

Acquiring and Loss of the Ownership on Things

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Abstract

In this paper we have examined the main legal issues regarding the acquiring and loss of the ownership on movable and immovable things according to the Georgian law. 1st part of the paper is dedicated to the procedures of acquiring and loss of the ownership on immovable things. In particular, according to the Article 183 of the Civil Code of Georgia, in order to acquire the ownership on the immovables the existence of two elements is required: 1) the written agreement between the parties and 2) registration of the acquirer as an owner in the Public Registry. For the abandonment of the ownership on the immovables a declaration of the owner on the abandonment of the ownership and registration thereof in the Public Registry are required.

The 2nd part of the paper is dedicated to the procedures of acquiring and loss of the ownership on movable things. In particular, acquire of the ownership on movables is possible by several ways, which are the cases of acquisitions on the basis of a transaction, law and an act of the administrative body. Loss of the ownership on movables takes place on the basis of a transaction, by abandonment of ownership and destruction.

Keywords: real agreement, declaration of intention, expectant right, causa, specificity principle, constitutum possessorium, traditio brevi manu, reservation of title, appropriation

Introduction

The Georgian law, as a part of the German law system, provides the different legal regimes in regulation of the movables and immovables since the property relations regarding the immovable property are to be more secured and trustworthy. The requirements of the written form of the transaction and registration in the Public Registry of the ownership and other real rights encumbering on the immovables are provided exactly for that purposes. Contrary to the immovables, compliance with this procedure in regard to the movables is not required because the legislator is crucially interested in rapid and easy turnover of the movables.

Despite the fact that the Civil Code of Georgia does not directly refer to the real agreement as a disposition transaction transferring the ownership, it must nevertheless be deemed existed in the Georgian law. In a sense of the Article 183 of the Civil Code of Georgia, the real agreement is deemed put into the written document even though the last may form and be called the sale-purchase agreement, gift, exchange, partnership agreement, etc. that is in lieu of the disposition transaction it just indicates to the obligatory transaction.

Thus, according to the Article 183 of the Civil Code of Georgia, in order to acquire the ownership on the immovables the existence of two elements is required:

1. the written agreement between the parties; and

2. registration of the acquirer as an owner in the Public Registry.

For the abandonment of the ownership on the immovables a declaration of the owner on the abandonment of the ownership and registration thereof in the Public Registry are required. From legal point of view the declaration is a unilateral disposition transaction and for its legal effect the only owner's participation (declaration of intention) is sufficient. The law does not directly provide the form of the declaration but we can suppose for sure that the written form must be observed. The moment of abandonment of the ownership shall be the date of registration of the declaration in the Public Registry.

What is the destiny of the immovables, which has been abandoned by its owner? It is clear that the legislation of any modern state should not permit the existence of the ownerless real property. Unfortunately, the Civil Code of Georgia provides no rule in this regard but this defect is eliminated by part 4 of the Article 14 of the Law of Georgia "On the Public Registry" of 19.12.2008, according to which the ownership on the abandoned real property shall be automatically acquired by the state.

Legal Position of the Acquirer Before the Registration in the Public Registry

Making an agreement between the alienator and acquirer in writing does not produce the effect of transferring

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the ownership or other real right to the acquirer yet. For that the law provides the second formal element – registration of the acquirer in the Public Registry. There is always a certain time gap, during which the alienator remains registered in the Public Registry; consequently, by operation of the record in the Public Registry the alienator is still an owner of the immovables and, therefore, formally authorised for further alienation. For that reason there is a need of protection of the acquirer's interests but, unfortunately, we cannot find any protecting provision in the Civil Code of Georgia. Based on the Georgian law, it can be supposed that the acquirer is not protected from the alienator's unfair conduct. In case of making further disposition transaction by the latter, the law protects of the interests of a new acquirer and provides the transfer of ownership to him on condition that the transaction between the alienator and the new acquirer is registered in the Public Registry. It is notable that the Georgia totally ignored the German law, where the similar problem is resolved by the legislation as well as in the judicial practice. Let us illustrate the legal position of the acquirer before the registration in the Public Registry on the basis of the German law.

In spite of the possibility, as a general rule, to repudiate by any party of the real agreement (“Einigung”) made between the alienator and the acquirer, according to part 2 of par. 873 in case of existence of certain formal pre-conditions (declarations are notarially certified or made before the Land Registry or submitted to the Land Registry, etc.), the parties are bound by the agreement and, therefore, a unilateral repudiation of it is not permitted. The interests of the acquirer are secured also by par. 878, according to which a declaration by the person entitled does not become ineffective as a result of the person entitled being restricted in disposition after the declaration has a binding effect for him and the application for registration has been made to the Land Registry. In addition to the security measures provided by the above statutory provisions, in the German legal science and judicial practice so-called “expectant right” (“Anwartschaftsrecht”) is known, which in regard to the acquirer of a real estate is denoted with a special term – “Auflassungsanwartschaft” (“expectant right on immovables”). (Wolf, 1996). This right is belonged to the acquirer from the moment of making the real agreement until the registration of the immovables and despite according to the dominated opinion in the German legal science, this right is not a real (absolute) right it is nevertheless is protected like the ownership and other real rights with *replevin* as well as *actio negatoria*.

Acquiring and Loss of the Ownership on Movables

1. Introduction

Acquire of the ownership on movables is possible by

several ways, which are the cases of acquisitions on the basis of a transaction, law and an act of the administrative body.

Loss of the ownership on movables takes place on the basis of a transaction, by abandonment of ownership and destruction.

2. Transfer of ownership

The private law science divides the systems of transferring the ownership on movables in accordance with those differences, which are characterised, on the one hand, to the tradition and consensual systems and, on the other hand, - abstraction and causal systems. Hereby, we would like to analyse these systems on the basis of the Georgian law.

Following to the model of the Civil Code of the Netherlands, the Georgian legislator shared so-called “intermediate system” of transferring the ownership (tradition and causal system). The Article 186 of the Civil Code of Georgia provides general rule of transferring the ownership on movables. According to this rule, the pre-conditions of transferring the ownership are as follows:

- a. a real agreement made between the parties, on the one hand, and an obligatory basis for the real agreement – *causa* – i. e. an obligatory transaction, upon which the real agreement is based, on the other hand, and
- b. handing over of the movable thing into the acquirer's possession.

The legal nature and content of the real agreement in the Georgian law are similar to its German counterpart. Its essence is that, on the one hand, a declaration of intention from the alienator takes place in this agreement, which is directed to transferring the ownership on the movable thing and, on the other hand, a declaration of intention from the acquirer, which is directed to obtain the ownership on the movables. The real agreement always relates to a specific thing, i. e. the Georgian law shares so-called “specificity principle” (*Bestimmtheitsgrundsatz*) accepted by the legislations of German as well as Romanic law system countries. The German legal science and judicial practice determine the certain criteria for specificity; in particular, the specificity in the real agreement must ensure the differentiation without difficulty by any impartial third person of the thing subject to transfer from other things (Wolf, 1996).

Like the German Civil Code, in part 1 of the Article 186 of the Civil Code of Georgia there is an indication to owner as a person entitled to transfer the ownership on the movables. But the owner is not the only person entitled to transfer the ownership; there are a lot of cases known by the law when the movable thing does not belong to a person but the latter is fully authorised to alienate it. For instance, in case of certain conditions (threat of perishing the goods and lack of enough time to notify or impossibility

to notify the entitled person (Wolf, 1996), the depositary is entitled to sell the goods stored. Therefore, it would be more correct to indicate on an entitled person in the Article 186 of the Civil Code of Georgia like it is done in the Article 84 of Book 3rd of the Civil Code of the Netherlands.

Handing over of the movable thing indicated in part 1 of the Article 186 of the Civil Code of Georgia means transferring the thing by the alienator into the acquirer's direct possession. According to the German legal science and judicial practice, in this case the alienator transfers to the acquirer the direct possession on the thing so that he retains no any part of it; in addition, granting the joint possession is not sufficient for transfer in the sense of the provision of the Article 186 of the Civil Code of Georgia. Thus, the alienator does not retain possession but he can become a detentor for the acquirer without keeping the indirect possession.

As a rule, a thing is to be handed over into the acquirer's possession. However, for the purpose to make the turnover of the movables smoother and easier it is permitted to hand over the thing into third party's possession who in this case becomes a detentor for the acquirer. Handing over can be also carried out through the direct possessor who may participate in the transaction on the alienator's as well as on the acquirer's side (Wolf, 1996).

In accordance with the Article 186 of the Civil Code of Georgia, in addition to handing over, transfer of the movable thing is accomplished also by the two special legal constructions:

1. creation of the indirect possession on the alienated thing – *constitutum possessorium* (*Besitzkonstitut*) and

2. assignment of the claim for return from the third party to the acquirer (*Abtretung des Herausgabeanspruchs*) when this third party holds the movable thing belonging to the alienator. Unfortunately, the Civil Code of Georgia does not mention so-called *traditio brevi manu* (*Übergabe kurzer Hand*) rule, which regulates the cases when the acquirer at the moment of alienation of the thing possesses himself the alienated movable thing. Contrary to the Civil Code of Georgia, this rule is directly provided in part 2 of par. 929 of the German Civil Code. Let us examine each legal construction one by one.

If in case of transferring the movables the parties wish that the alienator will temporarily retain his possession, they may agree on creating the indirect possession for the acquirer so that the alienator remains as the direct possessor. Therefore, the indirect possessory relation created between the parties effects as substitute of transferring the direct possession but not – of the real agreement. In case of *constitutum possessorium* the acquirer becomes the indirect proprietary possessor and the alienator – a possessor for another (Wolf, 1996). In the German legal science and judicial practice so-called “anticipated *constitutum possessorium*” (*antizipierte Besitzkonstitut*) is known when the

parties agree to create the indirect possession on the movable things (goods) produced or acquired in the future. This legal construction is used primarily in the credit relations for the purpose of securing the claims of the lender; for instance, when as a security the creditor is granted with a warehouse, in which the stock of the deposited goods is regularly renewed by selling or processing the old goods and adding new ones (Wolf, 1996). The prior real agreement and the indirect possessory relation shall be determined in such an extent that later on with the use of the real agreement it must be possible to identify any specific thing to be transferred into the acquirer's ownership. (Wolf, 1996)

Transferring the ownership by way of the assignment of the claim for return from the third party to the acquirer has been firstly developed by the German Civil Code. Before the adoption of the German Civil Code such legal construction of transferring the ownership on movables was not known for the Roman law as well as for the German Common Law (*Gemeines Recht*). In accordance with the last, it was permitted to assign a vindication action (*Vindikationszession*) but by this a person usually transferred only the right to vindicate a thing and – not the ownership on it. (Wolf, 1996)

The following pre-conditions are necessary to exist in order to transfer the ownership by way of the assignment of the claim for return:

1. the movable thing shall be in the third person's direct or indirect possession but usually third person is the direct possessor and the alienating owner – the indirect possessor. Besides, the possessory relation is always based on the particular legal relationship (lease, pledge, etc.);

2. there shall be made a real agreement between the parties on transferring the ownership together with the obligatory transaction as a basis for the real agreement;

3. together with the real agreement the parties shall make an assignment agreement in accordance with the Article 199 of the Civil Code of Georgia.¹

Like transferring the ownership by creating the indirect possession, in case of transferring the ownership by way of the assignment of the claim for return from the third party there happens no handing over of the direct possession on the movable thing. The thing remains in the state as it was in the third party's control (Wolf, 1996). The assignment and real agreement shall be made simultaneously; as a result, transferring the ownership occurs at the same time. Neither assignment nor real agreement requires special form and they can even be made orally. In practice the claim for return can be based on a transaction (contract) as well as resulted from the law.

Traditio brevi manu has absolutely unjustifiably not been provided in the Civil Code of Georgia when, on the contrary, – even for the purpose of visual comparison – the provision of the German Civil Code regulating tradi-

tio brevi manu is put on a visible place in the Code (par. 929, second sentence). It would not also be correct to argue that the existing wording of part 2 of the Article 186 of Civil Code of Georgia must comprise such legal construction of transferring the ownership (“The following shall be deemed to constitute transfer of a thing: handing over of the thing to the acquirer into direct possession; transfer of indirect possession by a contract under which the previous owner may remain the direct possessor; granting by the owner to the acquirer of the right to claim possession from a third person”) since in case of traditio brevi manu the acquirer already possesses the movable thing (for instance, in case of rent the thing is already in the lessee’s – future acquirer’s possession) and, therefore, transfer of indirect possession is excluded; and for transferring the ownership, a real agreement is sufficient together with the obligatory transaction as its basis.

Acquiring the ownership on the Movables in Good Faith

During the examination of the provisions regarding the Public Registry in the Civil Code of Georgia above, we discussed the procedure of acquiring the rights on the immovables in good faith. As we have already said, one of the pre-conditions of transferring the ownership on movables is the entitlement to transfer the ownership. In the Article 186 of the Civil Code of Georgia there is an indication to owner as one of the persons entitled to transfer the ownership; as a general rule, alienation by a person not entitled to transfer is void². However, from this general rule the law knows an exception.

In accordance with the Article 187 of the Civil Code of Georgia:

1. “1. An acquirer shall become the owner of a thing even if the alienator was not the owner but the acquirer is in good faith with respect to this fact. The acquirer shall not be deemed to be in good faith if he knew or should have known that the alienator was not the owner. Such good faith must exist prior to the transfer of the thing.

2. The acquirer of the movables cannot be in good faith if the owner lost these things, or they were stolen, or the owner was otherwise dispossessed of them against his will, or if the acquirer received the things without charge. These restrictions shall not apply to money, securities and/ or to things alienated by auction”.

According to part 1 of this Article, pre-conditions of acquiring the ownership in good faith is as follows:

1. the real agreement made between the parties together with the obligatory transaction as a basis for the real agreement,

2. the acquirer’s good faith.

For acquiring the ownership in good faith it is required to make by the unauthorised alienator both the effective real agreement and the obligatory transaction with the ac-

quirer. Thus, there takes place no acquiring in good faith when the contracting party is legally incapable or did not declare his will to alienate the thing or his representative has no representative authority (Bassenge, 2003). Alienation can be carried out by transferring the thing into the acquirer’s direct possession, by creating the indirect possession on the alienated thing and assignment of the claim for return from the third party to the acquirer. To the above ways we can add traditio brevi manu, which is not provided in the Article 186 of the Civil Code of Georgia. We also cannot find in the Civil Code of Georgia any direct regulation of the acquiring the ownership by means of the above ways for the cases of acquiring in good faith while, for the purpose of comparison, the German Civil Code provides the above ways one by one for every case of acquiring in good faith. Therefore, unfortunately, the rule, which is directly regulated by the provisions of the German Civil Code, is only supposed to be existed as a result of analysis of the Article 187 of the Civil Code of Georgia. If the alienator and the acquirer agreed on the ways of transferring the ownership like creating the indirect possession or traditio brevi manu, acquiring the ownership in good faith is permitted only if the movable thing is actually handed over to the acquirer (Wolf, 1996). As regards to acquiring the ownership in good faith by way of assignment of the claim for return from the third party, it is regulated by par. 934 of the German Civil Code. According to this paragraph, there are two kinds of situations:

1. if the unauthorised alienator is the indirect possessor, then transferring the ownership in good faith may take place by assignment of the claim for return by the alienator. In this case the alienator fully loses the possession and the acquirer obtains his possession from the indirect possessor;

2. if, on the contrary, the alienator is not the indirect possessor since the direct possessor does not possess directly for him, then transferring the ownership in good faith takes place in cases when the acquirer obtains the possession from the third party (Wolf, 1996).

Reliance from the acquirer’s side of the fact that the alienator is the owner of the thing is justifiable only in case when the acquirer did not know and should not have known that the alienator actually is not the owner (second sentence of the part 1 of the Article 187 of the Civil Code of Georgia). Therefore, in the sense of this provision acquiring in good faith is excluded in case when the acquirer certainly knows the fact that the alienator actually is not the owner as well as in case when he does not know this fact due to gross negligence.

Good faith of the acquirer must always be related to the belief that the alienator is the owner. Good faith in regard to the authority to disposition is not sufficient. However, if the alienator is actually authorised by the third party and the acquirer believes the third party to be the owner, then good faith exists not in regard to the author-

ity to disposition but – in regard to the ownership of the third party (Wolf, 1996). The fact of good faith must exist before the transfer of the thing (third sentence of the part 1 of the Article 187 of the Civil Code of Georgia). Thus, we can suppose that acquiring in good faith takes place also in cases when the acquirer later – i. e. after transferring the thing – found out that the alienator actually is not the owner. The different opinion we can find in the German law. According to the last, as a rule, good faith must exist during the period of time until all pre-conditions of acquiring are satisfied. In addition to making the real agreement, the alienator shall fully lose his possession and the last shall be obtained from the acquirer himself or from the third party (Wolf, 1996). If the transfer of ownership is carried out by transfer of possession, then the fact of good faith must exist at the moment when the agreement was made by the parties (Bassenge, 2003).

The acquirer's good faith is presumed. The acquirer is not obliged to prove his good faith. The burden of proof is carried by the person who wishes to call in question the acquirer's good faith (Bassenge, 2003).

The acquirer's belief that the alienator is the owner is not the sole justifying circumstance for recognising him to be acting in good faith. Acquiring the ownership by the acquirer from the unauthorised alienator is not justifiable also in cases when the owner was dispossessed of the thing against his will. The law enumerates as an example the cases of dispossessing against the owner's will; in particular, these are the cases when the thing has been lost and stolen. However, this list is not complete; to the cases of dispossessing against the owner's will we can also add duress, incapacity, etc.; but, on the contrary, mistake, deceit, voidance, public act do not belong to the above cases (Bassenge, 2003).

In addition, part 2 of the Article 187 of the Civil Code of Georgia indicates as a ground for excluding good faith also to transferring the thing by the unauthorised alienator to the acquirer free of charge. The legislator's reason is absolutely clear in this case: the acquirer "does not deserve" legal protection when he has not paid compensation for the thing acquired.

The same part 2 of the Article 187 of the Civil Code of Georgia provides the possibility to acquire in good faith the specific objects despite the fact that they were dispossessed by the owner against his will. Such objects are money, securities and the things sold by auction. Such decision of the legislator was motivated in the interests of secured turnover of the movables.

The Civil Code of Georgia provides no regulation for the cases when the alienated movable thing is encumbered with the rights of a third party. In particular, the law does not decide the destiny of the rights of the third party on the thing in case of alienation of the thing in accordance with the Article 186. This decision can be found in the German

law:

According to par. 936 of the German Civil Code, if an alienated thing is encumbered with the right of a third party, the right is extinguished as a result of the acquisition of ownership by the acquirer. In the rights of the third party the German law means the real rights like, for instance, usufruct, pledge (Bassenge, 2003). In addition to the transfer the thing into the acquirer's direct possession, in case of transferring the ownership by means of other ways the right of the third party is extinguished if the acquirer had obtained possession from the alienator. Besides, the right of the third party is not extinguished if the acquirer at the time of alienation is not in good faith with regard to the right.

Finally, we would like to add that since as a result of acquire of the thing the owner (and in accordance with the German law, – also the holder of a real right) loses his right, he has the obligatory claim for compensation of damages incurred (Bassenge, 2003).

Reservation of Title (Eigentumsvorbehalt)

In accordance with the Article 188 of the Civil Code of Georgia:

1. "If an alienator made the transfer of ownership to an acquirer conditional only on the payment of the price of a thing, then it is presumed that the ownership shall be transferred to the acquirer only after payment of the price in full. If the acquirer delays the payment of the price and the alienator rescinds the contract, then the parties shall return the performances already mutually rendered.

2. The condition defined in part 1 shall also be deemed fulfilled if the alienator is satisfied in any manner other than by payment of the price, or if the acquirer indicates to the limitation of action".

This article provides the legal institute – reservation of title known in the Property Law. The legal construction of reservation of title takes place in case when in a sale-purchase agreement the purchaser pays out the sale price not in a lump sum but by instalment; the movable thing is transferred into the purchaser's possession at the moment of making the agreement but the seller retains the ownership on it until the payment of sale price in full. The purpose of the reservation of title is usually to secure the credit in the turnover of the movables. The security is reached by way of making the real agreement with suspensive condition by the parties (Article 90 of the Civil Code of Georgia); i. e. transfer of ownership to the purchaser depends upon the payment of sale price in full. Any additional declaration of intention from the seller is not required (Bassenge, 2003).

There are obligatory and proprietary elements of the reservation of title according to the German legal science.

The obligatory element – sale-purchase agreement itself is not made subject to any condition; conditional is the

real agreement. The obligatory sale-purchase agreement is characterised with the stipulation that the obligation to pay sale price is postponed and the seller is obliged to transfer the ownership on the thing only subject to the payment of sale price in full (Wolf, 1996).

In the proprietary element the German legal science means the reservation of title. There is the reservation of title in case when despite transferring the thing into the purchaser's direct possession and making the real agreement between the parties, the transfer of title depends upon the fulfilment of the obligation to pay the sale price. Until that moment the title is retained by the seller and it is exactly his security (Wolf, 1996).

Here, we would like to give a short review of legal positions of the seller as well as of the purchaser in case of reservation of title elaborated by the German legal science. Despite the fact that the seller retains the title until the fulfilment of the certain condition, the legal position of the purchaser is nevertheless protected by law. Besides, the protection is not limited only to exercising the actual control of the thing – possession of the thing; the German legal science definitely admits that the seller is no more authorised to the further disposition of the thing. The German Civil Code declares such dispositions as ineffective. In particular, first sentence of par. 161 provides: "If a person has disposed of a thing, and the disposition is subject to a condition precedent, any further disposition which he makes as regards the thing in the period of suspense is ineffective on the satisfaction of the condition to the extent that it would defeat or adversely affect the effect subject to the condition". In addition to the above, the seller is secured with the claim for damages under par. 160 of the German Civil Code; according to part 1 of this paragraph: "Any person who has a right subject to a condition precedent may, in the case of the satisfaction of the condition, demand damages from the other party if the latter, during the period of suspense, is at fault for defeating or adversely affecting the right dependent on the condition". (Wolf, 1996).

We have already mentioned above that the German legal science and judicial practice know so-called expectant right in regard to the immovables. The analogous right is recognised to be existed for the purchaser in case of reservation of title in regard to the movables. The expectant right as a prior step for ownership of the purchaser is recognised as a real right by the German legal science and judicial practice; it exists only during the period of time when the condition can still occur. If the condition of payment of sale price occurs, the expectant right of the purchaser automatically transforms into the ownership on the thing. If the condition cannot occur due to the circumstances (rescission of the contract, avoidance of the transaction, etc.), in case of which the claim for payment of sale price no more exists, then the expectant right is also extinguished since as a result of impossibility of the condition the ownership

cannot be acquired as well. Therefore, the expectant right is depended on the existence of the claim for payment of sale price. (Wolf, 1996)

The purchaser is authorised in regard to the seller to possess the movable thing upon the sale-purchase agreement; in addition, based on the expectant right he has an absolute right to possess towards any person; in this case the purchaser is deemed to be a direct possessor for another (unmittelbarer Fremdbesitzer). (Wolf, 1996).

As regards to the legal position of the seller, in case of reservation of title he as the owner remains the indirect proprietary possessor (mittelbarer Eigenbesitzer). As far as the gradual payment of sale price increases the economic value of the expectant right, simultaneously the economic value of ownership decreases; the more sale price is paid by the purchaser, the more property value is transmitted to him and, as a result, the seller's property is decreased. (Wolf, 1996)

Other Grounds of Acquiring and Loss of the Ownership on the Movables

A. Appropriation (Aneignung)

In accordance with part 1 of the Article 190 of the Civil Code of Georgia, if a person takes possession of an ownerless movable thing, he acquires ownership of the thing unless its appropriation is prohibited by law, or unless the appropriation is prejudicial to the rights of another person who was entitled to appropriate the thing. The appropriation belongs to the type of original acquiring of the ownership. According to the Article 190, only ownerless movables is subject to appropriation; besides, a movable thing becomes ownerless if the owner, with the intention of waiving ownership, gives up the possession of the thing.

B. Finding and treasure trove

The finding can be only the lost thing. The things are deemed to be lost when they are dispossessed by the owner and which have not become ownerless. (Wolf, 1996)

The finder is deemed to be a person who takes possession of the lost thing. As a result of finding the legal relationship arises based on the law, in regard to which additionally the provisions of the negotiorum gestio apply (Articles 969-975 of the Civil Code of Georgia). (Basenge, 2003)

The provisions regulating the relations arising in case of finding the thing lost are put in the Article 191 of the Civil Code of Georgia:

1. "The finder of a lost thing shall immediately declare that he has found it to the person who lost the thing, the owner, the entitled person or, if the identities of the above mentioned persons are unknown, – to the police or other

local authority, and hand the thing over to them.

2. One year after making the declaration the finder shall acquire ownership of the find, except when the owner has become known to him or when the right of the owner to the thing has been declared to the police. All other rights on this thing shall be extinguished at the time of the acquisition of ownership on the thing.

3. If the entitled person repossesses the thing, the finder may demand from him a reward (finder's fee) in the amount of up to five percent of the value of the thing. In addition, the finder may demand from the entitled person or from the appropriate authority compensation for the expenses of storage of the thing.

4. If the finder waives the ownership, the appropriate authority may sell the thing after one year by auction and get the profit or, if the thing is of low value, – gratuitously alienate or destroy it.

5. The one-year period shall not apply when animals, highly perishable items or things for which the storage cost is high are found, and the sum received through their alienation shall be returned to the owner”.

The special case of appropriation of the ownerless movables is determined by the Article 192 of the Civil Code of Georgia in regard to the treasure trove. The definition of the treasure trove comes from the provision of the Article 192: the treasure trove is the thing that has been buried for so long period of time that the owner can no longer be found. The ownership of the treasure trove shall go in two equal shares to the finder and the owner of the thing in which the treasure trove was found.

C. Combination (*Verbindung*), intermixture (*Vermischung*), processing (*Verarbeitung*) (Articles 193-197 of the Civil Code of Georgia)

On the one hand, the law provides combination (connection) of the movables with the real estate (plot of land) and, on the other hand, combination of the movables with each other. Furthermore, the law specifies also such combination (mingle) of the movables with each other when their separation is impossible or the last is possible only with the disproportionate expenditures. (Wolf, 1996).

Both in case of combination and intermixture the factual disposition takes place; this is not the disposition on the basis of a transaction. (Bassenge, 2003). In case of connection of the movable thing with the real estate the former is transferred into the ownership of the real estate's owner only provided that as a result of the connection the movables becomes an essential part of the real estate in accordance with the Article 150 of the Civil Code of Georgia. In case of contrary, – i. e. when the movables does not become the essential part of the real estate, – the owner of the movables retains the ownership on his thing. In case of combination and intermixture transfer of ownership takes places automatically by operation of law. (Wolf, 1996)

As a result of the connection the movables, previously

separate things must create the essential parts of the new whole thing. In this case the former owners become the co-owners of the newly created thing. If one of the things is deemed to be the principal thing, then its owner shall acquire ownership on the whole thing as well. Unfortunately, by regulating the above case the literal Georgian translation of part 2 of the Article 194 of the Civil Code of Georgia on the place of term “the whole thing” (“*Alleineigentum*”) incorrectly uses the absolutely different word – “the accessories”!³

In accordance with the Article 195 of the Civil Code of Georgia: “When a new movable thing is created by processing or transformation of substances, then the producer and the owner of the substances shall become the co-owners of the new thing. The shares are to be determined in proportion to the value of the substance and the costs of production unless otherwise stipulated by agreement”. It is notable that the German Civil Code provides the different regulation in regard to creation of a new movables thing as a result of processing or transformation of substances; in particular, according to first sentence of par. 950 of the German Civil Code, a person who, by processing or transformation of one or more substances, creates a new movable thing acquires the ownership of the new thing, except where the value of the processing or the transformation is substantially less than the value of the substance.

1. “Part 1 of the Article 199 of the Civil Code of Georgia: “1. The assignor (creditor) may assign the claim to a third person without the consent of the debtor unless it contravenes either the essence of the obligation, the agreement with the debtor, or law (assignment of claim)”.

2. Even in the Roman law there was a rule: “*Nemo plus iuris ad alium transferre potest, quam ipse haberet*” (“One cannot transfer to another a larger right than he himself has”)

3. The literal translation of part 2 of the Article 194 of the Civil Code of Georgia is as follows: “If one of the things, according to established understanding, is deemed to be the principal thing, then its owner shall acquire ownership of the accessories as well”.

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