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Actual issues of property rights reform in Georgia

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Abstract. Creating legal framework and institutional guarantees compatible to modern standards of protection of human rights is among the main issues for Georgia. Georgia's transition from soviet state to modern democracy is determined by the state of free entrepreneurship, free market economy and protection of property rights. Institutional reforms and conducted privatization underlined the importance of property rights, effective mechanisms of protection this rights and states limitation to interfere in and regulate these rights.

Developing its state and democracy, Georgia had different approach concerning the ownership of agricultural land and creating mechanisms for protection of property rights of owners of real estate.

At the initial state of reforms and privatization, the property right on agricultural land was granted only to Georgian citizens, while foreign citizens were permitted just lease, rent and possession. Later, companies registered in Georgia were added to the subjects of the property right on agricultural land. Next and important stage of developing property right on agricultural land was determined by the decision of Constitutional Court of Georgia declaring contradictory to the constitutional standards of property rights. Constitutional court declared that legal restriction and differentiation of foreign citizens' rights on agricultural land contradicts to the property right granted by the Constitution of Georgia, because constitution does not consider such possibility for differentiation. Parliament with last constitutional changes in 2017, changed constitutional standard on agricultural land ownership and added provision granting the power of government to limit property rights on agricultural land of foreign citizens and foreign companies. This article analyses the practice of development of Georgian legislation and practice and compares to the German, French, Slovenia's and Slovakia's experience.

Another actual issue discussed in this article concerns the importance of developing effective mechanisms additional to the judicial, for protecting owners' rights. For a decade in Georgia existed non-judiciary administrative mechanism for protection of owners of real estate. While judiciary reform, weakly developed judiciary and time consuming proceedings was not effective and enough for protection and it was added by administrative execution, so called police extraction. Declaring priority of possessors' rights protection over the owners' rights, the Parliament of Georgia revoked this mechanism. Actual issues, problems and possible solutions for property right protection are analyzed in this article.

Articulating the problems, analyzing legal basis and suggesting possible solutions, author supports the scientific discussion and research. This can assist to improve a practice of protection of property right, strengthening investing climate and free market economy, where ownership rights are duly guaranteed.

1. Introduction

For transitional democracies, along with establishing the rule of law, it is also crucial to protect human rights and sustainable development, as well as achieve a reasonable balance between them. Sustainable development can be based on a free-market economy, a competitive business environment, and property. The degree of protection of property and a competitive business environment determines the level of institutional democracy, the stability of civil relations, and the economic welfare of the country. Entrepreneurial relations are impossible without protected property rights and stable property relations.

When discussing poverty reduction and decent living the famous Peruvian economist Hernando de Soto divides the states of the world into two parts: Those who have a defined property right and who do not have that right defined. Legally protected property rights are a key source of prosperity for the developed world, and a lack of property rights is a cause of poverty.[1].

Property and entrepreneurship are guaranteed by international and state legislation. The most important international instruments are the Universal Declaration of Human Rights[2] and the First Additional Protocol [3] to the Convention for the Protection of Human Rights and Fundamental Freedoms.[4]. Along with international acts, the legal basis for property in Georgia is the Constitution of the country, the Civil Code, and the laws governing land ownership. The purpose of the legal framework is to protect human rights and to ensure the stable development of public interests and private relations. The stability of human rights and private law relations is achieved through the foresight of legislative regulations, reasoned decisions, and effective enforcement mechanisms.

After the declaration of independence, in 1995, the main legal basis that provides the highest guarantee of human rights - is the Constitution of Georgia (hereinafter - the Constitution).[5]. Laws and institutions corresponding to the standards of modern democracy were created and developed after the adoption of the Constitution of Georgia. The first law of Georgia on property rights was the Law of Georgia on Agricultural Land Ownership (hereinafter - the Law on Agricultural Land).[6]. This law brought into the field of legislative regulation the reform of agricultural land, which started in 1992 and was carried out by subordinate normative acts. The next legislative act, the Civil Code of Georgia (hereinafter - the Civil Code)[7] was adopted by the Parliament of Georgia in 1997. Following the adoption of the Constitution, both the economic relations and the regulatory legal framework were evolving and changed as the country developed. The development of property and free entrepreneurship was influenced by the decisions of the new constitutional human rights institutions, the Public Defender of Georgia, and the Constitutional Court of Georgia, together with the judiciary. Georgian legislation also changed under the influence of these two institutions.

Special changes in the direction of protection of property and property rights were made in the period after 2012, which was reflected in the decisions of the Constitutional Court of Georgia, as well as in the laws and amendments to the Constitution. These decisions have substantially changed the existing regulations, standards, and practices of property relations.

The article presents current issues related to property, its protection, and the stability of private legal relations, as well as an overview of recent decisions and European practices. The purpose of the article is to identify problems, facilitate scientific-practical discussion and find solutions.

2. Reform of agricultural land ownership legislation

The "social model" of ownership requires conscious landlord behavior from landowners that is defined by the legislature. Content and restrictions on property rights aim to establish a "Socially Fair Property Order". This means that the social obligation must comply with the proportionality test and, in some cases, allow the government to intervene, in line with the changing social significance over time.[8]

One of the first legislative acts adopted by the supreme legislature since the adoption of the Constitution of Georgia in 1996 was the Law of Georgia on Agricultural Land Ownership.[9]. This law regulated the land reform started in 1992 and confirmed the constitutional right of ownership on agricultural land. Land reform involved the privatization of a state-owned land fund and the transfer of ownership to Georgian citizens free of charge. In the initial version of the Law on Agricultural Land, the main postulate of the reform that started was reflected unchanged - agricultural land ownership was granted to citizens of Georgia, while foreign citizens or stateless persons were granted only the right to lease.[10]. In case a foreign citizen inherited agricultural land, she/he was obliged to sell this land.[11].

Later, in the amendments to the Law on Agricultural Land in 2000, in addition to the citizen of Georgia, the companies registered in Georgia were added as a subject enjoying the ownership right on agricultural land. The reference to foreign citizens and stateless persons was removed from the Law on Agricultural Land Ownership.[12].

The ratification of the First Protocol (hereinafter - the First Protocol) of the European Convention for the Protection of Human Rights and Fundamental Freedoms by the Parliament of Georgia in 2001 is important for the chronology of agricultural land ownership regulations.[13]. Article 1 of this Protocol to the European Convention, which deals with the property right, provides:

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law. The preceding provisions shall not, however, in any way impair the right of a State to enforce such laws as it deems necessary to control the use of property in accordance with the general interest or to secure the payment of taxes or other contributions or penalties.

As can be seen from this quotation, the first paragraph of Article 1 of Protocol No. 1 identifies all persons and companies, regardless of nationality and territory, as subjects of property rights. Nevertheless, the second paragraph of Article 1 of Protocol No. 1 grants the right of the state to adopt and enact the laws for the regulation of property rights in its interests, but with several necessary conditions: a) to regulate the use of property in the common interest, b) to secure taxes, fees or fines. Thus, the First Protocol considers it permissible to have a lawful restriction of property rights in accordance with the common interest.

When ratifying the First Protocol, the State of Georgia exercised the right recognized by the second paragraph of Article 1 of the Protocol and ratified the First Protocol by reservations, one of which is concerned the ownership of Georgian citizens and legal entities registered in Georgia by Georgian law, substantively excluding the property rights on agricultural land of foreign citizens and stateless persons. The resolution of the Parliament of Georgia states: "Article

1 of the First Protocol shall apply to the scope of the Law of Georgia on the Ownership of Agricultural Land by the requirements of Articles 4, 8, 15, and 19 of the same Law. According to the current version of the First Protocol, Article 4 of the Law on Agricultural Land granted the right of ownership of agricultural land only to Georgian citizens and legal entities registered in Georgia. Consequently, the right of ownership on agricultural land of citizens of another country, stateless persons, and legal entities registered in another state was excluded.

Pursuant to the amendments to the Law on Agricultural Land Ownership, by 2010 an alien and a legal entity registered abroad were again granted the right to own agricultural land only on land that they had inherited or legally owned as citizens of Georgia. The Law on Agricultural Land Ownership imposed restrictions on foreigners and legal entities registered abroad for owning agricultural land - they had to alienate the land within 6 months of acquiring the property right. Otherwise, the agricultural land would be confiscated in accordance with the rules and procedures established by law, with appropriate compensation.

With the development of the Law on Agricultural Land Ownership, Article 21 of the Constitution of Georgia was amended, which dealt with the right to property and its restrictions. With regard to the restriction of the right to property, as amended by Article 21, Paragraph 2 of the Constitution of Georgia, the essence of the right to property should not be violated by the restriction of the right to property.[14].

Such was the legal environment related to the ownership of agricultural land before the decision of the Plenum of the Constitutional Court of Georgia on the case of Heike Kronkvist, a Danish citizen.[15]. By the decision of June 26, 2012, the Plenum of the Constitutional Court of Georgia, contradictory to Article 21 of the Constitution of Georgia, recognized the provisions of Article 4 of the Law on Agricultural Land Ownership, which restricted the right of a foreign citizen or stateless person to own agricultural land in Georgia. One of the main arguments in the extensive reasoning of the Constitutional Court of Georgia for unconstitutional norms restricting Article 4 of the Law on Agricultural Land Ownership is that Article 21 of the Constitution of Georgia, the Basic Law of the country, strengthened the right of ownership to all and not only for Georgian citizens, but only to agricultural land. Restricting the right of foreigners to ownership of agricultural land under a law on it would be neither legitimate nor constitutional. Article 21 of the Constitution of Georgia (current edition) was declared as a guarantee for the protection of the property rights of foreigners. "International acts indicate that property is the right of 'everyone' and is not related to the citizenship of this or that state. The understanding of the modern rule of law contradicts the use of a narrow criterion of citizenship to determine the subject of property rights. The modern state in this context is based on territorial and legal grounds. Therefore, the consideration of an individual as a subject of property rights is related to the simple fact that he / she is a person and does not depend on his/her citizenship" – is stated in the decision of the Plenum of the Constitutional Court of Georgia.

Following the above-mentioned decision of the Constitutional Court of Georgia, the Parliament of Georgia made 4 amendments to the Law on Agricultural Land Ownership and imposed a moratorium on foreigners property. At the same time, the norm of the Law on Agricultural Land, which established a moratorium on the right of foreigners to own agricultural land, has become the subject of discussion of the Constitutional Court of Georgia. In this case as well, the Constitutional Court of Georgia, in its 2014 decision,[16] considered the norm of the Law of Georgia on Agricultural Land Ownership on declaring a moratorium on foreign property contradictory to Article 21 of the Constitution of Georgia.

These decisions of the Constitutional Court of Georgia turned out to be a milestone in the protection of property rights guaranteed by the Constitution, which led to the decision of the highest representative political body to substantially change the standard of property rights and protection of agricultural land. The following reservation was made in paragraph 4 of Article 19 [17] of the Constitution of Georgia: „As a resource of special importance, agricultural land may be owned only by the State, the municipalities, a citizen of Georgia or an association of citizens of Georgia. Exceptional cases may be determined by the organic law, which shall be adopted by a majority of at least two thirds of the total number of the Members of Parliament.“ The constitutional amendment reduced the standard of ownership and protection of agricultural land and made it possible to limit and regulate the ownership of foreigners on agricultural land. Such change in agricultural land has both legal and political dimensions. It is necessary to maintain a reasonable balance in the light of the existing reality.[18]. Otherwise such a decision may become an obstacle to socio-economic development. It is well known that foreign investment is often hampered in countries that do not grant land ownership to foreigners.

It is noteworthy that the restriction of foreign ownership of agricultural land and the prolonged legislative vacuum have hindered the government from pursuing privatization policies and access to finance, as well as attracting foreign investment and developing the economy. As the Chairman of the Agrarian Issues Committee of the Parliament of Georgia stated at the meeting with the representatives of non-governmental and international organizations: "The moratorium that operates today has created certain difficulties and inconveniences. It is because of the moratorium that quite a lot of assets are out of disposal today. We want to open our hands to manage the assets that are problematic today." [19].

It is interesting to share the experience of developed foreign countries when discussing the development of agricultural land ownership.

Ownership rights in Germany are based on Article 14 of the Basic Law of the Federal Republic of Germany, which states that "ownership is binding and the use of property must at the same time serve the common good". It is interesting to see the case of the German Federal Constitutional Court regarding the ownership of agricultural land, which under Article 14 of the Constitution considers it permissible to impose restrictions on the ownership of land if this is clearly in the public interest. Furthermore, the German Federal Constitutional Court points out the need for clear legislative regulation of land ownership when it states:

„The legislator is not empowered to place the administration in charge of regulating this matter. Therefore, restrictions or obstacles relating to selling and acquisition in the field of law regulating and defining land-related circulation must be derived from the law; it is unacceptable for them to be determined by the administration or the courts themselves according to their own views.“ [20].

The German Constitutional Court ruled in 1967 that land is a finite resource and this fact makes it impossible to define land use through unclear market interactions and the whims of individuals.[21]. Alienation of agricultural land in Germany is regulated by the Agricultural Land Alienation Act. Alienation of agricultural land in excess of the statutory minimum requires a permit from the supervisory authority. The minimum area of agricultural land for which more than one permit is required is defined by the federal parties/lands (e.g. 2 ha in Bavaria). In case of inefficient allocation, reduction of agricultural land, unreasonably high or low prices, the regulator can both suspend the transaction and exercise its preemptive right of purchase.[22].

Like Germany, in Slovenia, the disposal of agricultural land requires the consent of the regulatory authority.[23].

In France, the purchase of agricultural land is regulated by the Land and Rural Settlement Development Authority (SAFER), of which there are 29 within the country. Their purpose is to regulate land prices, redemption and expansion. Communities have pre-emptive rights to purchase agricultural land (the prefecture determines the minimum area of land to which SAFER has pre-emptive rights, although this minimum is rather low). SAFER can exercise the right of first refusal with respect to the price or other conditions specified in the contract. If no agreement is reached and the seller does not agree to the offer, legal procedures for compulsory purchase can be initiated.[24].

In France, SAFER is involved in the negotiation process between the buyer and the seller. If the parties cannot agree on a price, SAFER may offer the seller another buyer or another price in line with the market price. In some cases, SAFER may exercise its preemptive right to purchase or lease agricultural land to another buyer. SAFER may exercise its right of first refusal even if the agricultural land is sold at a low price and SAFER has reasonable suspicion that the sale has been made for speculative purposes.[25].

It would be interesting for Georgia, whose stated goal is accession to the European Union, to learn from Slovakia's experience. In Slovakia, transfer of agricultural land is strictly regulated and foreign ownership was restricted upon accession to the European Union. In Slovakia, where there are many tenants, the state retains the right of first refusal, and the aim of strict regulation is to promote land consolidation and reduce fragmentation. After accession to the EU (2004), Slovakia was granted a seven-year, transitional period during which restrictions on foreign acquisition of agricultural land were maintained.[26].

With the change in the legal and regulatory framework, statistics and the actual situation regarding the ownership of agricultural land are important for further decision-making and policy development. This issue is important in the sense that if the state still owns agricultural land, it can, as the owner, take advantage of the guarantees provided by law, formulate a policy and decide in accordance with it, regarding the privatisation of land and the sale (or refusal to sell) to foreigners. More problematic is the issue of transferring privately owned agricultural land to foreigners and infringing this right: the restriction affects both the right of the acquirer and the seller to choose the best on favourable terms and earn more income from the transfer. The state has not carried out an inventory of agricultural land,[27] consequently, state statistics are not available, which makes it difficult to be able to optimally address the problem. According to a study[28] by the Food and Agriculture Organization of the United Nations (FAO) conducted in 2012, only 25% of agricultural land has been privatised, while remaining the remaining 75% is still in state ownership. The Local Self-Governance Code [29] stipulates the obligation to transfer agricultural land on the territory of a municipality from state to local ownership. The process of transferring state agricultural land to local municipalities has not been completed.

In order to protect ownership rights over agricultural land, it is important to establish a legal framework in line with modern standards. The laws adopted by the Georgian parliament [30] after the constitutional reform are based on the German-French experience of agricultural land regulation.

Agricultural land may be owned by citizens of Georgia, the state, municipalities and companies registered in Georgia and whose partner is a citizen of Georgia, or with the consent of the government of companies registered in Georgia and whose dominant partner is a foreigner. Foreign citizens can inherit agricultural land only by inheritance.

A company owning agricultural land that does not have the government's consent or violates its investment obligations will be obliged to sell the land.

Notably, these laws restricted not only the ownership of agricultural land, but also the ownership of buildings on the land, as well as the ownership of the partner's share in the company.

The right of first refusal to acquire agricultural land was granted to the state for a prior, full and fair compensation. An important legislative novelty is that the right of first refusal to purchase of land is granted to a co-owner also. When a co-owner disposes of its land, it is obliged to make a first offer to the other co-owner. In such case, while the state also has the right of first refusal, the law granted the right of first refusal to the co-owner.

Given that there is insufficient experience for analysis in the short time since the laws came into force, it is not possible to assess the reform of agricultural land ownership. Nevertheless, the application of statutory restrictions and prohibitions on alienation of shares or stocks in a company requires more justification, otherwise there may be undue or disproportionate interference with ownership rights.

3. Development of protection of property rights

The development of property rights is significantly influenced by the decisions of the Parliament of Georgia, the Constitutional Court of Georgia and the established practice in the system of courts of general jurisdiction to protect the owner from illegal possession.

Protection of property rights provides a solid basis for stability and confidence of private transactions.[31] Considering that the right to property has both private and public implications,[32] in order to ensure its effective protection, it is important to develop both constitutional and civil equivalent rules. It is in this sense and direction that case law has developed in both the Constitutional Court and the general court system.

The Constitutional Court of Georgia regards the creation of effective mechanisms for the protection of property rights as a positive obligation of the State and notes that the first paragraph of Article 21 of the Georgian Constitution "simultaneously guarantees the institution of private property and fundamental human rights". It ensures the inviolability of the institution of private property, it is directed at the legislator and obliges him to create a system of norms that will not call into question the existence of this institution".[33]. The Constitutional Court does not consider it sufficient to provide a person with an abstract property guarantee; ownership must be exercised in a way that ensures the unimpeded use of the right to property, which, on its part, determines the development of civil turnover.[24]. At the same time, when discussing police eviction (hereinafter "police eviction") under Article 172 of the Civil Code of Georgia, the Constitutional Court of Georgia notes that Article 21(1) of the Georgian Constitution does not provide for the obligation to protect property rights only through court proceedings.[35].

A similar understanding of the right of ownership has been established in the practice of the courts of general jurisdiction. The Supreme Court of Georgia emphasises in one of its decisions that the content of the ownership right is manifested in the owner's right to fully dispose and dispose of the thing at his discretion, and this right must not be endangered.[36].

With the protracted judicial reform, the state has to create fast and efficient mechanisms for resolving property cases and simple civil cases related to their protection, as court cases were delayed for several years due to lack of judges and overcrowding. This was served by the 2006 addendum to Article 172 of the Civil Code of Georgia, [37] which allowed the protection of real estate ownership rights with non-judicial administrative proceedings. By order of the Minister of

Interior of Georgia, issued to enact new legislation on protection of property rights, [38]. Non-judicial protection and real estate restitution (police eviction) became possible in a matter of months instead of years. At the same time, the costs of litigation for the owner were significantly reduced. The extra-judicial procedure of real estate ownership had a balance and provided for mechanisms to protect the rights of both the owner and the other party. In administrative proceedings the parties had the right to appeal. If there were indications of civil legal relations and disputes between the parties in administrative proceedings, the administrative proceedings would be terminated and the parties would have to go to court. In the presence of police evictions, between 2010 and 2015 the MoI conducted administrative proceedings in 3,295 cases and decided on an eviction.[39]

The amendment to the Civil Code of Georgia had the premise to ensure the constitutionally guaranteed right to property and the right to effective protection, as on the one hand the owner was shielded from illegal ownership, but on the other hand, the state failed to provide an effective mechanism to protect the property. A police eviction mechanism is not provided for in the German Civil Code, [40] to which the Civil Code of Georgia is closest, but in the context of a well-functioning judicial system and differences in practice, the introduction of this mechanism had a factual and legal justification.

An initiative to declare a moratorium on police evictions was submitted to the Parliament of Georgia in 2013. [41]. The bill provided for a moratorium on the sale of real estate based on loans, mortgages and buyout agreements concluded before 1 August 2013, from 1 February 2014. After the first reading of the bill, a bill was drafted in the Legal Affairs Committee of the Georgian Parliament, which envisaged the complete abolition of police evictions or the removal of Article 172(3) of the Civil Code.[42]. The initiative of the Parliamentary Committee on Legal Affairs, despite negative assessments by the government[43], business and the non-governmental sector, was passed by Parliament and the institution of police eviction was abolished [43] in December 2015. The author of the draft law referred to the unconstitutionality of police evictions in relation to the right to housing under Article 20(2) [44] of the Georgian Constitution, which is a contentious issue. In these circumstances, the Parliament of Georgia would be justified to exercise the right granted by the Constitution of Georgia and apply to the Constitutional Court of Georgia to determine the constitutionality of the rule on police evictions.

Citizen George Nodia, the Georgian Banking Association and the Georgian Association of Entrepreneurs appealed against the law repealing the police eviction to the Constitutional Court of Georgia. According to the authors of the constitutional lawsuit the amendment of the contested norm resulted in gross and unjustified interference with the sphere of property rights. Lawmaker put interests of illegal owner above the interests of legal owner of the property. The restriction of the right to property has occurred without a legitimate purpose, as there is no public interest in protecting the illegal possessor. "developing the economy, attracting foreign investment and promoting business are the most important priorities of the state. To no small extent, it is the protection of immovable property that contributes to the sustainable development of civil turnover and stimulates entrepreneurial and investment activity. That is why the development of entrepreneurship is directly linked to the proper use of property rights," the plaintiffs said.[45]. The plaintiffs sought constitutional review of the abolition of police evictions with respect to the right to property protected by Article 21 of the Georgian Constitution and the fair trial and protection guaranteed by Article 42. The Constitutional Court, without discussing the merits, refused to hear the plaintiffs' constitutional claim.

The abolition of police evictions is wrongly pointed out by the Georgian parliament [46] and business unions. [47] At the initiative of the Georgian government there are plans to re-establish police evictions of foreclosed real estate in the interest of the state. The bills have already been passed at the first hearing. The explanatory paper of the draft law states: "The expropriator has the right to apply to law enforcement authorities and request the eviction of the illegal owner from the property belonging to him on the basis of a document certifying the ownership right. With this in mind, the law enforcement agency returns in part to the so-called "Police Eviction" function".[48].

Interference in owner's property rights and ineffective protection mechanisms seem to have created problems not only for individuals, but also for the state itself, proving that the abolition of police evictions was an unwarranted interference in property rights.[49].

With this in mind, there is a need to create new and effective procedures that are swift, cost-effective and that strike a reasonable balance between protecting the rights of both the owner and the possessor.

The main disadvantage of the existing property protection mechanism (vindication action) and the problem for the owner remains the length and cost of litigation, including direct damage or lost income. The case is accompanied by one specific difficulty - it is highly likely that after the dispute is resolved in court (examples abound), the owner still cannot vacate and own the property, as another person who was not involved in the dispute may already exist at the time of execution. Enforcement procedures cannot be applied to the latter. Consequently, the landlord will have to go to court again and incur additional costs to start a lengthy legal process. An effective mechanism for protecting the property rights of the owner of real estate can be the protection of property rights through summary judicial control. This rule of protection of ownership of real estate implies that:

1. The case is heard only by the court of 2 instances in a simplified procedure and within a tighter time frame (probably 1 month for each instance);
2. The enforcement of the decision after the end of the court proceedings is ensured by the police in the execution of the bailiff, and the owner submits to the court:
 - a) an application;
 - b) a document on the payment of the state duty;
 - c) an act of property valuation (audit report or other);
 - d) document on notification of the owner on the termination of the ownership right;
3. The court checks the formal validity of the application and the documents and, if they meet all the conditions, sends them to the holder;
4. The owner has the right to object within 14 days after the decision of the court, subject to the following rules and conditions:
 - A) will file an objection in the same court;
 - B) will submit a receipt for the payment of the state duty;
 - c) will submit a surety for the owner's damages (which will be at least 3 months) in the amount of 20% of the value of the property indicated in the property valuation report submitted by the owner (pledge, bank guarantee, surety or other, and will be applied along with the eviction)
 - d) will submit documents proving the legitimacy of possession or at least the existence of a dispute.
5. In the case of an objection and the submission of documents by the owner within the prescribed time limit, the objection shall be considered by the same court and, in the case of an appeal, by the court of appeal;

6. If the case is not submitted within the deadline for objection or the case is tried in a higher court, the decision (on eviction, compensation/losses, state fee and executive fee) is subject to immediate execution by the execution (financial part) and police (eviction part) services. Moreover, decisions made in the course of enforcement proceedings (by executive or police authorities/officials) are not subject to separate appeal.

7. The defendant is not allowed to transfer the disputed property to other persons during the dispute resolution process.

4. Conclusion

A well-functioning modern market economy would be inconceivable without the unimpeded possession and alienation of property. Unobstructed possession and alienation of property is not possible without the right of ownership, secured by properly protected and effective mechanisms.

The state may be empowered by a special law to take weighted property decisions in the public interest in processes related to the management and alienation of agricultural land, both to Georgian citizens and foreigners.

Amendments to the civil procedure and enforcement legislation may create an effective mechanism to protect the ownership property rights of the real estate owner, ensure equality of the parties through judicial control, compulsory execution and return of the property to the owner.

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Актуальные вопросы реформы прав собственности в Грузии

Резюме

Ключевые слова: Собственность, сельскохозяйственные угодья, предпринимательство, суд, судебная власть, акции, реформа, Грузия, Франция, Германия, Словения, Словакия, конституция, законодательство, конвенция, декларация.

Введение. Создание правовой базы и институциональных гарантий, совместимых с современными стандартами защиты прав человека, является одним из основных вопросов для Грузии. Переход Грузии от советского государства к современной демократии определяется состоянием свободного предпринимательства, свободной рыночной экономики и защиты прав собственности. Институциональные реформы и проведенная приватизация подчеркнули важность прав собственности, эффективных механизмов защиты этих прав и ограничения государства на вмешательство и регулирование этих прав.

Развивая свое государство и демократию, Грузия по-разному относилась к владению сельскохозяйственными землями и созданию механизмов защиты прав собственности владельцев недвижимости.

На начальном этапе реформ и приватизации, право собственности на землю сельскохозяйственного назначения было предоставлено только гражданам Грузии, а иностранным гражданам разрешалась только аренда, аренда и владение. Позже к субъектам права собственности на земли сельскохозяйственного назначения добавились компании, зарегистрированные в Грузии. Следующий и важный этап развития права собственности на земли сельскохозяйственного назначения определило решение Конституционного суда Грузии о признании права собственности противоречащим конституционным нормам. Конституционный суд постановил, что законодательное ограничение и разграничение прав иностранных граждан на землю сельскохозяйственного назначения противоречит праву собственности, предоставленному Конституцией Грузии, поскольку Конституция не предусматривает такой возможности разграничения. Парламент с последними конституционными изменениями в 2017 году изменил конституционный стандарт о собственности на землю сельскохозяйственного назначения и добавил положение, предоставляющее правительству право ограничивать права собственности на землю сельскохозяйственного назначения иностранных граждан и иностранных компаний. В данной статье анализируется практика развития грузинского законодательства и практика и проводится сравнение с опытом Германии, Франции, Словении и Словакии.

Еще один актуальный вопрос, обсуждаемый в данной статье, касается важности разработки эффективных дополнительных к судебным механизмам защиты прав собственников. В течение десятилетия в Грузии существовал внесудебный административный механизм защиты владельцев недвижимости. В то время как судебная реформа, слаборазвитая судебная система и трудоемкое судопроизводство не были эффективными и достаточными для защиты и к этому добавлялось административное исполнение, так называемое полицейское изъятие. Декларируя приоритет защиты прав собственников над правами собственников, парламент Грузии отменил этот механизм. В статье проанализированы актуальные вопросы, проблемы и возможные решения по защите прав собственности.

Формулируя проблемы, анализируя правовую базу и предлагая возможные решения, автор поддерживает научную дискуссию и исследование. Это может помочь улучшить практику защиты прав собственности, укрепить инвестиционный климат и свободную рыночную экономику, где должным образом гарантируются права собственности

