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Law of Neighbouring Tenements and the Essence of Private-Law Obligation of Tolerance in Georgian Law

Private Law Reform. On the whole, the analysis of civil law reforms implemented in post-Soviet countries allows for the identification of two main competitive models. Within the framework of the first model the provisions of Soviet civil law, of non-ideological nature, were retained. Majority of post-Soviet countries opted for this model.[1] *In these countries the new civil codes were adopted on the basis of Model Civil Code, which codes still retain the provisions of Soviet period. Hence, in countries which applied the above model to themselves, the reform and development of civil law were based on the traditions of the Soviet period.*[2]

Georgia opted for fundamentally different line of development of civil law. When it came to the elaboration of the Civil Code of Georgia (CCG), which was drafted under the close cooperation of renown representatives of Georgian private law science and German scholars,[3] *the Civil Code of Germany was taken as the basis. In the formation of new legal institutes the CCG fed upon the European codifications.*[4;5] *Opting for German model was conditioned by its high scholarly authority and the fact, that the authors of the CCG regarded the European type of codification fully concurrent with Georgian historical traditions.*[6]

The law is a part of culture and quite a number of cultural and technical features should be taken into account in the course of reception.[7] *It should necessarily be stressed, that none of the abovementioned models of reformation of civil law exists "as is". The countries which opted for the development*

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1 Comp. *Kurzynsky-Singer E., Zarandia T.,* Rezeption des deutschen Sachenrechts in Georgien, Transformation durch Rezeption?, Transformation durch Rezeption? Möglichkeiten und Grenzen des Rechtstransfers am Beispiel der Zivilrechtsreformen im Kaukasus und in Zentralasien, *Kurzynsky-Singer E.* (hrsg.)*,* Tübingen, 2014, 108 ff.

2 Ibid.

3 Comp. *Zoidze B.,* Reception of European Private Law in Georgia, Tbilisi, 2005, 1 (in Georgian); *Knieper R.,* Methods of Codification and Conception in Transition Economies (Including the Situation in Georgia), Legal Reform in Georgia, *Jorbenadze S., Knieper R., Chanturia L.* (eds.), Tbilisi, 1994, 176-191 (in Georgian); Also, comp. *Jorbenadze S.,* Main Challenges of Future Civil Code of the Republic of Georgia, Legal Reform in Georgia, Tbilisi, 1994, 142 (in Georgian).

4 Comp. *Makovsky A*., Einige Einschätzungen der Hilfe bei der Ausarbeitung der Gesetzgebung und des Standes der internationalen Zusammenarbeit, Wege zu neuem Recht: Materialen internationaler Koferenzen in Sankt Petersburg und Bremen, *Boguslavskij M., Knieper R*. (hrgb.), Berlin, 1998, 339.

5 See. *Chitashvili N.*, Impact of Amended Circumstances on the Fulfilment of Obligations and Potential Secondary Claims of the Parties, Tbilisi, 2014, 81 (in Georgian).

6 Comp. *Zoidze B.,* Reception of European Private Law in Georgia, Tbilisi, 2005, 92 ff (in Georgian).

7 With this regard, see: *Kennedy D.,* The Politics and Methods of Comparative Law, The Common Core of European Private Law, Essays on the Project, *Mattei U*., *Bussani M*. (eds.), Hague, 2002, 143; With regard to the question of necroreception, see: *Burduli I*., Nekrorezeption in Transformationsgesellschaften, Dogmatik im Dienst von Gerechtigkeit, Rechtssicherheit und Rechtsentwicklung, Festschrift für Hanns Prütting, *Brinkmann M., Effer-Uhe D. O., Völzmann-Stickelbrock B., Weesser S., Weth St.* (hrsg.), Köln, 2018, 3 ff.

of civil law within the framework of existing traditions, inevitably borrow certain institutes from other legal systems, at least, to the extent that such borrowing is necessary to legally provide for civil circulation in market economy. On the other hand, in countries, which opted for the reception of foreign law, certain legal traditions, existing before the reception, will be inevitably retained.[8]

Overall, current European Private Law system, and specifically the property law system, is the result of political, economic and legal thinking of the nineteenth century[9]*. The foregoing is particularly apparent in the law of neighbouring tenements, which includes normative regulations important for agricultural society of that epoch. Contemporary industrial development posed new challenges in this respect.*

Key words: *property law, law of neighbouring tenements, neighbouring nuisances, encroachment on other land plot during construction, unacceptable encroachment, building collapse danger, demand to prevent danger, emissions, perfect emissions.*

1. Law of Neighbouring Tenements in the Light of Georgian Private Law Reform

The fact, that provisions regulating the law of neighbouring tenements are accumulated in the "Law of Neighbouring Tenements" Chapter and are not scattered fragmentarily, can be regarded as an achievement of the CCG. Such systematization of provisions was unfamiliar for the law of the Soviet period. Georgian law of neighbouring tenements is a part of property law and these provisions aim at the resolution of disputes arising between the neighbours and provision for peaceful cohabitation.[10] More specifically, the provisions of the law of neighbouring tenements establish the scope of acceptable nuisance against a neighbouring land plot or other real estate, duty of the "neighbouring property owner" to tolerate such nuisance in certain cases and also, the law of neighbouring tenements incorporates provisions, regulating legal consequences of the breach of this rules.

2. Duty of Mutual Respect

Under the first sentence of Article 174 of the CCG, in addition to the rights and duties prescribed by law, the owners of neighbouring land plots are bound to hold each other in respect. This provision introduces the principle of mutual respect. The descriptive part of the provision allows for distinguishing the following elements of mutual respect between the neighbours: the owners of neigh-

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8 E.g., Georgian law renounced the abstract model of transfer of title existing in German law. Comp. *Kurzynsky-Singer E., Zarandia T.,* Rezeption des deutschen Sachenrechts in Georgien, Transformation durch Rezeption?, Transformation durch Rezeption? Möglichkeiten und Grenzen des Rechtstransfers am Beispiel der Zivilrechtsreformen im Kaukasus und in Zentralasien, *Kurzynsky-Singer E.* (hrsg.), Tübingen, 2014, 110 ff. Furthermore, today the procedure of transfer of title to immovable things does not require notarization unlike German law. With this regard, see: *Zarandia T.,* Purchase of Immovable Property in Good Faith from Unauthorized Seller per Georgian Case Law, Journal Studia Universitatis Moldaviae. Stiinte Sociale, № 8(98), 2016, 75 ff.

9 Comp. *Akkermans B.*, Sustainable Property Law?, European Property law Journal, Vol. 7, Issue 1, 2018, 1.

10 Comp. *Totladze L.,* Article 174, Commentary on Civil Code of Georgia, Law of Things (Property), *Chanturia L.* (ed.), Tbilisi, 2018, 91-92 (in Georgian).

bouring land plots are bound to: 1. abide by the rules and bans prescribed by law, and 2. respect each other. Of these two elements the first one is an objective factor and specific prohibitions, prescribed by substantive law can always be presumes as its violation. As regards the second element, it is subject to evaluation and always becomes a matter of dispute in the light of circumstances of the case[11] and acquires specific content in judicial practice. Adjacency of land plots binds the neighbours to come to terms[12].

The duty to respect is not only a declared duty, it obligates the owners of neighbouring land plots and other real estate to respect the others' property and other civil rights and exercise their rights in a manner as not to impair the others' rights. The law allows for nuisances stemming from neighbouring real estate within acceptable limits, what is envisaged by Article 175 of the CCG and toleration of these nuisances is inherent for neighbouring relationships, what is concurrent with neighbours' duty to respect each other.[13] Although the rights and obligations of the neighbours are regulated by the Code and other acts, but this list can never be exhaustive. The neighbouring relationships easily escape the oversight of the law and due to this reason Article 174 of the CCG introduces the common-law obligation of the neighbours. Mutual respect means such bilateral binding, that will have legal implication.[14] Mutual respect, first and foremost concerns personal obligation of each owner to respect the rights of the neighbour while enjoying their property, what may even result in the restriction of enjoyment of own property to a certain extent. Property right, as one of the fundamental rights, is a social phenomenon, which should be protected and cared for in relationships between the neighbours.[15]

Furthermore, public-law regulation is also important for the law of neighbouring tenements, the fields like environmental law, construction law. The law of neighbouring tenements, construction and environmental law is an apparent example of coexistence of private law and public law.[16] To this end it is important to exercise property right is such a manner as to ensure common benefit to maximum practicable extent. This means the new conceptual understanding of property right itself, admitting that being an owner does not mean clearing out everything from the object of title, but rather this right is combined with the duty to look after, take care and keep it for the next generation.[17]

The provisions of the law of neighbouring tenements are based on classical principles of private law like party equality, good faith and disposition. Specifically, unless otherwise prescribed by law, a party agreement is admissible which prevails if there is a dispositional regulation.

3. Scope of Application

The "neighbouring property" relationship exists in every civilized community and is based on the recognition of property right as absolute estate on the one hand and on the other - respect of the

11 Comp. Decision of May 25, 2014 № AS-122-116-2014 Supreme Court of Georgia.
12 Comp. *Schwab K. H., Prütting H.,* Sachenrecht, 32 aufl., München, 2006, 129.
13 Comp. Decision of October 29, 2013 № AS-526-500-2013 Supreme Court of Georgia.
14 Comp. *Zoidze B.,* Georgian Property Law, Tbilisi, 2003, 111 (in Georgian).
15 Comp. Decision of July 15, 2016 № AS-413-396-2016 Supreme Court of Georgia.
16 Comp. *Wolf M., Wellenhofer M.*, Sachenrecht, 31 aufl., München, 2016, 663.
17 Comp. *Akkermans B.*, Sustainable Property Law?, European Property Law Journal, Vol. 7, Issue 1, 2018, 3.

rights of the thirds persons, the "neighbouring owners" in the case concerned, and taking account of their interests, also the general principle of bona fide exercise of a civil right. The law of neighbouring tenements regulates relations between the neighbours stemming from their property. To a certain extent it is a search for compromise between the freedom of ownership and its limitation in the interests of other persons.

In Georgia the provisions of the law of neighbouring tenements serve the purposes of regulation of everyday housing relations, like, use of adjacent land plot, consequences of trespassing, private boundaries, issues of neighbouring nuisances. Contemporary law of neighbouring tenements conforms modern challenges, the technological development brought about new disputes about electromagnetic waves as neighbouring nuisances. Hence, the law of neighbouring tenements is also linked with environmental issues.[18] Hence the property right of the owners of land plots and other real estate is limited from the every outset, it is necessary to find a balance between the interests of the neighbours. A land owner cannot exercise his right as if he is alone in the world.[19]

In Georgian reality the scope of application of the provisions of the law of neighbouring tenements extends not only to directly adjacent land plots, but rather, the provision of the law of neighbouring tenements also apply in cases when land plots do not have a common border, or are otherwise separated from each other. In practice, the most hazardous nuisances originates not from directly adjacent, but rather remote land plots, an example of the foregoing being the cases of water pollution by factories or leakage of harmful gases[20]. It is important to be possible to have a negative impact on the other land plot. Furthermore, the scope of application of the law of neighbouring tenements is not limited only to land surface, it also extends beyond and over it. However, a land owner is not entitled to claim the prohibition of such nuisance, he has no reasonable interest to prevent, e.g. flight of airplanes.[21]

4. Acceptable Nuisance - Tolerance of Neighbouring Nuisances

The property right entitles an owner to enjoy his land plot at his own discretion, exclusively, excluding others. Furthermore, Article 175 of the CCG provides for the limits of prohibited and acceptable enjoyment of land plot and other real estate. According to Part 1 of Article 175 of the CCG an owner of a land plot or other immovable property may not prohibit the impact of gas, steam, smell, soot, smoke, noise, heat, vibrations or other similar phenomena emanating from a neighbouring land plot, unless they obstruct the owner from enjoyment his land plot or immaterially impair his rights. According to literal interpretation of the provision only the owner of the neighbouring plot is entitled to claim the suppression of nuisances, but the provision should be interpreted widely and all the rightful owners should be given this right.[22] Furthermore, Part 1 of Article 175 of the CCG contains only a partial list of all possible nuisances, that may exist in legal relations under the law of neighbouring

[18] Comp. *Schwab K. H., Prütting H.,* Sachenrecht, 32 aufl., München, 2006, 123-124.
[19] Ibid.
[20] Comp. Ibid, 130.
[21] Comp. *Wolf M., Wellenhofer M.*, Sachenrecht, 31 aufl., München, 2016, 398.
[22] Ibid, 406.

tenements. The above provision provides for the obligation of tolerate nonessential emissions. Hence, as a general rule, an nuisance is nonessential when established limits are not violated as a result of nuisance. The established standards can be environmental or other standards[23][24] and they may be prescribed by law.

Under Part 2 of Article 175 of the CCG the obligation to tolerate still exists when nuisance is essential but is caused by ordinary enjoyment of the other land plot or real estate and it cannot be prevented through measures that are regarded as regular economic activity for such users. When establishing how essential the nuisance is, the focus is made on an average reasonable person, respectively on an ordinary user of a land plot or other real estate. In this case one cannot rely only on subjective comprehension of the aggrieved party.[25] The account is also taken of the location as there is a different approach in urban and rural area, densely populated area and industrial zones, also in recreational and touristic territories. Hence when assessing neighbouring nuisance the account is taken of the location, intensity and duration of impact and the assessment is made with due consideration of the criteria, pertinent to the place concerned,[26] from the point of view of an ordinary (impartial) observer.

However, when nuisance is essential, but is caused by "ordinary" enjoyment, the owner, who allowed such nuisance against his land plot or other real estate, is entitled to claim relevant, adequate monetary compensation from the owner of the neighbouring land plot.

It goes without saying, that nuisances can be of different type - it can be either material, as in the case of "penetration" onto the neighbouring land plot in the form of solid or liquid mass or immaterial - when nuisance is caused by some invisible material, smell, or vapour, e.g. gas leak, smoke, heat, noice vibration.[27]

Hence, according to Georgian law, when some nuisance is emanating from the neighbouring land parcel, what cannot be regarded as a material breach even from the point of view of an objective observer, such impact is non-essential. And contrary to the foregoing, the impact is essential, when an owner, living in the neighbourhood, neglects the interest of the neighbour, e.g. arranges a car-wash station in the garage, thus causing material restlessness in the neighbours.[28]

It is worth mentioning, that the law does not define whether what is an unacceptable nuisance and it is judicial practice, who has to answer this question. Furthermore, for instance, the air pollution conditioned by the activities of a neighbour, excessive noise, water discharge can be regarded as essential nui-

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23 E.g. Order № 297/N of the Minister of Labour, Health and Social Protection of Georgia on Approval of the Qualitative Environmental Standards of Tbilisi, dated 16/08/2001.

24 E.g. Code of Administrative Offences of Georgia, Article 77, Emission of harmful substances in atmosphere in excess to established standards or the absence of such standards and harmful physical impact on atmosphere, exceeding acceptable limits of harmful emission or/and temporarily approved limits of emission in atmosphere, the absence of these standards also the technical report on the inventory of the sources of pollution of atmosphere and hazardous substances emitted thereby and exceeding the established limits of harmful impact on atmosphere (amongst them of noise, vibration, electromagnetic fields) is punishable by fine in amount of five hundred to thousand GEL.

25 Comp. *Kropholler J.*, German Civil Code, Study Comments, *Chechelashvili Z.* (trans.), *Chachanidze E., Darjania D., Totladze L.* (eds.), Tbilisi, 2014, 690 (in Georgian).

26 Comp. *Prütting H.*, Sachenrecht, 36 aufl., München, 2017, 133.

27 Ibid, 130.

28 Comp. Decision of December 31, 2014 № AS-764-731-2014 Supreme Court of Georgia.

sance. Also, the arrangement of a mobile base station should require the permission of the neighbours. The so-called "sound pollution" is very frequent. The "acceptable" limit of voice is the level of voice, which does not cause material restlessness of a human being.[29] Normally, the noise pollution level should not exceed 40 decibels from 07:00 am. till 23:00 pm. and 30 decibels after 23:00 pm.

5. Perfect Emissions

Modern European literature widely disputes[30] the admissibility of nuisances stemming from a neighbouring land plot, that contradict "human feelings", their morale, ethics.[31] In legal literature an example of the foregoing is an unpleasant view from the neighbouring land plot, e.g. arrangement of a brothel or bordello; or depraved and immoral behaviour of the neighbours (e.g. walking naked in own yard). Overall, the question of such emissions is disputable and judicial practice is non-sequential. In certain cases a recourse can be made to provisions on the abuse of power.[32]

6. Local Rules and Traditions

When assessing the question of exceeding the limits of acceptable nuisance the account should necessarily be taken of the limits set according to local traditions. As a general rule, the case concerns car noise, hanging out of a flag in a yard, various yard games, operation of a lawn-mower, etc. It is widely accepted that while assessing these situations the account is taken of relevant rules of local public order. The absence of obligation to tolerate essential nuisance in places concerned results in deployment of a negative action, envisaged by Part 2 of Article 172 of the CCG. Furthermore, it is important for the assessment to pay attention, whether or not the offender tried to prevent this nuisance through available for him economically justified means. If nuisance is essential, the owner is entitled to claim monetary compensation. A precondition for receiving monetary compensation is the existence of essential negative nuisance, also of violation against the neighbouring land plot through such nuisance, and the obligation to tolerate such nuisance emanating from a neighbouring land plot.

Some types of exposure are quite common in practice and thus are duly regulated by law.

7. Unacceptable Encroachment, Building Collapse Danger

A neighbouring land plot can be subjected to different types of nuisances and the legislation regulates only that part of these nuisances that are most widely known in practice. According to Article 176 of the CCG an owner of a land plot may demand the prohibition of erection and utilization of such buildings on neighbouring land plots that unacceptably encroach on the right to enjoy the land

[29] Observance of accepted levels of noise on the territory of Tbilisi is overseen by the Supervision Service of Tbilisi Municipality. Comp. Resolution № 1-2 of the Assembly of Tbilisi Municipality on Approval of the Regulations of the Supervision Service of Tbilisi Municipality, dated 12/01/2016.

[30] Comp. *Prütting H.*, Sachenrecht, 36 aufl., München, 2017, 130.

[31] Comp. *Iro G.,* Bürgerliches Recht, B. IV, Sachenrecht, 3 aufl., Wien, New York, 2008, 64.

[32] *Zoidze B.,* Georgian Property Law, Tbilisi, 2003, 113 (in Georgian).

plot and the foregoing is apparent from the very outset. It should be stressed that mentioned Article is of preventive nature and in the case of unacceptable encroachment, based on the interests of the owner guaranteed by this provision, subject to suppression of interference is the nuisance, emanating from the building constructed even in accordance with construction rules.[33] Furthermore, unacceptable encroachment means the construction or such exploitation of a building that exceeds the statutory scope of toleration neighbouring nuisances and endangers the owner of a neighbouring land plot to a certain extent.[34] Hence, in the case of observance of normative construction rules by a neighbour regarding the distance between constructions and the borderline of the land plot, also other preventive measures, that the provision can be applied only when "unacceptable encroachment" is actually present with all its elements.

According to the interpretation of the Court of Cassation offered in one of its cases, prohibition of exploitation of a high-risk fuel station can be based on the provision on unacceptable encroachment. It can be said, that given its legal nature Article 176 of the CCG again prevails over to Article 175, regulating the obligation to tolerate neighbouring nuisance, as it grants an owner of a land plot with the right to prohibit the construction or exploitation of a building when the following two preconditions are present: the right to enjoy the land plot is unacceptably violated and the foregoing is apparent from the very outset. According to the explanations of the Court of Cassation the above cumulative conditions generate the precondition for demanding the prohibition of exploitation of already constructed building, what is the stringent form of restring the right to property enjoyment. In this case the holder of the right to claim bears the burden to prove that his land plot is subjected to unacceptable encroachment in the case of exploitation of a fuel station. Only the fact, that the fuel station is the source of high risk cannot be regarded as a proof to the foregoing, as public law provides for its technical security requirements to these very end.[35]

Also, only the fact, that, e.g. a gas pipeline is the source of high risk, cannot become ground for dismantling constructions. As stated with regard to one of the cases, whereas a gas pipeline is a high-risk unit, the respective normative act provides for the rules of its protection and terms and conditions of regulation of protective zones. These provisions aim at the prevention of hazards emanating from or against this gas pipeline and determination of protective zones and provision for different terms and conditions of regulation serve these very purpose. Hence, only the fact, that a gas pipeline is a high-risk unit is not sufficient ground for prohibition of construction or exploitation of a building in the neighbourhood. The construction of such units is admissible when specific technical terms and conditions are abided by, the violation of which should be proved for it to be qualified as an unacceptable encroachment.[36]

Part 1 of Article 177 of the CCG provides for the right to demand the elimination of the danger of building collapse only when such danger may be emanating from the neighbouring land plot. In this case the owner may demand that the neighbour undertake necessary measures to eliminate the danger.

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33 Comp. Decision of May 25, 2014 № AS-122-116-2014 Supreme Court of Georgia.
34 Comp. Decision of March 22, 2012 № AS-40-38-2012 Supreme Court of Georgia.
35 Comp. Decision of July 15, 2016 № AS-413-396-2016 Supreme Court of Georgia.
36 Comp. Decision of October 29, 2013 № AS-526-500-2013 Supreme Court of Georgia.

In the case of exceptional circumstances, when the owner is avoiding the fulfilment of his obligations, the owner, who is facing danger is entitled to deploy self-assistance articles by way of analogy and relay on the rules on carrying out the duties of the other persons without assignment[37] as nobody is required to wait until the neighbouring building "falls on him". The responsibility also includes fixing expenses.[38] Furthermore, the law prohibits changing the direction of waters or ground waters passing through several land plots or such manipulation with waters what may result in the decrease or the amount of water or/and deterioration of its quality, also the encroachment upon natural flow of rivers.

8. Invasion into the other land plot during the construction works

Article 179 of the CCG provides for the case when an owner of a land plot unintentionally encroaches the boundaries of the neighbouring land plot. Crucial in this case is the mode of crossing the border: intentionally or as a result of negligent action. If the boundary was crossed intentionally the owner may relay on Article 172 of the CCG and demand the dismantling of the construction. If the boundary was crossed without an intention or gross negligence,[39] the law obliges the owner of the neighbouring land parcel to tolerate this nuisance on his land parcel as in this case the economic interest of the other party is involved, except for the cases, when he opposed the foregoing in advance or as soon as he became aware. Construction is a process and a party may unintentionally conduct certain works beyond the boundaries of his territory due to non-awareness of the exact outline of the boundary. Encroachment on border, if there is such, can easily be noticed by the neighbouring owner. Thus, the law obliges the owner, for whom it is important for his land plot not to be subject to any such nuisance, to immediately inform the other party about the encroachment on the border - in advance, as soon as a doubt has arisen about this danger or as soon as he became aware of the foregoing. In the case of failure of the owner to do so, he loses the right to demand dismantling of the construction erected on his land plot.[40] Hence, if the neighbour in breach is acting wilfully, then nothing will prevent demanding the suppression of negative nuisances caused by construction works. And if construction works are extended to the land parcel of the other owner without any intention, this demand can be upheld only when the neighbour whose rights were violated, laid a claim in advance or as soon as he became aware of the foregoing. But if he becomes aware of potential violation, but lays no claim immediately, the owner of the land plot, whose rights were violated should tolerated the nuisance concerned.[41] The neighbour encroaching the boundary is obliged to pay monetary compensation, which should be paid in advance on an annual basis. Furthermore, in the case of deciding on compensation, no subsequent claim for restitution of old boundaries should not be satisfied.[42]

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37 Comp. *Zoidze B., Zarandia T.,* Check Your Knowledge, Cases in Property Law (Questions and Answers), Georgian Property Law, Tbilisi, 2003, 513 (in Georgian).

38 Comp. *Prütting H.*, Sachenrecht, 36 aufl., München, 2017, 139.

39 Comp. *Wolf M., Wellenhofer M.*, Sachenrecht, 31 aufl., München, 2016, 417.

40 Comp. Decision of November 28, 2016 № AS-142-138-2016 Supreme Court of Georgia.

41 Comp. Decision of October 30, 2015 № AS-36-33-2015 Supreme Court of Georgia.

42 Comp. Decision of September 16, 2002 № 3K-601-02 Supreme Court of Georgia.

Hence, Georgian legislation provides for a special provision to regulate cases of unintentional intrusion into the other land plot during construction works (CCG, Article 179), which provision aims at striking balance between the interests of the owners of the land plots and compensation of the obligation of the owner of the neighbouring land plot to tolerate through paying damages.[43] However, the Civil Code regulation concerns only the cases of unintentional encroachment. Hence the jurisprudence boldly confirms, that every construction, intentionally erected on the territory of the other owner land plot, against the will of the latter, is subject to dismantling. *Prima facie*, if we recognise the inviolability of property right and absolute and special nature of property, we should also recognise the right to claim the dismantling of the construction, crossing the border, irrespective of mental attitude of a perpetrator towards this fact (was it an intentional act or negligence). Actually, allowing the maintenance of erected construction, even in lieu of payment of compensation, is equal to allowing expropriation not in favour of the state, but rather of the other private person. Hence, when a builder has no direct intention to encroach upon and misappropriate the neighbouring land plot, this should explicitly lead the former to dismantling of the construction. Hence the owner has the absolute right to protect the integrity of his property against his neighbours.[44]

9. Easement by necessity

Under Article 180 of the CCG, when a land plot has no access to public roads, power grid, oil, gas and water supply system its due enjoyment, the owner is entitled to request for the neighbour to tolerate the enjoyment of his land parcel to ensure such necessary utilities. The main purpose of this regulation is for any land parcel to have necessary access to public roads and necessary utilities even when such utilities are not located on directly adjacent or neighbouring land plot. The foregoing can be requested only by the owner and not possessor of the land plot from the neighbour, whose land plot allows for the shortest and most reasonable access to public road or utility.[45] Furthermore, the right to easement by necessity implies single-option cases and should be conditioned by certain "urgency"[46]. This road should be important for ensuring the necessary access to the main land plot.

Hence, Article 180 provides for terms and conditions of statutory binding, in the case of existence of which the neighbour is required to tolerate encumbrances, his land plot is subjected to due to easement by necessity. Furthermore, these encumbrances should be conditioned by objective factor, specifically, when the land parcel is fully isolated from the public road or the major part of it is landlocked, or when there was as a road necessary for its due enjoyment but currently it cannot be used to this end. The necessary road implies not only a path, a footpath, but also a motor-way. The right to easement by necessity can be employed for the passage of a pipeline.[47] The right to connect to a public road is a statutory

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43 Com. *Totladze L.,* Article 174, Commentary on Civil Code of Georgia, Law of Things (Property), *Chanturia L.* (ed.), Tbilisi, 2018, 91-92 (in Georgian).

44 Com. *Capitant H., Terré F., Lequette Y.,* Les grands arrêts de la jurisprudence civile, Tome I, 11e ed., Dalloz, 2000, 334-338.

45 Comp. *Wolf M., Wellenhofer M.,* Sachenrecht, 31 aufl., München, 2016, 421.

46 Comp. *Prütting H.,* Sachenrecht, 36 aufl., München, 2017, 140 ff.

47 Comp. Case on the passage of Baku-Tbilisi-Ceyhan pipeline, qualification as a necessary road and exclusion of construction and easement. Decision of April 21, 2005 № AS-1416-1548-04 Supreme Court of Georgia.

right and it cannot be restricted.[48] In judicial practice the right to easement by necessity is proved by various evidences, including an expert opinion.

It should be stressed that only the comfortable connection cannot be used as an argument for easement by necessity. What is more, without this necessary road the marketability of the land plot should be unjustifiably decreased.[49] Article 180 of the CCG is applicable to power, gas or water supply systems, also in the case of the Internet and other means of communication. This right applies both to land plots and constructions. Judicial practice with this regard is mostly uniform, the easement by necessity is employed for ensuring the access to public road or connection to utilities when the land plot is landlocked and there is no connection. The right to request easement by necessity should be conditioned by objective conditions - the owner should be unable to enjoy own land plot without encumbrance of the neighbouring land plot. The property right can be limited only in such cases of enjoyment of others' property.[50] The neighbours, whose land plots are crossed by necessary road or utility system, should be paid the adequate compensation, which can be made as a lump-sum payment. The amount of compensation is determined through mutual agreement of the parties, but if the compensation is determined by court, it should be reasonable and should not impose excessive burden on the party. In one of its cases the Supreme Court of Georgia found that imposition of 200 GEL as a compensation for tolerance of easement by necessity was not reasonable as this would have taken the person, responsible for compensation over a rough road.[51]

Furthermore, the obligation to tolerate easement by necessity will not arise if there is no connection as for this moment, but the earlier existing connection was eliminated due to wilful actions of the owner.

10. Conclusion

As mentioned above, Georgia went through the reception of German property law, however the reception concerned the basic structures of regulation in the very first place.[52] The transposed rules were considerably simplified during the process of reception, what goes true with the part of the law of neighbouring tenements. As a result of such simplification the reception did not cover quite a number of details, which *prima facie* seem to be of accessory nature, but relatively in-depth analysis demonstrates that these details maintain the balance of interest, which is embodied in German model. However, requirements concerning unacceptable encroachment and suppression of danger are widely applied in Georgian judicial practice and acquire specific legal meaning in specific court decisions.

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48 Comp. Decision of March 6, 2012 № AS-1732-1713-2011 Supreme Court of Georgia.

49 Comp. *Wolf M., Wellenhofer M.,* Sachenrecht, 31 aufl., München, 2016, 421-422.

50 Comp. Decision of May 24, 2011 № AS-102-100-2011 Supreme Court of Georgia.

51 Comp. Case 20 GEL instead of 200 GEL, Decision of October 5, 2005 № AS-328-648-05 Supreme Court of Georgia.

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