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THE IMPORTANCE OF ELIMINATING THE LEGAL GAP OF TITLE TO A HOUSEHOLD AND THE ROLE OF THE CONSTITUTIONAL COURT

ABSTRACT

Only one article in the Civil Code of Georgia is dedicated to the issue of title to a household regulation, and the problem unresolved from the first years of independence up to now, which shows the lack of legal status of the owners, is echoed by many decisions of the Constitutional and Common Courts of Georgia. The question as to why title to a household has lost its function should normally be investigated by the legislator, but the practice of Common Courts did not capture the scope of the problem that actually existed. It is very important to make a correct definition of the norm, but when the legislator repeals the norms regulating the household, the problem becomes unsolvable and acquires a prolonged nature.

I. INTRODUCTION

The goal of the current land registration reform is to eliminate the difficulties that landholders have faced for many years in the process of property registration.[1] From 2022, the National Agency of Public Registry has clearly expressed the will of the administrative body - about the necessity of land registration, for further protection of property rights of owners and economic development of the state. In order to achieve this goal, the legislator formulated several norms of the Civil Code in a new edition to comply with the state reform of land registration and reflected the content of the repealed norm in the new norm[2] so that the process would be conducted *Prior in tempore* [first in time]. Changes have been made to other normative acts, but the question arises, since the registration of ownership has been simplified, why do household members and non-members litigate?

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[1] Comp. Besarion Zoidze, Reception of European Private Law in Georgia (Publication of the Publishing Training Center 2005) 34 (in Georgian).

[2] Article 1, Law of Georgia “On Amending the Civil Code of Georgia”. June 25, 2019. Legislative Herald of Georgia, 4851-IIs, 02.07.2019.

No one denies that the desire of private owners to overlap land plots, register them with an incorrect plan, changed area and incomplete household record, appropriate the outer perimeter and access roads to adjacent plots, arbitrarily take possession of the estate and many other private property desires is characteristic of our citizens, however, similar cases should not create a presumption of error and incompleteness of the registry data.[3] Protection of a title of member and non-member heirs of household through mediation, which implies the use of alternative dispute resolution means to resolve complex legal cases, should be considered.[4] It should be noted that the legislator did not try to improve the legal regulation of the household, waiting for the natural death of the members of the household for years, as a kind of end of the legal form of the household.[5] The expectation of the legislator was not justified, therefore the National Courts of Georgia, still review and will probably review in the future, disputes between the surviving members of the household and non-member heirs of the household, as well as among other owners of household land plots.[6]

The goal of the research is to conduct a systematic study of title of a household, to find out how the gap in the legislation turned into a challenge to the Constitutional Court. Historical, normative, comparative and analytical research methods have been used to achieve the goal of the research.

II. NORMS GOVERNING TITLE OF A HOUSEHOLD

Article 15131 of the Civil Code of Georgia is the only one in the Code that regulates the opening of the estate on common property of the household, and it is reasonable that the rights of members and non-members of the household are protected by the mentioned norm.[7] The norm comprises three parts. The first and second of them establish formal compliance, and the third one extends the legal content to it. The provision and scope of Article 1513 should be considered. Both norms are used together with other normative acts regulating land law.[8]

[3] Article 312, Civil Code of Georgia. June 26, 1997. Parliamentary Gazette, 31, 24.07.1997.

[4] Comp. Irakli Leonidze, 'The Notary Mediator at the Edge of Public and Private Law Systems' (2021) 2(1) Challenges of Contemporary Science 109.

[5] Comp.: Authors, 'State Property Management in the Republic of Kazakhstan' (2016) 5(19) Journal of Advanced Research in Law and Economics 1180-1190; Jordan Gans-Morse, Property Rights in Post-Soviet Russia: Violence, Corruption, and the Demand for Law (Cambridge University Press 2017) 20; Paul Babie, 'Ukraine's Transition from Soviet to Post-Soviet Law: Property as a Lesson in Failed Regulation' (2016) 3(1) Journal of Ukrainian Studies 5.

[6] The scale of the problem varies according to the number of citizens, but overload as a result occurs regardless of the number of citizens. Comp. Robert Heuser, 'The Role of the Courts in Settling Disputes between the Society and the Government in China' (2003) 49 Journal of China Perspectives 6.

[7] Comp. Nino Meskhishvili, Bona Fide Purchase of Property from an Unauthorized Person (Caucasus University Publishing House 2018) 23-25 (in Georgian).

[8] Comp. Article 1.109 and 6.590, Civil Code of the Republic of Lithuania. July 18, 2000. XI-1254.

The mentioned norm represents the continuation/result of the law-making that was not implemented and not fully implemented by the legislator in the past, which sets August 1, 2019 as the time delimiter. It is likely, that no one investigated whether the rights of the household members were violated by the establishment of this date, nor did they determine how many households exist throughout Georgia and how many people [household members] are registered in it [also, it would be impossible to calculate the number of heirs who are not members of the household in advance and, in the future, consider the risk of the inheritance disputes]. The legislator is wise,[9] but the definition: if it regulates the issue, it should protect the legal status of the addressees of this issue,[10] turned out to be forgotten. Accordingly, the task of regulating title of a household and the purpose of registration went beyond the means of protecting the rights of the interested person.[11]

The norms regulating the household can be classified in the following order: a) the effect of the norms in the Soviet Socialist Republic of Georgia at the end of the 80s, b) the effect of the norms from the time of independence to the adoption of the Civil Code of Georgia, c) the effect of the norms from the adoption of the Civil Code of Georgia to the cancellation of the possibility of registering and de-registering members in the household, d) the effect of the norms from the cancellation of the possibility of registering and de-registering members in the household until the legislative change of 2019, e) the effect of the norms from the legislative change of 2019 until now.

At the moment, it is not allowed to register a member in the household, de-register a member from the household, and the registering authority cannot correct the data independently.[12] The correctness of the household record, in case it is considered disputed by the parties, will be considered by the Common Courts of Georgia. The legislator set the limit for the issue of opening the estate on the common property of the household before and after August 1, 2019, thereby establishing the general rule for opening the household estate and a new criterion for the fact of the death of a household member, which in its form opposes the interest of maintaining family relations between the surviving members of the household and accelerates the manifestation of private ownership interest of household members and non-members after August 1, 2019.[13]

[9] Contradictory statement in the book: Marina Garishvili, Introduction to the Philosophy of Law - Course of Lectures (TSU Publishing House 2010) 33. It is stated: “A wise man does not need the law at all, for a wise person and a good soul, the motherland is the whole world.”

[10] Zoidze, supra note 1, 34.

[11] See the question of historical origin.: John N. Hazard, ‘Soviet Property Law’ (1945) 4(30) Cornell Law Review 467; Peter B. Maggs, ‘The Security of Individually-Owned Property under Soviet Law” (1961) 4 Duke Law Journal 526-527; Kimura Hiroshi, Personal Property and Private Property (Hokkaido University Collection of Scholarly and Academic Papers 1970) 66-68.

[12] Ekaterine Lapachi, The Impact of Registration of Property Rights on Immovable Property on the Implementation and Protection of Property Rights (TSU Publishing House 2016) 47 (in Georgian).

[13] Tamar Zarandia, Property Law (Meridian 2019), 196 (in Georgian).

Norms regulating the household are not equipped with the function of effective and equal protection of the property of household owners. Legal insecurity was felt during and after the adoption of the 1993 and 1996 legislative acts. At the local level, the municipal and registration authorities were inconsistent [incomplete] in the maintenance of land recognition or household records and registration of rights.

With its decision, the legislator again put at risk the long-standing social relationship that was respected by household members and non-members/heirs, and with the new normative agenda the legislator turned out to be in the mode of waiting not for the death of household members [which used to be an early practice], but for litigation between household members and non-members. The legislator and registration body being in the waiting mode violate the constitutional rights of household owners by unequal treatment and essentially heterogeneous litigation with negative results.[14] It should be noted that the notary norms do not correspond to the readiness to solve the problem that we will discuss in this paper.[15] Template-based and narrow-procedural norms do not include the need to respond to cases typical for private relations[16] and to assess the special needs of interested persons.[17]

Regarding the title of a household, the legal expectations towards the administrative body based on the establishment of a new vision and procedure of this body are at threat.[18] The legal requirements [registration services], which have become a novelty for citizens, do not at all represent an innovation in the regulation and protection of the legal status.[19]

It is desirable that the norms governing title of a household be interpreted with an equal assessment of the legal interest of household members and non-members [which implies that "laws adopted for the benefit of society should be well interpreted"[20]], and not based on the principle: *Prior in tempore, potior in iure*.[21] A challenge has been

[14] See Besarion Zoidze, 'Constitutional and Legal Order of Values as a Basis for the Restriction of Basic Rights in the Conditions of the COVID Pandemic (on the Example of Georgia)' (2021) 2 Review of Contemporary Labor Law 70 (in Georgian).
[15] Davit Sukhitashvili, Notarial Law (Publishing House Tbilisi [G. G.], 2012) 191-193 (in Georgian).
[16] Richard Bock, 'Some Thoughts on the Future of Notarial System' (2022) 2 Georgian-German Journal of Comparative Law 1-2.
[17] Comp. Mikheil Bichiya, "Peculiarities of Determining the Regime of Property Relations of Spouses according to the Judicial Practice of Georgia" (2019) 1(61) Justice and Law 85 (in Georgian).
[18] Judgement of the Constitutional Court of Georgia N2/14/879 "Georgian citizen Zurab Svanidze v. the Parliament of Georgia", 8 September 2017, I-6.
[19] Comp. Antanas Maziliauskas and others, 'Economic Incentives in Land Reclamation Sector in Lithuania' (2007) 11 Journal of Water and Land Development 18.
[20] Indicated: Statuta pro publico commodo late interprentatur in the book Giorgi Nadareishvili, Civil Law of Rome (Publishing House "Bona Causa" 2005) 189 (in Georgian).
[21] Comp. Diana Mizaraite and others, Forest Land Ownership Change in Lithuania (European Forest Institute Central-East and South-East European Regional Office - University of Natural Resources and Life Sciences 2015) 7-8.

identified that calls for the owners of the households to protect their rights through a dispute in the court, and not through an appeal to the registration authority.[22]

It should also be assessed that the division of the household into groups of surviving and non-members is conditional, and the issue becomes questionable when the household record is substantially flawed, incomplete and erroneous or all members of the household are deceased. Over time, the unfair regulation of title of a household gave rise to a social outcome, when there is no surviving member in the household, because registration and de-registration from the household is not allowed, the household record unduly limits the legal interest of the household owners [creates an unnatural expectation about who will be the first to die after August 1, 2019 or already died, which is usually unnatural for the field of family and inheritance law].[23]

It is commonly known that land registration is an important event for the state,[24] but it is unacceptable to distort its essence at the background when the land fund of the state is not universally registered and the system of the laws of civil legislation is deficient in relation to the occupied territories.[25] The current reform not only simplified the legal situation of the owners, but also accelerated the detection of threats of unjustified encroachment on the property right and inheritance right. The title of a household lost in time and space turned from a flaw in the legislation into a challenge to the proceedings of the Constitutional Court of Georgia,[26] and the proprietary interest of members and non-members of the household was based on an unforeseeable, vague and possibly flawed household record.[27] The only way to prevent a "forced" result is litigation.[28] The existing family relations between the members of the household worsened and the cases of improper intervention of non-members of the household in the family-economic relations of the household increased.

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[22] Decision of the Civil, Entrepreneurial and Bankruptcy Chamber of the Supreme Court of Georgia Nas-684-1014-07, 31 January 2008.

[23] Comp. Sjef van Erp, European and National Property Law: Osmosis or Growing Antagonism? (Europa Law Publishing 2006) 9.

[24] Monika Gabunia, The Social Function of Ownership in the Context of the Implementation of Property Rights to Land (Davit Batonishvili Law Institute Publishing House 2016) 6 (in Georgian).

[25] Article 5, Law of Georgia "On Occupied Territories", October 23, 2008. Legislative Herald of Georgia, 28, 30.10.2008.

[26] Author's note: Refers to the Judgment of the Constitutional Court of Georgia N1/4/258 "Georgian citizen Dina Popkhadze v. the Parliament of Georgia", 22 February 2005.

[27] Irakli Leonidze, 'Peculiarities of Receiving the Estate by Actual Possession in Georgian Law and Legal Guarantees of Legal Heir Protection' (2020) Alternative Dispute Resolution - Annual Special Edition 14-16 (in Georgian).

[28] Comp. Paul Martens, Conference of European Constitutional Courts XIIth Congress: The Relations between the Constitutional Courts and the other National Courts, Including the Interference in this Area of the Action of the European Courts (Report of the Constitutional Court of the Federal Republic of Germany 2002) 34.

III. COMPOSITION OF TITLE OF A HOUSEHOLD

The Civil Code of Georgia does not define a household. The question is why the legislator forgets the proprietary and inheritance interests of its citizens in connection with the household. The first and second instances[29] of the Common Courts of Georgia interpret the household ultimately, unnaturally and in different ways, as if the surviving member or non-member heir does not even have a constitutional right or interest in the property of the household. So, members and non-members of the household were lost in time and space.[30]

According to Article 147 of the Civil Code of Georgia, "Property, according to this Code, is all things and intangible property, which may be possessed, used and administered by natural and legal persons, and which may be acquired without restriction, unless this is prohibited by law or contravenes moral standards".[31] Title of a household usually consists of immovable and movable property. In different municipalities of Georgia, the number of properties per household is different, considering the general ratio of the existing land fund, social habits established before and after the period of independence.[32] Therefore, for the purposes of the research, household should be interpreted correctly considering legal form and content. Regardless of the sense in which this term is used in private law, the household, which we consider within the scope of this paper, is not characterized by a filling function and is a socio-legal entity that is immovable/unregistered and/or registered in the name of the last or any member of the household [in the household record], which combines property goods: plots of land and buildings on it, in rural areas and in cities [the expansion of cities included households in rural areas].

According to Article 19, paragraph 4 of the Constitution of Georgia: "As a resource of special importance, agricultural land may be owned only by the State, a self-governing unit, a citizen of Georgia or an association of citizens of Georgia...". The constitutional record does not specify the household, against the background that agricultural land plots on the territory of Georgia still exist in the form of outdated and unregistered legal records, including in the occupied territories, where the household record is usually the only document establishing the right. It should be noted that the constitutional record contradicts the social reality in which it establishes a normative order.[33]

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[29] Decision of the Civil Affairs Chamber of the Supreme Court of Georgia Nas-7-2019, 11 June 2020.

[30] Additionally, see Roman Shengelia, Ekaterine Shengelia, Family and Inheritance Law (Meridian Publishing House 2015) 410 (in Georgian).

[31] Article 147, Civil Code of Georgia. June 26, 1997. Parliamentary Gazette, 31, 24.07.1997.

[32] Aleko Nachkebia, Definitions of Civil Law Norms in the Practice of the Supreme Court (2000-2013) (German Society for International Cooperation 2014) 83.

[33] Additionally, see Besarion Zoidze, 'The Impact of Fundamental Rights on Private Autonomy: Expansion or Limitation of Private Autonomy (Review of the Practice of the Constitutional Court of Georgia)' in Tamar Zarandia and Evgenia Kurzinski-Singer (eds.), Private Autonomy as a Basic Principle of Private Law (TSU Publishing House 2020) 101.

For the completeness of this record, it is important to evaluate the title of a household under the condition that it is fully included in the provision: owned by a citizen of Georgia or an association of citizens of Georgia.[34] Otherwise, the agricultural land constituting the household, as a resource of special importance, due to certain reasons and factual circumstances, may be owned only by the state. In this case, protecting the property rights of heirs who are members of the household and who are not members of the household will no longer be a common challenge of the legislator, the Public Registry and the Common Courts, but will turn into the burden of proof of the person who is a member or non-member of the household.[35]

An interesting definition of the composition of title of a household can be found in the practice of the Common Courts of Georgia. Distortion and confusion of concepts is one of the challenges when the court examining the case, contrary to the legal interest of the parties, interprets the legal regulation of the household in accordance with the legislative provisions in force before and now. The definitions are interesting from the point of view of the concept of property.

On case №as-7-2019 of the Supreme Court of Georgia dated June 11, 2020, the court of the first instance determined that a collective household was represented, after the cancellation of which the title of a household belonged to the plaintiff and the defendant by the right of co-ownership [fathers of the plaintiff and the defendant were brothers who were registered in the same household].[36] In this case, the composition of the household was defined by the agricultural plot of land and the building that existed on it earlier [proved by the record], although the court limited itself to the legal circumstances presented in the case so that the legal status of the parties with regard to the title of a household was not investigated. The position of the court of the first instance was based on the scope of the plaintiff's claim and excluded the expected legal consequences from it.

The Chamber of Appeals reversed the legal reasoning of the first instance regarding the existence of the household and found that it was not a collective household but a worker-servant household and the property was co-owned by the plaintiff and the defendant, however, since the structure belonging to the household no longer existed on the plot of land, and the right of ownership was not registered in the Public Registry by the members of the household, according to the Civil Code, the Chamber of Appeals explained that the agricultural land was the property of the state based on Article 19, paragraph 4 of the Constitution. The court denied the legal status of the parties with regard to the household and determined the following: based on Article 1513 of the

[34] Giorgi Khubua and Koba Kalichava, Handbook of Administrative Science (Petit Publishing House, 2018) 235-236 (in Georgian).
[35] Comp. Roman Shengelia, 'The Necessity of Improving the Mechanism for Protecting the Interests of the Subjects of Inheritance Law Relations' (2022) 1-2(57-58) Life and Law 95 (in Georgian).
[36] Decision of the Supreme Court of Georgia on case Nas-7-2019, 11 June 2020.

Civil Code, the plaintiff could not become the owner of the title of a household.[37]

The reasoning of the Chamber of Appeals directly and grossly infringes on the rights of household owners. The aforementioned contradicts the goal of the legislator to regulate the issue and the function of protecting the legal status of citizens, and subsequently the state/public and private interest. According to this reasoning, there is an unfair idea that unregistered agricultural land plots of the household throughout the entire territory of the state will be owned by the state, including titles of a household in occupied territories that cannot be physically disposed of by citizens and buildings are destroyed on said unregistered land plots.

The Supreme Court of Georgia isolated itself from the reasoning of the Chamber of Appeals regarding the exclusion of the legal form of the household and the legal status of members/non-members of the household. The Court of Cassation determined: a) the need for a correct definition of the household and applicable norms, b) the inseparability of the household property from the legal status of the household members, c) the special needs of setting a specific case for the applicable norm and protecting the legal status of the household owners.

The reviewed decision confirms the problems that household owners may face. The owners, rejected by the registration authority, continue the dispute in court,[38] where the question arises that they cannot be the owners of the title of a household where they have lived for more than half a century. Composition of ownership: property and the rights to it are often misjudged by the Common Courts and harm the legal position of the owners. The registration body and the notary are not focused on the special needs of householders. The question of how difficult it is for the court to perceive and evaluate the special needs of the owners is clear.[39]

[37] ibid.

[38] Tamar Zarandia, ‘Bona Fide Acquisition of Immovable Property from an Unauthorized Alienator in Georgian Judicial Practice’ in Collection Dedicated to Luarsab Andronikashvili – “Current Issues of Georgian Law” (2014) 72-73 (in Georgian).

[39] Author’s note: It should be noted that this issue requires special attention regarding the civil procedural nature of household disputes. Let’s review one of the sample decisions. The Court of Cassation, on February 24, 2021, on case №as-186-2019, reconciled the issue of the definition of a household, which should be formulated in accordance with Article 15131 of the Civil Code: “With the abolition of collective farms, the existence of a collective household lost its legal basis and it ceased to exist. Accordingly, the property, which was the property of the household and at the same time the common property of the household members, is no longer the property of the household and is the common property of the persons who are members of the household in equal shares. The general regime of ownership stipulated by the Civil Code of Georgia applies to the said property.” The definition has its historical significance, which was reflected in Article 15131 after the repeal of Article 1323 of the Civil Code.

Title of a household has acquired characteristic and negative socio-legal definitions, such as: unspecified, unregistered, non-functional and disputed.[40] It is not enough to apply to the Public Registry to settle complex and acute family-inheritance conflicts. The legislator should remember that *Georgia is a social state*[41] that "takes care of strengthening the principles of social justice, social equality and social solidarity in society."[42] In relation to the household, everything is the other way round, a clear example of which is the question of the inefficient and undue regulation of the title of a household and the acquisition of ownership rights over it.[43]

Title of a household does not conflict with the provisions of Article 147 of the Civil Code of Georgia, although it imposes different provisions for the possession, use and disposal of this property.[44] The progress of the state reform of land registration and the achieved results are welcome, but within the framework of this reform, the special needs of household owners should be taken into account.[45] Non-uniform proceedings are accompanied by wrong practices about registration of title of a household,[46] which undermines the legal status of household owners.[47] It is unacceptable to deny the proprietary interest of Georgian citizens in a similar way. Legislators, registration bodies and notaries must interpret the laws passed for the benefit of society.[48]

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[40] Comp. Tamar Zarandia, 'The Concept of Ownership and Its Exclusive Character, a Comparative Legal Study according to Georgian and French Law' (2008) 5 Works of Sukhumi State University 758-759 (in Georgian).

[41] Article 5, para 1, the Constitution of Georgia, August 24, 1995. Gazette of the Parliament of Georgia, 31-33, 24.08.1995.

[42] ibid, paragraph 2.

[43] Additionally, see Collective of authors, Commentary on the Civil Code of Georgia/Book Five, Family Law. Inheritance Law. Transitional and Final Provisions of the Civil Code (Publishing House "Law" 2000) 378-379.

[44] Nana Chigladze, 'Basic Rights in a Democratic State and Georgian Challenges' in Tamar Zarandia and Ana Tokhadze (eds), European Security and the Modern Constitutional State (Georgia's Example) (Publishing House Samshoblo 2021) 188-189 (in Georgian).

[45] Comp. Ketevan Meskhishvili, Commentary on Article 3 of the Civil Procedure Code of Georgia in the book Commentary on the Civil Procedure Code - Selected Articles (German Society for International Cooperation 2020) 71.

[46] Comp. Katherine Verdery, 'The Property Regime of Socialism' (2004) 2(1) Conservation & Society 190-191.

[47] Louise I Shelley, Privatization and Crime: The Post-Soviet Experience (The National Council for Soviet and East European Research 1995) 2-5; Zvi Lerman and others, Land Policies and Evolving Farm Structures in Transition Countries (World Bank Research 2002) 83-84.

[48] Author's note: Determining the fact of receiving the household estate by actual ownership is a subject of judicial, notarial and mediation practice in Georgian law. In the decisions of the Supreme Court of Georgia, the judicial knowledge related to this issue is collected, although it is not enough to eliminate the existing problems. It is a fact that the issue of receiving the household estate by actual possession is still relevant and problematic.

IV. ANALYSIS OF THE PRACTICE OF THE CONSTITUTIONAL COURT OF GEORGIA IN RELATION TO THE HOUSEHOLD

The analysis of the practice of the Constitutional Court of Georgia can be divided into two parts: decisions related to the right of ownership and cases where a direct or indirect definition of a household was established. The second case is important, because the first, in itself, includes an indivisible and unified field of right of ownership, where title of a household is considered regardless of form.

In 2005, in the judgement of the Constitutional Court of Georgia, it was noted for the first time that "at the Preliminary Session and during the preparation period for the discussion of the merits of the case, the need to improve the legal regulation of the relations stipulated by the disputed norm - Article 1323 of the Civil Code of Georgia ("Opening of an estate in a household") was highlighted."[49] Before the discussion of the merits of the case, the aforementioned explanation was preceded by a notice of the plaintiff's death, and the subject of the dispute was the constitutionality of Article 1323 of the Civil Code of Georgia in relation to the first paragraph of Article 21 of the Constitution of Georgia.[50] Who knows how much the course of this case could have caused fundamental legislative changes, however, due to the circumstances, the Constitutional Court of Georgia suspended proceedings on the constitutional lawsuit of citizen *Dina Popkhadze*. After 2005, in the practice of the Constitutional Court of Georgia, the constitutionality of Article 1323 of the Civil Code of Georgia in relation to the property right was never considered, nor was the title of a household evaluated so unambiguously.

The Constitutional Court of Georgia renewed the indirect evaluative reasoning on household from 2012 in the case of "*Danish citizen Heike Kronqvist v. the Parliament of Georgia*", where while evaluating the words "foreigner" and "constitutionality" of paragraph 11 of Article 4 of the Law of Georgia "On ownership of agricultural land" the court explained the norm disposition and the obligation of a "foreigner"[51] stipulating that "the agricultural land in his/her possession should be alienated to a Georgian citizen, household or legal entity within 6 months from the date of origination of title to it."[52] It should be noted that the household in this case does not refer to the legal form provided

[49] Judgment of the Constitutional Court of Georgia N1/4/258 "Georgian citizen Dina Popkhadze v. the Parliament of Georgia", 22 February 2005.

[50] Article 1323, Civil Code of Georgia. June 26, 1997. Parliamentary Gazette, 31, 24.07.1997, as of February 25, 2005, "In a household, the estate will be opened on the common property of the household from the date of death of the last member of the household." The disposition of the norm did not change, until the mentioned norm was completely repealed by the legislative change of 2019.

[51] Additionally, see Judgment of the Constitutional Court of Georgia №1/2/563 "Austrian citizen Matthias Hutter v. the Parliament of Georgia", 24 June 2014, II-5.

[52] Judgment of the Constitutional Court of Georgia N3/1/512 "Danish citizen Heike Kronqvist v. the Parliament of Georgia", 26 June 2012, II-73.

for by Article 1323 of the Civil Code. As of 2021, the Law of Georgia "On ownership of agricultural land" is invalid, and Article 1323 of the Civil Code is repealed.

In 2013, in case "*Joint and several liability company "Grisha Ashordia" v. the Parliament of Georgia*" it was noted that "the plots of land to be transferred to the ownership can have a vitally important purpose for certain categories of individuals". For example, the law, along with the plots of land designated for other purposes, in the plots of land to be transferred to the ownership of individuals, includes the plots of land reserved for the use of the household for living and for meeting other minimum subsistence needs.[53] The court based the explanation on the purpose of the disputed norms of the law of Georgia "On recognition of ownership rights on land plots owned (used) by natural and private legal entities", which was reflected by the legislator when determining the possibility of receiving a document confirming the right within the proceedings of the land recognition commissions, on the basis of which the citizen could register the right in the Public Registry. The concept of the household in this case is ambiguous, because the legal purpose of the term is not defined, and it is combined in the main area of recognition of ownership of land plots.[54]

In the constitutional claim on case "*Citizen of the Hellenic Republic Prokopi Savvidi v. the Parliament of Georgia*", the plaintiff "applied to the Public Registry of Georgia for the purpose of registering the house and croft, built by himself and listed in his name according to the Household Book, however, he received a verbal refusal to accept documents, referring to the disputed norm."[55] The disputed norm was Article 22, paragraph 33 of the Law of Georgia "On Agricultural Land Ownership". The course of the mentioned case took place with consideration of constitutional claims №1267 and №1268. The court additionally examined the consequences of the Cronquist case and the unconstitutionality of alienation of a plot of land to a household by a foreigner.[56] According to the decision of the Constitutional Court, constitutional claims №1267 and №1268 ("*Citizens of the Hellenic Republic - Prokopi Savvidi and Diana Shamanidi v. the Parliament of Georgia*") were not accepted for review.").[57] Accordingly, the statement in the constitutional claim that the plaintiff's right to be confirmed according to the household record was rejected. Other legal circumstances in the case should be considered here, however, the fact that the special needs of the owners of the

[53] Judgment of the Constitutional Court of Georgia N2/3/522,553 "Grisha Ashordia" v. the Parliament of Georgia", 27 December 2013, II-26.

[54] Comp. Authors, Real Property Cadaster in Baltic Countries (Estonian University of Life Sciences, Latvia University of Agriculture, Aleksandras Stulginskis University 2012) 151-153.

[55] See constitutional claim №1267.

[56] Judgment of the Constitutional Court of Georgia N3/1/1267,1268 "Citizens of the Hellenic Republic - Prokopi Savvidi and Diana Shamanidi v. the Parliament of Georgia", 19 October 2018.

[57] Judgment of the Constitutional Court of Georgia N3/10/1267,1268 "Citizens of the Hellenic Republic - Prokopi Savvidi and Diana Shamanidi v. the Parliament of Georgia", 7 December 2018.

household are forgotten is really clear and perceptible. For example, before and after the consideration of the case in the Constitutional Court, according to the Household Book, title of a household was registered in the name of the plaintiff, although by the "verbal" refusal of the Public Registry to accept the documents and referring to the disputed norm, a special need of a household member was neglected. If a Georgian citizen submitted a similar request to the Public Registry, it is unlikely that the Registry would have given a "verbal" refusal. While the norms related to the regulation of the household have not changed over the years, even the constitutional grounds for justifying unequal treatment by the Public Registry are strange.[58]

It's worth to note the dissenting opinion of the members of the Constitutional Court of Georgia - *Irine Imerlishvili, Giorgi Kverenchkhiladze, Maya Kopaleishvili* and *Tamaz Tsabutashvili* on the decision №3/7/679 of the Plenum of the Constitutional Court of Georgia dated December 29, 2017, where the decision of Tbilisi Court of Appeals on the invalidity of the gift agreement was cited as an example of the non-uniform interpretation of the disputed norm.[59] The subject of the gift agreement was the title of a household [property], which was disposed of by the donor alone to the detriment of the legal interest of other members of the household. According to the members of the Constitutional Court of Georgia, in this case, "the court considered that the dishonest deal, which was concluded between the family members, in this case, violated the norms of public order and morality provided for in Article 54. However, the court did not explain the content of "public order" and "morality" norms. It is also not known whether, in this case, "public order" and "morality" should be understood with identical content.".[60] The feedback of the members of the Constitutional Court of Georgia on the significance of the decision of Tbilisi Court of Appeals is a special case that serves to outline and assess the special needs of household owners.

In another constitutional claim, on case "*Archil Pulariani v. Baghdati Gamgeoba*", the plaintiff indicated that Baghdati Sakrebulo was not authorized to transfer ownership of the plot of land lawfully owned by "Baghdati Cinema" to an individual, because the said individual was not registered as a household and did not own the plot of land within the norm established by the law. The Constitutional Court did not accept the constitutional claim №1431 ("*Archil Pulariani v. Baghdati Municipality Gamgeoba*") for consideration.[61] The judgment did not make any reservation or discussion about

[58] The dissenting opinion of the members of the Constitutional Court of Georgia, Eva Gotsiridze, Merab Turava and Manana Kobakhidze, regarding judgment №3/10/1267,1268 of the Plenum of the Constitutional Court of Georgia dated December 7, 2018, para 2.1.

[59] Decision of Tbilisi Court of Appeals N2 /3321-14, 8 April 2015.

[60] The dissenting opinion of the members of the Constitutional Court of Georgia - Irine Imerlishvili, Giorgi Kverenchkhiladze, Maya Kopaleishvili and Tamaz Tsabutashvili on the decision №3/7/679 of the Plenum of the Constitutional Court of Georgia dated 29 December 2017, para 89.

[61] Judgment of the Constitutional Court of Georgia N1/7/1431 "Archil Pulariani v. Baghdati Municipality Gamgeoba", 30 April 2020.

title of a household [no examination of the validity of the household record was carried out], but the issue was related to the progress of the land reform without mentioning the household.[62]

The Constitutional Court of Georgia did not accept constitutional claim №1454 ("*Ketevan Lapiashvili v. the Parliament of Georgia*")[63] for discussing the merits of the case. The problems mentioned in the constitutional claim were related to: a) the issue of the death of the last member of the household, b) the possibility of receiving title of a household by a non-member of the household, who is the heir of different ranks of the last member of the family, c) the terms of receiving the estate, the challenges of receiving the estate by sequence and actual possession.

There is a perception that the court avoids considering the problems of title of a household to the extent necessary to protect the rights of owners of the household. Of course, the Constitutional Court will not be able to perform the functions of Common Courts, however, the rejection of other constitutional claims of similar content in recent years is worrying. From this point of view, not only the special needs of the owners of the household, [64] but the right of ownership of all those persons, who are neglected by a kind of interpretation of the norm, are called into question.[65]

Limitation of the rights of household owners becomes uncontrolled and harms the constitutional rights of Georgian citizens. The legislator changes the legislation related to the issue of land law in such a way that the rights of household owners are not considered at all. For example, the constitutional claim №1627 mentions the legislative change that unjustly limited the rights of household members, because "from January 1, 2021, introduction of the implemented changes led to cancellation of the mentioned legislative regulations and the state forest is no longer subject to privatization, except in case of transfer to the ownership of the Apostolic Autocephalous Orthodox Church of Georgia.".[66]

The analysis of the practice of the Constitutional Court of Georgia confirms that the legislator, registration authority and courts are not ready to regulate the issue of land ownership in the entire territory of Georgia, after the full restoration of Georgian jurisdiction, because one of the main documents confirming the property right in the

[62] Comp. For determining the civil procedural nature of the issue: Ekaterine Gasitashvili, Commentary on Article 18 of the Civil Procedure Code of Georgia in the book Commentary on the Civil Procedure Code - Selected Articles (German Society for International Cooperation 2020) 181-182.

[63] Judgment of the Constitutional Court of Georgia N1/11/1454 "Ketevan Lapiashvili v. the Parliament of Georgia", 30 April 2020.

[64] Constitutional claim №1455 (Gogi Gvidiani, Badri Gvidiani, Bidzina Gvidiani and Jamlat Gvidiani v. the Parliament of Georgia).

[65] Comp. Nika Arevadze, 'The Principle of the Social State: The Practice of the Constitutional Court on Social Issues' (2021) 2 Journal of Constitutional Law 188-189.

[66] Constitutional claim №1627 (Public Defender of Georgia v. the Parliament of Georgia).

occupied territories is the household record. This is at the background when in the territory of Georgia, where the jurisdiction of the state extends, there is an institutional campaign against the owners of the household and a deliberate attempt to eliminate the legal form of the household, by distorting the concepts, misinterpreting the norm, and establishing legal practices that limit rights.

V. LITHUANIAN LAND REGISTRATION REFORM AND THE CONCEPT OF RESTORATION OF PRIVATE PROPERTY

After gaining independence, Lithuania managed to maintain its territorial integrity and establish a constitutional order throughout the territory.[67] The original intention of the legislator was to restore historical justice, because the history of Lithuania's independence in the first half of the 20th century combined the constitutional significance of private property and the documentary authenticity of the property right,[68] however, the restoration of the property form in the new reality should not lead to the destruction of the post-Soviet socialist ownership composition/property. By adapting the form, the legislator protected the property of strategic and economic importance and extended the private interest of individuals only to a part of it. A significant part of the territory of Lithuania is made up of agricultural plots of land, part of which was previously owned by individuals, and a large part - by the collective farm.

The actions to be implemented at the legislative level were planned in advance so that the rights of citizens were not limited before the introduction of any regulation.[69] The main task of the legislator was the preservation of agricultural farms and the legal transformation of the socialist form. In the first years of independence, the need for control was felt the most, because the legal self-determination of citizens was not yet complete. In this process, properties of strategic importance for the development of the state had to be transformed in such a way that the new owners could continue to operate the enterprise or other facilities.

According to the Constitution of Lithuania, the normative concepts[70] of the property right were established, and more specific provisions for the definition of these concepts were formulated in various acts. The state limited as much as possible in time the operation of the principle of first priority and supported the principle of legal equality. Of course, agricultural farms and enterprises temporarily suspended functioning while waiting for

[67] Claes Levinsson, 'The Long Shadow of History: Post-Soviet Border Disputes-The Case of Estonia, Latvia, and Russia' (2006) 5(2) Journal of Partnership for Peace Consortium of Defense Academies and Security Studies Institutes Connections 98.
[68] Vytautas Pakalniškis, 'The Doctrine of Property Law and the Civil Code of the Republic of Lithuania' (2004) 42(50) Jurisprudencija 56-57.
[69] Valentinas Mikelenas, National Report: Lithuania (Supreme Court of Lithuania 2008) 3-4.
[70] Article 23, Constitution of the Republic of Lithuania, 25 October 1992.

the legal transformation, but their property was not confiscated until the appearance of a new owner, and the employed persons continued to take care of the property.[71] The concept of property restoration was based on the chronological review of the documents submitted by the citizens, followed by the determinations with political, legal and social characteristics.

Obviously, the new legal form established by the state included the content of economic importance, because the products that the transformed enterprises had to receive had to comply with the standards of the market that would carry out its sale. The state supported the initiatives of citizens and citizens' associations with a corresponding commitment to receive agricultural plots of land and enterprises.[72] By transferring agricultural plots of land to private ownership, the plot of land kept its agricultural value. Therefore, the desire to join the European Union was facilitated by the wide discretion of economic development opportunities in the daily life of citizens, which was also reflected in the quality of well-being and benevolence of the population.

The success of the transformation of the legal form was due to historical reality, because with this transformation, the said property, to some extent, returned to the legal regime existing before the Second World War, and the form of socialist ownership was never the primary source of the legal status of the owners.[73] In the process of transformation of the legal form, the socialist property was part of the process, the property and value of which did not decrease, but turned into a subject of civil circulation.

Lithuania's land registration reform never went beyond the constitutional scope of the right to property and was a guarantee of this right.[74] The functional load of the land plots found in civil turnover was more or less preserved. Accordingly, the reform was carried out with a common content, although in different periods of time. In this way, each subsequent person who acquired the power to govern continued the reform started in the past without changing the content and main goals of the reform. That is why personnel changes did not have a negative impact on the legal status of citizens. Citizens could own unregistered plots of land until the state ensured the development of an effective registration policy.[75]

With the strengthening of the economic importance, the establishment of the legal form became connected to the public interest, which was not an event similar to the private

[71] William Valetta, Completing the Transition: Lithuania Nears the End of Its Land Restitution and Reform Program (Fao Legal Papers №11, 2000) 1-8.

[72] World Data Atlas, "Lithuania - Agricultural Area Organic" <https://knoema.com/atlas/Lithuania/topics/Land-Use> [last accessed on 14 July 2022].

[73] Jolanta Valčiukienė and others, 'Changes of Land Users in Interwar Lithuania' (2015) 2 Journal Baltic Surveying 2, 13.

[74] Giedre Leimontaite, Land Consolidation in Lithuania (Fao Legal Papers 2006) 1-3.

[75] Authors, Spatiotemporal Patterns of Land-Use Changes in Lithuania (2021) <https://www.mdpi.com/2073-445X/10/6/619/htm> [last accessed on 14 July 2022].

property interest, and it was not aimed at seizing state property. The good will of the state to restore the forms of ownership in civil law took some time to ensure that the economic purpose of the issue did not change from the establishment of basic norms in the Lithuanian Civil Code to the registration process.[76] This represented a kind of call for ownership for economic development and did not only have the narrow purpose of transferring ownership. The adopted normative acts on land established the means of practical implementation of the provisions of the constitutional record of the state and the Civil Code. A correctly developed strategy from the beginning led to the systematization and regrouping of the legal status of citizens in relation to the new legal reality.[77] The state started to complete the cadastral surveying measurement data at an early stage.[78]

The implementation of the legislator's idea was facilitated by the development[79] of essentially equal practice by the Constitutional Court, the definition of concepts was connected to the support of the restoration of the legal status of citizens. The Constitutional Court objectively explained the cause-and-effect relationship between the old and new regulations.[80] The subject of assessment was not only property rights, but also the course of land reform in different periods of time and its constitutionality. Let's consider some solutions.

Decision[81] №12/93 of May 27, 1994 established the fiction of state ownership after gaining independence. Private property, which was illegally confiscated from citizens by the Soviet authorities since 1940, was considered conditionally controlled and de-facto property by the state immediately after the independence of Lithuania until the right of the private owner was restored to this property, based on the presentation of an appropriate request. The court determined the negative consequences of the actions carried out by the Soviet authorities in terms of restricting the rights of private owners, including forced collectivization and the use of confiscated property for other purposes.

The decision raised questions about the full and partial nature of the concept of restoration of private property. It was clear from the beginning that the complete

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[76] William Valletta, 'The Hesitant Privatization of Lithuanian Land' (1994) 18(1) Fordham International Law Journal 214-217.

[77] Petrulyte, 'Elements of Land Cadaster in Lithuania' (1998) 24(1) Geodesy and Cartography 37; Real Property Law and Procedure in the European Union General Report Final Version (European University Institute (EUI) Florence/European Private Law Forum Deutsches Notarinstitut 2005) 9.

[78] Aniceta Šapoliene, Agricultural Surveys and Censuses in Lithuania (Statistics Lithuania) 2-5 <http://www.stats.gov.cn/english/icas/papers/P020071114297505163007.pdf> [last accessed on 14 July 2022].

[79] Irmantas Jarukaitis, Lithuanian Experience in the Field of Restoration of Property Rights to Former Owners (Round Table Organised with Financial Support from the Human Rights Trust Fund) 2.

[80] Egidijus Jarašiūnas, Ernestas Spruogis, Problems of Legislative Omission in Constitutional Jurisprudence (The Constitutional Court of the Republic of Lithuania, Prepared for the XIVth Congress of the Conference of European Constitutional Courts 2007) 25.

[81] Constitutional Court of the Republic of Lithuania N12/93, 27 May 1994 Judgment on the Restoration of Ownership Rights to Land.

restoration of property forms could not be carried out, because from 1940, up to the restoration of independence, the characteristics of private property confiscated from citizens were changed or their part was completely destroyed and merged into another form of property, the disruption of which would have a negative impact on the well-being of the state and citizens.

If we compare it with the Georgian reality, in our case the balance was not maintained and the transfer of the property owned by the state to the ownership of citizens often took the form of seizure of property, although it should be noted that the gaining of independence allowed the citizens of Georgia to become economically stronger in terms of taking ownership of plots of land of a certain area and intended purpose, to be used as desired or to make it the subject of a civil turnover contract.

Decisions[82] №11-1993/9-1994 of June 15, 1994 and №10/1994 of October 19, 1994 stated that the restitution of property was partial and not complete, which meant the sorting and evaluation of citizens' applications in the part of admissibility of restoration of private property. The Constitutional Court clarified the scope of the responsibility of the independent state of Lithuania for the issue of property restitution, namely that by 1991 the state could not be responsible for the full restitution of private property seized as a result of the occupation in 1940 and ensuring its transfer to the original owners. Clarification of the issue of responsibility and the need to maintain the balance suspended the threats of civil confrontation. By 1991, the area and distribution of agricultural land in certain municipalities changed fundamentally compared to 1940, while in other municipalities no change was observed. Consequently, land reform and the concept of property restitution were implemented with varying frequency in these municipalities, although the format was common throughout the country.

In the Georgian reality, the results of the confrontation between citizens are still perceived as an acute conflict, because such an event as the overlapping of land plots occurred. This problem does not only refer to the lack of completeness of the measuring question. Of course, citizens, for a certain purpose, still try to use this opportunity to absorb the borders and adjacent territories in whole or in part. Therefore, comparing the distribution of land plots according to municipalities, according to different years, is still problematic.[83] If the comparable years in Lithuania were defined as the beginning of 1940 and the end of 1991, in the Georgian reality this perspective is counted off from 1921, and the assessment of properties confiscated by the Soviet authorities is

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[82] Constitutional Court of the Republic of Lithuania N11-1993/9-1994, 15 June 1994 Judgment on the Restoration of Citizens' Ownership Rights to Residential Houses. Constitutional Court of the Republic of Lithuania N10/1994, 19 October 1994 Judgment on the Restoration of the Ownership Rights to Residential Houses.

[83] Giorgi Gogiashvili, 'Constitution and Civil Law: to What Extent is Private Law Subject to Constitutional Control?' (2019) 2(62) Justice and Law 21-22 (in Georgian).

uneven, biased or not carried out at all. In relation to the surveying issue, there is a lack of qualified personnel and their bias towards the person who uses this service. The excessive formalism of the notary makes notarial mediation an inefficient process. In another decision[84], the court determined the relevance of the issue of citizenship for participation in the process of restitution of private property. This reservation is important because from 1940 to 1991 and afterwards, many citizens or former citizens had contact with Lithuania.

From the decision[85] №2-A/2021 of September 28, 2021, it is clear that together with the concept of property restitution, a management strategy for the plots of land with agricultural significance was developed, both from the point of view of registration and preservation of agrarian purpose. In the Georgian reality, the Registry formally indicates the purpose, but no one investigates the agricultural importance of the land[86], risks[87] and dangers related to the yield of the land plot or the change of purpose.[88] In the past, the functioning of the household was based on the yield/cultivating the land plot included in it.[89]

VI. MEDIATION FOR THE PROTECTION OF THE RIGHTS OF HOUSEHOLD OWNERS

In order to consider mediation as an effective means of protecting the rights of household owners, the legislator should develop a strategy for selecting the appropriate environment for mediation and legal resolution of complex social relations [conflict],[90] in order to subsequently start the formation of large-scale targeted working groups according to municipalities,[91] where titles of a household are still unregistered and there

[84] Constitutional Court of the Republic of Lithuania N40/03; 45/03-36/04, 13 March 2013 Judgment on the Interpretation of the Provisions of the Constitutional Court's Judgments of 30 December 2003 and 13 November 2006 Related to Citizenship Issues.

[85] Constitutional Court of the Republic of Lithuania N2-A/2021, 28 September 2021 Judgment on the Legal Remedy for the Protection of the Pre-emption Right to Acquire Private Agricultural Land.

[86] Arkadyush Vudarski and Lado Sirdadze, 'The Jungle of Registries in the 21st Century' (2020) 6 Georgian-German Journal of Comparative Law 25-27 (in Georgian).

[87] Additionally, see Ketevan Kvinikadze, 'Conflict of Interests of the Former and New Owner during Bona Fide Acquisition of Ownership of Real Estate' (2015) 5(48) Justice and Law 75-76 (in Georgian).

[88] Comp. Tamar Khavtasi, 'The Property Right During a State of Emergency' (2020) 1 Journal of Constitutional Law Special Issue 137-138.

[89] Additionally, see Tengiz Urushadze and others, Soil Science (Publishing House: "Shota Rustaveli State University" 2011) 86 (in Georgian).

[90] Comp. Irakli Kandashvili, 'Mediation - Innovation in the Georgian Legal Space and an Effective Mechanism for the Realization of Human Rights' (2022) 2 Justice 101-102 (in Georgian).

[91] Khubua, Kalichava, supra note 34, 233-239; Ekaterine Ninua, 'Some Legal and Economic Aspects of Land Reform' (2015) Conference Papers: Economic, Legal and Social Problems of Contemporary Development 2-5.

is a dispute between the parties or the threat of forming a disputable relationship.[92]

The importance of mediation is relevant in the process of determining the fact of receiving inheritance and the place of opening of the estate through non–contentious proceedings,[93] among them, it is important to protect the property rights of household member and non-member heirs through mediation. In order to reach an agreement with mutual and multilateral interest, it is possible to critically evaluate the historical, social and legal function of the household archive statement in the process of implementing a new stage of the state reform of systematic land registration. In case of a dispute between the parties, it is preferable that the mediation be conducted by a mediator registered in the Registry of the Georgian Mediator Association, and not by a notary, who may have difficulty adapting the principles and norms of mediation to a complex legal case.[94] Mandatory use of notarial mediation confirms[95] that notaries, as a rule, fail to regulate cases when owners of households confront each other with different demands and subsequently the mediation case is brought into court.[96] The actions of the mediator notary are conditioned by the undue presumption of liability,[97] which is why notarial mediation is strictly formalized and ineffective.[98]

It is important to establish the addressees of property rights, whether it is a member of the household or a non-member, who need to use mediation or require alternative dispute resolution. These are:

– The last surviving member of the household;

– The intestate heir who is the member of the household;

– The testamentary heir who is the member of the household;

– A person without hereditary status who is the member of the household;

– The intestate heir who is not the member of the household;

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[92] National Public Registry Agency website, “Register Land Easily and Become an Owner” <https://napr.gov.ge/p/1579> [last accessed on 14 July 2022].

[93] Comp. Giorgi Khubua and Lado Sirdadze, ‘Law Technologies (Legaltech) in Georgia, Their Use in Private Companies and Public Agencies’ (2022) 7 Georgian-German Journal of Comparative Law 9-10.

[94] Comp. Collective of Authors, Socio-demographic and Family Policy of Demographic Development of Georgia (Publishing House “Poligraph”, 2010) 48.

[95] Article 18, Law of Georgia “On Systematic and Sporadic Registration of Rights to Land Plots and Completion of Cadastral Data”. June 3, 2016. LHG, 17/06/2016.

[96] Nino Kharitonashvili, ‘Mediation in the Georgian Notarial System’ (2019) Alternative Dispute Resolution 2018-2019 Special Edition 21; Richard Bock, ‘The German Notarial System’ (2020) 8 Georgian-German Journal of Comparative Law 6-8.

[97] Article 4, Order №71 of the Minister of Justice of Georgia on the Approval of the Instruction “On the Procedure for Performing Notarial Acts”. March 31, 2010. LHG, 33, 31/03/2010.

[98] Comp. Irakli Leonidze and Mariam Nutsubidze, ‘Peculiarities of the Institution of Notarial Mediation in Georgian Law and Its Development Perspective’ (2019) Alternative Dispute Resolution, 2018-2019 Special Issue 82.

– The testamentary heir who is not the member of the household;

– A person without hereditary status who is not the member of the household.

The 2nd and 3rd paragraphs of the first article of the Law of Georgia “On Mediation” can be applied for the classification of forms and means of alternative dispute resolution.[99] The advantage of mediation, compared to other dispute resolution mechanisms, implies a new model of resolution of disputed legal issues related to household regulation, the novelty of which is expressed in the establishment of mediation legislation and practice in Georgian law. In different states of the world, mediation is already considered to be relatively preferable among other dispute resolution mechanisms.[100]

Mediation is the only alternative to bring household owners or their heirs lost in time and space back to reality. Accordingly, along with the study of the nature of the relationship within the scope of the social event of the deterioration of the attitudes of the disputing parties, the issue of clarifying the legal consequences does not always imply the rejection of the norms established in the society and, by making unjustified demands, aggravating the situation.[101] Self-determination of the parties through mediation often aims to clarify the issue for the parties.[102]

Mediation is a way to complement other dispute resolution mechanisms. Therefore, interesting is the case of household regulation, for which the persons in charge of other dispute resolution mechanisms cannot or do not establish the standard of effective proceedings,[103] and with the functioning of the mediation institute and the combination or sharing of mediation powers, it became possible to establish citizen-oriented governance and organizational proceedings.

[99] See the website of the Association of Mediators of Georgia, the newsletter about the activities of the “Association of Mediators of Georgia” in September - December 2021 <https://mediators.ge/ka/article/sainformacio-biuleteni/329> [last accessed on 14 July 2022].

[100] Natia Chitashvili, ‘Peculiarities of Individual Ethical Obligations of a Lawyer-mediator and the Need for Regulation’ (2016) 2 Law Journal 29 (in Georgian).

[101] Comp. Ketevan Kochashvili, Ownership as the Basis of Presumption of Ownership (TSU Publishing House 2012) 86 (in Goergina).

[102] Mikheil Bichiya, ‘The Importance of Using Mediation in Business Disputes During a Pandemic’ (2021) 3 Law Gazette 14-15 (in Georgian); Aleksandre Tsuladze, The Georgian Model of Court Mediation in the Euro-American Prism (TSU Publishing House, 2016) 15-16.

[103] Author’s note: legislator’s mobilization regarding a problematic issue, in individual case, is determined by a specific precedent. The legislator mobilized in this way is characterized by actions with hasty and unforeseen legal consequences, which is expressed in the new legislative agenda. Additionally, see Ekaterine Ninua, ‘Some Peculiarities of Receiving Estate’ (2018) 2(58) Justice and Law 117-118 (in Georgian).

VII. CONCLUSION

For decades, the state failed to provide effective regulation of title of a household. The practice established by the Common Courts of Georgia was not enough to protect the rights of the owners of the household, and the discussion of this issue in the Constitutional Court of Georgia was unsuccessful. That is why this issue is a challenge for the Constitutional Court, which back in 2005 had the opportunity to express a clear opinion regarding the deficiency of Article 1323 of the Civil Code of Georgia. The aim of the present study was a systematic review of title of a household lost in time and space. As a result of the research, the need for correct assessment and fair resolution of complex legal cases related to title of a household was determined in order to improve the family and inheritance relations of Georgian citizens.

Finally, based on the research, the following conclusions were made:

1. The management of the agricultural plots of land of the household, the area of the registered property, the location and the issue of registration in the name of an individual are problematic. The challenges and shortcomings that accompany this process, both from the point of view of the interest and actions of the state and citizens, create a socio-legal situation of encroaching on the legal status of householders.

2. The existing agriculture in rural areas was destroyed only because the state perceived the household as a circumstance devoid of content and function, and not as an opportunity for economic development through the social coexistence of citizens.

3. The fact that since 2022 the systematic registration of land throughout the country has started, makes us think once again what challenges the citizens of Georgia and the state faced, when the word "the whole country", for the purposes of this reform, means "carrying out surveying and registration activities in 59 municipalities of Georgia (except for the occupied territory and the self-governing cities: Tbilisi, Batumi, Kutaisi, Rustavi, Poti).".[104] In general, positive expectations should be accompanied by real results and the anticipation of expressing support, so that this reform, like its predecessors, does not turn into a never-ending process.

4. The legislator wants to subject the regulation of title of a household lost in time and space to the process of systematic land registration and in this way satisfy the interest of the heirs of the household who are members and non-members, subsequently the interest of the owners. It would be desirable to clearly mention the problems of Georgian citizens, which this reform would aim to solve in the predetermined territorial area. Accelerated registration should not be an end in

[104] Website of the National Agency of Public Registry, "Systematic Land Registration" <https://napr.gov.ge/p/2063> [last accessed on 14 July 2022].

itself, the essence of the issue is to protect the property right of citizens, and not to ignore it by the fact of registration.

5. The function of the Public Registry, notarial system and court will reach its perfection when the citizens will no longer need litigation to solve the problem.[105]

[105] Additionally, see Sukhitashvili, supra note 20, 31.