects by substantive law.² The principle of party disposition, adversarial proceedings, and judicial discretion collectively form the regulatory framework for the administration of civil justice.³ "In any case, procedural legislation must be reduced to two fundamental objectives: first, how to ensure the independence of the judiciary so that proceedings are conducted on the basis of adversariality and party disposition; and second, how to simplify the procedure for the adjudication of civil disputes in order to ensure the effective protection of the rights of legal subjects."⁴ The cornerstone of judicial proceedings is the effective

restoration of violated or disputed rights. Civil procedural legislation serves multiple purposes,⁵ among which the regulation of the rules and procedures governing the adjudication of cases by the courts is particularly noteworthy. At the same time, civil proceedings contribute to the expression of the abstract values of society.⁶

In the constitutions of legal and democratic states, provisions can be found granting every individual the right to apply to a court for the protection of their rights.⁷ This right is also guaranteed by various supranational, binding international instruments, such as the European Convention on Human Rights, the Charter of Fundamental Rights of the European Union, and the American Convention on Human Rights.⁸

In order to ensure the equal protection of the rights of every individual, it is necessary to establish clear and

¹ Labadie, D, La procédure civile, Pages 33 à 43, 05/12/2019

² Clermont, K, Civil Procedure, Black letter outlines, Thomson/West, 8th ed, 2009, 1.

³ Kiriiak, O, Method of civil procedure, International Comparative Jurisprudence Volume 1, Issue 2, December 2015, 143.

⁴ Khurtsilava. R., Simplified Procedure in the Civil Procedure of Georgia, Dissertation, 2009, Tbilisi, 14.

⁵ Avraham, R, Hubbard, W, Civil Procedure as the Regulation of Externalities: Toward a New Theory of Civil Litigation, University of Chicago Law Review: Vol. 89: Iss. 1, Article 1. Available at:

<https://chicagounbound.uchicago.edu/uclrev/vol89/iss1/1> [08/04/2026]

⁶ Friedenthal, J, Miller, A, Sexton, J, Hershkoff, H, Civil Procedure: Cases and Materials, American Casebook Series, West Academic Publishing, 11th edition, 2013, 2.

⁷ Constitution Of Georgia, Consolidated publications: 29/06/2020, Article 31.1.

⁸ Bado, K, Galič, V, Mendes, A, Huber, S, and others, Procedural Rights, Principles, and Approaches Influencing the Structure of Civil Litigation, Comparative Procedural Law and Justice (Part VI Chapter 1), 13.

foreseeable procedural institutions. It is one thing when national legislation strictly regulates the procedures for the adjudication of civil cases by courts, and quite another when the procedural means of access to the court are transparent and clearly defined. According to the principle of party disposition, the initiation of civil proceedings is based on the filing of a lawsuit or application with the court.⁹ "The court may refuse to accept an application or to examine a case only on the grounds and in accordance with the procedure established by the Civil Procedure Code."¹⁰ It is not surprising that both the procedural codes of individual countries and legal doctrine reinforce the rule of classifying a lawsuit from a civil procedural point of view.¹¹

The plaintiff, depending on their legal interest, the subject matter of the dispute, and the nature of the lawsuit, selects a specific type of action. The definitions of claims for alteration of legal relations and "Transforming Lawsuits" are relatively straightforward. However, with regard to the action for acknowledgement, difficulties of interpretation arise both in legal literature and in judicial practice. For example, in Austria, after prolonged debates, the action for acknowledgement eventually established its place within the legal system.¹²

The principal characteristic of a declaratory lawsuit lies in its preventive nature, meaning that it aims to protect a person's legal position before their right is directly violated. Such a type of lawsuit indeed constitutes an effective means of restoring rights, as evidenced by the fact that an action for acknowledgement is inadmissible where a lawsuit for performance can be brought.

Although such a provision is not explicitly found in the Georgian Civil Procedure Code, it is, similarly to Germany, firmly established through judicial practice. Therefore, for a person seeking the resolution of a legal dispute, where the prerequisites for filing a declaratory lawsuit are present, an action for acknowledgement represents the ultimate procedural remedy. At the same time, an action for acknowledgement is distinguished by one specific element, legal interest, which is characteristic exclusively of this type of lawsuit.

Accordingly, the relevance of studying the action for acknowledgement is evident for determining its role in the administration of civil justice.

- Types, subject matter, and subsidiary nature of the action for acknowledgement

An action for acknowledgement is a purely procedural institution and, accordingly, a distinct form of legal protection.¹³ This type of lawsuit is defined by Article 180 of the Civil Procedure Code of Georgia.¹⁴ The latter mirrors the provision of § 256 of the German Code of Civil Procedure. The purpose of actions for acknowledgement is to eliminate legal uncertainty regarding a right, rather than to seek the attribution of a subjective right.¹⁵ The distinctive nature of a declaratory lawsuit in relation to other types of lawsuits becomes evident from the very moment of its definition. An action for acknowledgement does not aim to impose the performance of a specific act, but is directed solely toward the clarification and determination of a legal relationship.¹⁶

It is difficult to find explicit provisions in the civil procedural legislation of any country concerning the types of an action for acknowledgement. This is not surprising, as the law defines only the normative concept of the procedural institution, while practice, driven by necessity, ensures its classification into specific forms. An example of this is the action for acknowledgement, which, according to legal doctrine, may be divided into positive and negative forms.

A positive action for acknowledgement arises where a person requests the court to establish the existence of a specific right or legal relationship, as well as to confirm the authenticity of a document. For example, an action for the establishment of paternity or for the recognition of the right to use property constitutes a positive action for acknowledgement.¹⁷

In the case of a negative declaratory lawsuit, a person requests the court to establish the non-existence of a right or legal relationship, such as the invalidity of a specific transaction. A negative action for acknowledgement also encompasses claims concerning the falsity of a document. Accordingly, it is evident that the assessment of a document's authenticity falls within the scope of an action for acknowledgement. In many

⁹ Culda, S, The Principle Of Party Disposition In Civil Lawsuits, *Fiat Iustitia* No. 2/2018, 46-47, Available at: <https://fiatiustitia.ro/wp-content/uploads/2021/03/376-Article-Text-730-1-10-20190404.pdf> [08/04/2026]

¹⁰ Khurtsilava, R., *Simplified Procedure in the Civil Procedure of Georgia*, 2009, Tbilisi, Publishing house: "Meridiani", 19.

¹¹ Georgian procedural legislation, similar to that of European countries, recognizes three types of lawsuits: claims for alteration of legal relation, Transforming Lawsuits, and actions for acknowledgement. The purpose of each of them in the administration of justice is the same; however, the distinguishing factor lies in their legal nature. Reference: Liluashvili T., Liluashvili G., Khrustali V., Dzlierishvili Z., *Civil Procedural Law, Part II*, Tbilisi, 2023, p. 23.

¹² Trzaskalik, *Die Rechtsschutzzone der Feststellungsklage im Zivil- und Verwaltungsprozeß: Studien zur Fortentwicklung des Rechtsschutzverständnisses* (1978) 12

¹³ Rechberger/Klicka in Rechberger/Klicka, ZPO § 228 Rz 1. Cited in: Wilfinger, A, *Grundfragen der Feststellungsklage*, 2025, Monografie, Verlag Österreich, 19.

¹⁴ Civil Procedure Code of Georgia, consolidated version - 09/12/2025, available at: <https://matsne.gov.ge/document/view/29962?publication=174> [08/04/2026]

¹⁵ Kurdadze Sh., *Adjudication of Civil Cases in the Court of First Instance*, Tbilisi, 2016, p. 479.

¹⁶ Klausurtypische Probleme der Feststellungsklage, Übersicht Feststellungsklagen / Seite 1, available at: <https://www.assessorkurs-hemmer.de/pdf/kursmaterialpdf/bayern/1615-uebersichtfeststellungsklage.pdf> [08/04/2026]

¹⁷ Liluashvili T., Liluashvili G., Khrustali V., Dzlierishvili Z., *Civil Procedural Law, Part II*, Tbilisi, 2023, p. 31.

instances, "a negative action for acknowledgement and the decision rendered thereon do not determine what is to be protected, but rather indicate what must be avoided."¹⁸

The subject matter of a declaratory lawsuit may consist solely of a specific right or legal relationship. A vague or non-specific claim cannot become the object of adjudication in an action for acknowledgement. On the other hand, it is equally undisputed that abstract legal issues are excluded from serving as the subject matter of such a type of lawsuit.¹⁹ This position is also reflected in German judicial practice, which clearly states that "abstract legal issues cannot be resolved by a decision rendered in a declaratory action."²⁰ The subject matter of an action for acknowledgement may even include legal relationships that have expired, provided that they continue to serve as a basis for ongoing claims.²¹

A distinctive feature of an action for acknowledgement is its subsidiary nature. The court will declare such an action inadmissible if it is possible to bring an action for performance or a constitutive action. Based on the analysis of an interpretation by the German Federal Court, it may be concluded that the subsidiary nature of an action for acknowledgement promotes the rational use of procedural costs and the proper implementation of procedural economy.²² "In another case, the Federal Court held that an action for acknowledgement must fully correspond to the plaintiff's legitimate legal interest and should not require the plaintiff to reapply to the court in order to protect the same right."²³ A similar approach is reflected in Article 228 of the Austrian Civil Procedure Code, while legal doctrine indicates that there is no legal interest in an action for acknowledgement if an action for performance or a constitutive action can provide everything that is sought through a declaratory action.²⁴ In this regard, according to the well-established practice of the Supreme Court of Georgia, based on the principle of procedural economy, "a person must achieve the restoration of a violated right and the improvement of their legal position through the filing of a single lawsuit rather than multiple actions. In other words, the satisfaction of an action for acknowledgement must produce a beneficial result for

the plaintiff and eliminate the need to bring an action for performance."²⁵

- Prerequisites for bringing an action for acknowledgement and legal interest

Courts are not competent to provide general opinions on legal situations, as, according to established practice, even interesting legal issues must be resolved outside the courtroom "by going to the legal library."²⁶

In Austrian law, abstract legal issues, hypothetical situations, individual elements of legal relationships, facts (with the exception of the authenticity or non-authenticity of documents), and certain legal characterizations of facts are not subject to determination by state courts.²⁷

"The existence of a legal interest in an action for acknowledgement constitutes an essential prerequisite for its admissibility."²⁸ "This specific form of legal protection is available only to those who possess a particular interest in obtaining a legally binding decision that can be achieved exclusively through this means."

"In the case of instituting an action for acknowledgement, the legal interest indicated by the plaintiff must be genuine and valid, that is, capable of being achieved. The plaintiff's desire is one thing, while the genuine legal interest underlying the action is another; these two must not be equated. The concept of legal interest always implies the substantive right whose protection is ensured through an action for acknowledgement."²⁹

Georgian judicial practice establishes the criteria for determining the legal interest in an action for acknowledgement, namely: (a) the plaintiff's right must be disputed; (b) the existence of the dispute must create a real risk of future violation of the plaintiff's right; and (c) the resolution of the action for acknowledgement must constitute the most appropriate means of resolving the dispute. Furthermore, in order to determine the existence of a legal interest, it must primarily be assessed whether the plaintiff's legal

¹⁸ Das erkennt auch Loyal, ZJP 130 (2017), S.203, 206. Cited in: Placke, E, Nichtigke Urteile als Gegenstand einer Feststellungsklage im Sinne des § 256 ZPO, Dissertation, des Fachbereichs der Rechtswissenschaften der Universität Osnabrück, Osnabrück, 2023, 60.

¹⁹ Frauenberger-Pfeiler in Fasching/Konecny, ZPG § 228 ZPO Rz 65 Cited in: Wilfinger, A, Grundfragen der Feststellungsklage, 2025, Monografie, Verlag Österreich, 3.

²⁰ RGZ 148, 81, 100; BGH WM 2001, 378, 380; BAG NJW 1985, 220.

²¹ BGH NJW 1958, 1293; BGH WM 1981, 1050; BAG NJW 1994, 1751

²² BGH Urt. v. 22.7. 2021 - VII ZR 113/20, MDR 2021, 1410.

²³ BGH NJW 1997, 870; BGH NJW 2003, 3274

²⁴ Frauenberger-Pfeiler in Fasching/Konecny, ZPG § 228 ZPO Rz 110 f; vgl im vorliegenden Kontext bereits Hellwig, Anspruch 412. Cited in: Wilfinger, A, Grundfragen der Feststellungsklage, 2025, Monografie, Verlag Österreich, 15.

²⁵ Supreme Court of Georgia, Chamber of Civil Cases, Case №3-1389-2018, 30.11.2018

²⁶ Dobbs/Roberts, Remedies 37. Cited in: Wilfinger, A, Grundfragen der Feststellungsklage, 2025, Monografie, Verlag Österreich, 3.

²⁷ Frauenberger-Pfeiler in Fasching/Konecny III/13 § 228 ZPO Rz 37 ff; ausführlich Jacobs, Gegenstand des Feststellungsverfahrens 36 ff; siehe auch die schweizerischen Autoren Dietrich, Zulassung der Feststellungsklagen 90 f und Chern, Die Feststellungsklage im Feststellungsprozeß (1997) 107 ff. Cited in: Alice, A, Die Feststellungsklage im Schiedsverfahren, Exposé zur Dissertation, Wien, Dezember 2018, 6.

²⁸ RIS-Justiz RS0039177, Cited in: Wilfinger, A, Grundfragen der Feststellungsklage, 2025, Monografie, Verlag Österreich, 5.

²⁹ Supreme Court of Georgia, Chamber of Civil Cases, Case № 55-54-2014, 21.07.2014

position will improve upon the satisfaction of the declaratory lawsuit.³⁰

In one case, the Court of Cassation noted that “the recognition of paternity, the establishment of paternity, the annulment of marriage, the recognition of authorship of a literary work, and similar actions are not aimed at the attribution of a subjective right, but rather at eliminating the uncertainty surrounding a right. In such cases, it is not necessary for the right to have already been violated; rather, the assumption that it may be violated in the future constitutes the plaintiff’s legal interest.”³¹

Civil proceedings are conducted on the basis of the adversarial principle. The court is not authorized to interfere with the parties’ autonomy or to engage in qualified argumentation on their behalf. However, the court is, of course, obliged to regulate procedural matters: it must not assume the role of a subject of substantive law, yet it must also prevent the parties from disregarding the fundamental principles of procedural law. This position is also reflected in the practice of the Supreme Court of Georgia, which notes that “although the cassation complaint does not contain an objection concerning the absence of a legal interest in the claim, the existence of a legal interest in an action for acknowledgement is a procedural issue that the court must examine even in the absence of any indication by the parties, in order to avoid futile proceedings incapable of producing a meaningful legal outcome.”³²

Legal interest constitutes the primary threshold for bringing an action for acknowledgement, and its proper articulation often presents difficulties for plaintiffs. In legal discourse, legal interest is frequently associated with an already materialized outcome; however, the assumption that a right may be violated in the future also constitutes a legal interest. Nevertheless, not every assumption can serve as a sufficient basis for the admissibility of an action for acknowledgement. In one case, the German Federal Court disagreed with the lower courts and held that the legal interest in a declaratory action may arise from the inevitability of future damage. The factual circumstances of the case revealed that, out of 35 elements of a fence exterior repaired by the contractor, 24 had already been damaged. The plaintiff (the client) filed an action for acknowledgement with respect to the remaining 11 elements, supported by an expert report confirming the likelihood of further damage. The plaintiff sought a determination of the obligation to compensate for damage that would arise in the future. The Federal Court clarified that the plaintiff was not required to wait for the damage to actually occur. A legal interest in the immediate determination of the existence or non-existence of a legal relationship always exists where the plaintiff’s right is under threat.³³

• Conclusion

An action for acknowledgement constitutes one of the significant and distinctive institutions of civil procedural law, ensuring the clarification and protection of a person’s legal position even in cases where the right has not yet been directly violated, but there exists a real risk of its violation.

The research has demonstrated that the specific nature of a declaratory action is determined by several key elements: its subsidiary character, the necessity of legal interest, and the clear determination of its subject matter. The cumulative presence of each of these elements is mandatory for the admissibility of an action for acknowledgement. Subsidiarity indicates that this type of action is employed only when other procedural remedies (actions for performance or constitutive actions) are incapable of effectively safeguarding the plaintiff’s interests.

Particular attention is given to the existence of a legal interest, which constitutes the primary criterion for the admissibility of an action for acknowledgement. Legal interest must be real, specific, and directed toward the improvement of the plaintiff’s legal position. A purely hypothetical or abstract assumption is not sufficient. It is necessary that there be a dispute or a real risk of a violation of a right, the elimination of which can be achieved through a judicial decision.

Both Georgian, as well as German and Austrian legal doctrine and judicial practice, unanimously indicate that an action for acknowledgement plays a significant role from the perspective of the principle of procedural economy. It enables a person to avoid more severe legal consequences and to establish their legal position in a timely manner.

Accordingly, an action for acknowledgement constitutes an effective civil procedural remedy for the restoration of rights. Its good-faith and highly qualified application ensures both the protection of individual rights and the efficient and rational functioning of the civil justice system.

References

1. Constitution Of Georgia, Consolidated publications: 29/06/2020
2. Civil Procedure Code of Georgia, consolidated version – 09/12/2025
3. Supreme Court of Georgia, Chamber of Civil Cases, Case № 55-54-2014; Case № 937-887-2015, 10.11.2015; Case № 121-117-2016, 17.03.2016; Case № 1389-2018, 30.11.2018; Case № 30-2022
4. Liluashvili T., Liluashvili G., Khrustali V., Dzlierishvili Z., Civil Procedural Law, Part II, Tbilisi, 2023.
5. Kurdadze Sh., Adjudication of Civil Cases in the Court of First Instance, Tbilisi, 2016.
6. Khurtsilava. R., Simplified Procedure in the Civil Procedure of Georgia, Dissertation, 2009, Tbilisi.
7. Khurtsilava. R., Simplified Procedure in the Civil Procedure of Georgia, 2009, Tbilisi, Publishing house: "Meridiani".

³⁰ Supreme Court of Georgia, Chamber of Civil Cases, Case № 121-117-2016, 17.03.2016

³¹ Supreme Court of Georgia, Chamber of Civil Cases, Case № 937-887-2015, 10.11.2015

³² Supreme Court of Georgia, Chamber of Civil Cases, Case № 30-2022, 24.05.2022

³³ BGH VII ZR 187/08, 2010, 25 February

8. Avraham, R, Hubbard, W, *Civil Procedure as the Regulation of Externalities: Toward a New Theory of Civil Litigation*, University of Chicago Law Review: Vol. 89: Iss. 1, Article 1.
9. Bado, K, Galič, V, Mendes, A, Huber, S, and others, *Procedural Rights, Principles, and Approaches Influencing the Structure of Civil Litigation*, Comparative Procedural Law and Justice (Part VI Chapter 1).
10. BGH NJW 1958, 1293; BGH WM 1981, 1050; BAG NJW 1994, 1751.
11. BGH NJW 1997, 870; BGH NJW 2003, 3274.
12. BGH Urt. v. 22.7.2021 - VII ZR 113/20, MDR 2021, 1410.
13. BGH VII ZR 187/08, 2010, 25 February.
14. BGH WM 2001, 378, 380.
15. Clermont, K, *Civil Procedure*, Black Letter Outlines, Thomson/West, 8th ed., 2009.
16. Culda, S, *The Principle of Party Disposition in Civil Lawsuits*, Fiat Iustitia No. 2/2018.
17. Das erkennt auch Loyal, ZJP 130 (2017), S.203, 206.
18. Dobbs/Roberts, *Remedies*, 3rd ed., 7.
19. Frauenberger-Pfeiler in Fasching/Konecny, ZPG3 § 228 ZPO Rz 65.
20. Frauenberger/Pfeiler in Fasching/Konecny III/13 § 228 ZPO Rz 37 ff; Jacobs; Dietrich; Chern.
21. Frauenberger-Pfeiler in Fasching/Konecny, ZPG3 § 228 ZPO Rz 110 f; Hellwig.
22. Friedenthal, J, Miller, A, Sexton, J, Hershkoff, H, *Civil Procedure: Cases and Materials*, West Academic Publishing, 11th ed., 2013.
23. Kiriiak, O, *Method of Civil Procedure*, International Comparative Jurisprudence, Vol. 1, Issue 2, 2015.
24. Klausurtypische Probleme der Feststellungsklage, Übersicht Feststellungsklagen, Seite 1.
25. Labadie, D, *La procédure civile*, Pages 33–43, 05/12/2019.
26. Rechberger/Klicka in Rechberger/Klicka, ZPO5 § 228 Rz 1.
27. RGZ 148, 81, 100.
28. RIS-Justiz RS0039177.
29. Trzaskalik, Die Rechtsschutzzone der Feststellungsklage im Zivil- und Verwaltungsprozeß, 1978, 12.