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Property Rights and Duties of De Facto Spouses

According to the Article 1151 of the Civil Code of Georgia, the personal and property rights and duties of spouses arise only from a marriage registered in accordance with the legislation of Georgia. Nevertheless, there are frequent cases of de facto family cohabitation outside of marriage between men and women, which, due to the legal ignorance of its consequences, usually causes damage to the property interests of the parties to the relationship. The purpose of the present study is to identify and legally assess the problematic aspects of the property rights and duties of de facto spouses. In particular: the social/legal nature of expenses incurred during the de facto family cohabitation outside of marriage; Issues related to determination of ownership regime of the property acquired during the de facto relationship; Problems arising from de facto spouses' use of each other's property; Legal basis for material support of the parties from each other and inheritance tendencies.

Keywords: *De facto spouses, de facto family cohabitation outside of marriage, property rights and obligations, expenses incurred during the cohabitation, property acquired during the cohabitation, use of each other's property by de facto spouses, use of housing, legal basis for receiving material support, inheritance.*

1. Introduction

According to the first part of article 1158 of the Civil Code of Georgia (hereinafter referred to as – the CCG)[1], the property acquired by the spouses in marriage is their common property, unless otherwise is provided by the marriage contract between them. It should be noted that the law does not provide the same presumption regarding the property of de facto spouses, since according to article 1151 of the CCG, the rights and duties of spouses arise only from a marriage registered in accordance with the rules established by the legislation of Georgia.[2] Moreover, the fact of being in de facto family cohabitation outside of marriage has no qualifying significance at all in order for the property acquired during the relationship to be recognized as the common property of its participants. It turns out that the formal approach to the definition of family relations is not in line with the essence of these relations and the practice established by the European Court of Human Rights.[3] Accordingly, in respect of property acquired by de facto spouses, unless they have defined their common ownership regime in an

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1 The Parliamentary Gazette, 31, 24/07/1997.

2 The Ruling of May 15, 2008 of the Chamber of Civil, Entrepreneurial and Bankruptcy Cases of the Supreme Court of Georgia on the Case №As-968-1269-07, Motivational Part – rights and duties do not arise on the basis of crucifixion either. The crucifixion performed by the church will not have any legal consequences.

3 Johnston and Others v. Ireland, [1986], ECHR, 56.

agreement performed in accordance with the law[4], the share of each should be determined based on the general principles of the CCG – according to the extent of their participation in the acquisition of common property.

The issue of real estate is less problematic as it is a subject to registration and both de facto spouse can register the property right when purchasing an item. With regard to movable items, the issue is relatively difficult. De facto spouses often do not keep a list of movable items purchased together. Consequently, neither the amount of their participation in the purchase of property is recorded.

It is important to note that in the case of de facto family relationships outside of marriage, when dividing common property, participating in the management of family affairs, as well as covering household expenses, will not be taken into account without the appropriate agreement of the parties.[5] Also, except the property that is not even considered the common property of the spouses according to article 1161 of the CCG, in case of de facto family cohabitation outside of marriage, neither the salary of de facto spouses nor income from entrepreneurial activities, income from intellectual activities, pensions/stipends and so on should be considered as common property.[6]

The practice of determining the shared ownership of the property of de facto spouses after the acquisition of the property, depends significantly on their ability to prove the existence of an agreement between them on the purchase of the said property under the relevant regime, which is usually done by expressive conclusive will,[7] or at best, orally.

The opposite approach to the above is provided, for example, by the Family Code of Ukraine. According to the first part of article 74 of this code, if a woman and a man live in the same family, but are not married, the property acquired by them during the cohabitation is their common joint property, unless otherwise is provided by a written agreement between them. According to this norm, the only object of proof is the fact of being in such a relationship and the moment of its origin. Part 2 of the same article stipulates that such property is subject to the rules provided for in chapter 8 of the code, which deals with the joint property of married spouses.

The constitutional claim №1351 submitted to the Constitutional Court of Georgia on September 12, 2018 appeals against the constitutionality of the normative content of Article 1151 of the CCG, which stipulates that "the rights and duties of the spouses arise only from a marriage registered in accordance with the rules established by the legislation of Georgia." The factual basis of the claim became the circumstance that the plaintiff was not considered as the legal heir of her deceased de facto spouse.

According to the rules established by the legislation of Georgia, a de facto spouse, unlike the spouses in marriage, has no right to apply to the court for declaring other de facto spouse missing or

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4 The CCG, Article 173, Part 1 – According to this norm, the participants of the de facto family cohabitation outside of marriage, on the basis of a transaction, can have both common (joint and shared) property.

5 Norway has a different approach to this issue. See. Paragraph 3 of this article.

6 Comp. *Belov V. A*., Civil Law, Special Part, Vol. III, Absolute Civil Legal Forms, Moscow, 2013, 235 (in Russian).

7 *Baghishvili E*., Commentary of the CCG, Book III, Tbilisi, 2019, Article 328, Field 3 (in Georgian).

dead. Recognition of a person as missing or dead is related to the following property relations: property management, alienation, inheritance, etc.[8]

The part 16 of article 8 of the Tax Code of Georgia does not consider a de facto spouse as a family member for the purposes of the tax legislation. Accordingly, the de facto spouse is not the subject to the benefits provided by the relevant legislation, that are provided for those spouses who are married. Also, in the event of the death of a breadwinner and a family member provided for in article 5 (1) (d) and (e) of the Law "On State Compensation and State Academic Stipends" of Georgia, the beneficiaries receiving compensation and the State stipend may not be de facto spouses.[9]

In light to the above mentioned problems, the purpose of the present study is to identify and legally assess the problematic aspects of the property rights and duties of de facto spouses based on the comparison of the named social institution with the marriage, as to the most similar legal institution, based on analysis of the general principles of law and the review of foreign practice. In particular: the social / legal nature of the expenses incurred during the de facto family cohabitation outside of marriage; Issues related to the determination of the ownership regime of the property acquired during the de facto relationship; Problems arising from the de facto spouses' use of each other's property; Legal basis for material support of the parties from each other and inheritance tendencies. This study will provide an important theoretical basis for the problematic aspects of the property rights and duties of de facto spouses, that will help to eliminate the negative legal consequences of the relationship, based on the understanding of the issues discussed in this article by the participants themselves. This, in turn, will help to identify possible mechanisms for the legal development of the institute.

2. Expenses Incurred During the Cohabitation

The first clause of article 8 of the European Convention on Human Rights protects the right of free development of a person, which includes the right to establish relations with other people.[10]

According to the Constitution of Georgia, "the people and the state are limited in the exercise of power ... with rights and freedoms as directly applicable law." It is true that people's freedom limits the government, but people often expect more from the state than to refrain from interfering in their freedom.[11]

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8 *Abramishvili L., Gugava A*., Unregistered Marriage and its Legal Regulation, Justice and Law Journal, № 3 (63), 2019, Field 10 (in Georgian).

9 The Law of Georgia "On State Compensation and State Academic Stipends", LHG, 56, 28/12/2005, Article 18, Clause 2; Article 22^1, Clause 3.

10 Niemietz v. Germany, [1992], ECHR, 29; Pretty v. the United Kingdom, [2002], ECHR, 61, 67; Oleksandr Volkov v. Ukraine, [2013], ECHR, 165-167.

11 *Lomtatidze E*., Constitution of Georgia and Freedom: Freedom from the State or Freedom in Society ?, The Constitution of Georgia 20 Years Later, Tbilisi, 2016, 175 (In Georgian).

In a number of decisions made since 2010, the Constitutional Court of Georgia has discussed freedom of personal development as freedom by nature.[12]

Regarding the right to free development of a person protected by article 12 of the Constitution of Georgia, the Constitutional Court of Georgia clarifies that it protects the freedom of a person to manage his own inner world at his own discretion and to establish and develop relations with the outside world by his own decisions.[13] Coercion of a person and interference with his freedom is allowed only to avoid harm to other people. In a behavior that only concerns him, his independence is unconditionally absolute.[14]

The approach of the Supreme Court of New York is interesting. In particular, it does not recognize implicit (conclusive) agreements between cohabitants about alimony as well as about property when it is based on a complainant who provided certain "services", e.g. managing family affairs. The Court notes that the fact that all this was done for free and without compensation makes this process natural. The Michigan court shares the same position.[15]

In conclusion, the costs incurred by a de facto spouse without the agreement of the parties should be understood as actions taken by him/her for the purpose of free development.[16] Consequently, such a de facto spouse has no legal basis to claim reimbursement of material or intangible expenses incurred by him / her, since its performance was a natural process, which was conditioned by his/her own internal needs. However, if a de facto spouse receiving the benefit will carry out a reciprocal performance, which will be the reason for his/her receipt of the benefit, he/she can no longer demand a refund, as his/her performance was based on moral duties.[17]

It should also be noted that the rule provided by the CCG, in certain cases, may still apply to a de facto spouse who is spending within the scope of natural freedom. In particular, the article 987 of the CCG deals with the payment of expenses on the property of another person and stipulates that the obligation to reimburse the expenses intentionally or by mistake incurred on the property of another person arises only if that person is enriched by it, and if the fact of enrichment is not visible, then only spending does not give an obligation to pay.[18] Also, under the article 163, part 2 of the CCG, a bona-fide possessor may claim from an authorized person compensation for the improvements and expenses

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12 Ibid, 179, see citation: The Judgment №2/4/532,533 of the Constitutional Court of Georgia of October 8, 2014 on the case "Citizens of Georgia – Irakli Kemoklidze and Davit Kharadze v. The Parliament of Georgia", II, 5; The Judgment №2/1/572 of the Constitutional Court of Georgia of July 31, 2015 on the case "The Public Defender of Georgia v. The Parliament of Georgia", II, 11.

13 The Judgment №2/4/532,533 of the Constitutional Court of Georgia of October 8, 2014 on the case "Citizens of Georgia – Irakli Kemoklidze and Davit Kharadze v. The Parliament of Georgia", II, 3.

14 *Lomtatidze E*., Constitution of Georgia and Freedom: Freedom from the State or Freedom in Society ?, The Constitution of Georgia 20 Years Later, Tbilisi, 2016, 181 (In Georgian).

15 *McCaffrey C.S*., The Property Rights of Unmarried Cohabitants in the USA, Trusts & Trustees, Vol. 24, №1, February 2018, 104.

16 *Duca R.,* Alimony in Divorce in the Italian Legal System, *Verschraegen B. (ed.),* Family Finances, Vienna, 2009, 447.

17 The CCG, Article 976, Part 2.

18 *Nachkebia A*., Definitions of Civil Law Norms in the Practice of the Supreme Court (2000-2014), Tbilisi, 2015, Case №As-711-666-2010 (in Georgian).

he has incurred during the bona-fide possession of the item and that is not compensated from the use of that item. Under the part 3 of the same article, a bona-fide possessor may refuse to return an item until its requirements have been met.

3. Property Acquired During the Cohabitation

Interesting are the similarities and differences between the legal mechanisms of protection of rights in relation to jointly acquired property in marriage and in de facto family relationships outside of marriage.

According to the CCG, a marriage contract defines the property rights and duties of spouses, both during the marriage and in case of divorce (the first part of article 1172). This agreement is made only between the future spouses or spouses. In case of future spouses, the contract enters into force upon registration of the marriage (article 1173).

In view of the above said, the participants of a de facto family cohabitation outside of marriage, intended to determine the property regime acquired during the relationship, can not enter into a marriage contract under the article 1172 of the CCG, although they can, within the scope of freedom of contract (article 319, part 1 of the CCG.), enter into a contract similar to this one.

Although contracts for the settlement of de facto family relations outside of marriage are often referred to as cohabitation or civil partnership contracts, they are mainly for the settlement of property issues. The study of the problems that accompany de facto family cohabitation outside of marriage revealed the expediency of concluding the above-mentioned agreement in writing in the following cases: 1) the relationship is likely to last a long time and they will have to run a common household; 2) either or both have significant financial assets; 3) joint financial investments are planned, for example: buying a house and/or running a joint business; 4) one cohabitant financially assists the other cohabitant; 5) one roommate moves into a house owned by another roommate. Also when they use other things belonging to each other; 6) They raise a child together and so on.

Regardless of whether de facto spouses enter into the above-mentioned agreement, when the couple buys real estate jointly during the cohabitation, it is better to have both co-owners in the written agreement on the purchase of the item in accordance with the law. Accordingly, the mode of jointly acquired ownership will be determined from the very beginning, and in the case of a share co-ownership, also the amount of each owner's share. It is desirable to indicate in the contract, if necessary, how the mentioned common property will be divided; whether parties will have the right of preferential purchase each other's share/ideal share, etc.

Adjusting the couple's daily expenses, which can also include buying movable items for common use, can be as follows – everything that de facto spouses buy should be recorded on their credit cards. Then, at the end of the month, they should review the completed transactions and assess what was consumed for their common needs and what for their individual needs were. In such a case, it is possible for the cohabitant, whose expenses for the common need are less, to reimburse the other cohabitant for the difference in expenses by paying the appropriate amount of money, which is better

to be done by bank transfer.[19] However, as practice shows, the longer relationship lasts, the more difficult it becomes to keep track of who spent how much for common needs.[20]

The French law recognizes a "Civil Covenant of Solidarity", that is concluded by two adults for cohabiting purposes.[21] The subject of this agreement may be the definition of a common property regime in respect of household items that persons acquire after the conclusion of a civil covenant of solidarity in exchange of a payment fee. According to the covenant, if the parties do not/can not prove that the acquired property is the property of any of them, or what share of this property belongs to each of them, it will be considered that they have a common joint ownership right over it.[22]

In Switzerland, de facto spouses can enter into an agreement to settle property issues, although it is unclear to what extent such agreements are free. If the couple does not have concluded the above mentioned agreement, the general provisions of the law of obligations or property law apply. It should also be noted that the Swiss Federal Supreme Court has rejected the analogous application of property related norms from family law in relation to informal relationships.[23]

The purpose of the Swedish Cohabitation Act 2003 is to protect the interests of the parties at the end of cohabitation with regard to shared housing and household items, regardless of who paid the fee for them and also if they did not have an agreement on common financial matters.[24] Cohabitants do not have the right to alienate or otherwise legally encumber dormitories and household items without each other's permission.[25] The cost of dormitory and household items may be split, although they must exist at the end of the relationship.[26] When a division of property occurs, the funds that will cover the total debts must be allocated first.[27] Then the value of the remaining asset should be divided equally between them.[28] In case of excess of shares during the division, the respective partner can choose – to transfer the property to the other, if he pays in return.[29] In addition, cohabitants can agree that property rules contained in the Swedish Cohabitation Act do not apply to their relationship. They may also agree that the designated property will not be subject to division. This agreement is in writing and is signed by both parties (registration and notarization is not required).[30]

Norway is the only Scandinavian country where co-ownership can be established by indirect contributions to the acquisition of property by cohabitants. E.g. Managing household chores, or covering other household expenses.[31] While cohabitants do not agree on who should be considered the

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19 *Solot D., Miller M.,* Unmarried to Each Other, NY, 2002, 134.
20 Ibid, 135.
21 The Civil Code of France, Article 515-1, 21/03/1804.
22 The Civil Code of France, Article 515-5, 21/03/1804.
23 *Schwenzer I., Keller T.,* Informal Relationships, National Report: Switzerland, February 2015, Section 3.
24 The Swedish Cohabitees Act (2003:376), Sections: 3, 5, 6.
25 Ibid, Section 23, Para.: 1-4.
26 Ibid, Section 3, 7.
27 Ibid, Section 13.
28 Ibid, Section 14.
29 Ibid, Section 22, Para.3.
30 Ibid, Section 9.
31 *Sverdrup T.*, An Ill-Fitting Garment: Why the Logic of Private Law Falls Short Between Cohabitants, *Verschraegen B. (ed.),* Family Finances, Vienna, 2009, 360.

owner of the purchased item, co-ownership is based on what the parties contributed to its purchase. If both cohabitants made a direct monetary contribution to the purchase of the item needed for common use, it is implied that they entered into a conclusive co-ownership agreement, even though in reality the buyer of the item may be only one. This view is counterbalanced by the position that in certain cases such a monetary contribution may have served to make a gift or to lend.[32] Also, not only direct but also indirect participation in the acquisition[33] is taken into account if one of them was in charge of the family affairs and in the division of property stated that he was thus helping the other party to make savings, work more and develop his career. The ex de facto spouse who will make the last claim will have to prove what achievements his partner would have made if he had not taken over the family affairs.[34]

According to the 2003 Albanian Family Code, cohabiting partners are only liable if they sign a cohabitation agreement in the presence of a notary, which sets out the consequences of cohabitation regarding the children and the property assets they acquire during their cohabitation.[35]

In New Zealand, the Property (Relationship) Act has been in force since 1 February 2002. This act applies to marriages as well as to civil unions and de facto couples. This legal act legally recognizes the property rights of unmarried cohabitants[36] and stipulates that property acquired by the parties during cohabitation is usually divided equally between them.[37] Prior to the enactment of this Act, property disputes between de facto spouses were settled in accordance with the general rules of the contract and the norms of fiduciary law.[38]

The California Supreme Court in 1976, in the case of Marvin v. Marvin, limited the scope of the Doctrine of Lawlessness, as extant of an act against public order about property agreements between de facto spouses and upheld several fair remedies to settle relevant property disputes.[39]

In the above case, plaintiff Triola and defendant Marvin lived together continuously for 6 years without marriage. Property acquired during this time was recorded only as the property of the defendant. After their relationship ended, Triola filed a claim that on the basis of an oral contract entered into with the defendant, he owned half of the acquired property and was entitled to the right of support. The court clarified that it would not reject similarly expressed agreements unless it was established that the agreement was based solely on sexual services. In the same judgment, the Court

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32 *Sverdrup T.*, An Ill-Fitting Garment: Why the Logic of Private Law Falls Short Between Cohabitants, *Verschraegen B. (ed.),* Family Finances, Vienna, 2009, 361.

33 Ibid, 365.

34 *Sverdrup T.*, An Ill-Fitting Garment: Why the Logic of Private Law Falls Short Between Cohabitants, *Verschraegen B. (ed.),* Family Finances, Vienna, 2009, 364.

35 The Family Code of Albania, 8/05/2003, Article 164.

36 The Property (Relationships) Act 1976 of New Zeland, 14/12/1976, 1C (1).

37 Ibid, 1C (4).

38 *Briggs M.*, The Formalization of Property Sharing Rights For De Facto Couples in New Zeland, *Verschraegen B. (ed.),* Family Finances, Vienna, 2009, 329.

39 Harvard Law Review Association, Property Rights Upon Termination of Unmarried Cohabitation: Marvin v. Marvin, Vol. 90, №8 (Jun., 1977), 1708. <http://www.jstor.org/stable/1340491> [07.04.2020].

also held that the property acquired during the period of cohabitation should be divided between the parties even when the conclusive action of the parties attests to that purpose.[40]

The Supreme Court of Washington ruled in 1995, in a case against Connelly v. Francisco, that upon the dissolution of an unmarried couple, there is a presumption that the courts have the power to divide the property acquired during the cohabitation equally between them.[41] Default (conclusive) agreements are quasi-agreements. These agreements are obligations created by law to prevent unjust enrichment of one party at the expense of the other.[42] E.g. The Supreme Court of New Jersey ruled in 2002, in the Rocomonte case, that an implied promise of survival was enforceable from the heir's estate.[43]

It is important to discuss how de facto spouses should divide their common property if they desire. Generally, termination of common joint property occurs when such ownership changes regime and property becomes common shared. Shared common property arising in this way may, in turn, be changed or terminated upon separation of the share in kind from the object, if it allows separation. Also, joint common property may be terminated: at the death of the co-owner, if the right of co-ownership is not inherited; When the co-owner is declared missing or dead; When divorcing.[44]

Each co-owner has the right to request the separation of shares in kind from the common item, which must be done by an agreement of the parties. When the terms of the allocation cannot be agreed, the co-owner can apply to the court for the allocation of his share. The allocation of shares may be made in kind, or by its corresponding monetary compensation, if the allocation of shares in kind is not allowed by law, or such allocation will lead to a significant deterioration of the condition of the item. In this case, the co-owner who requests the allocation is entitled to receive the corresponding monetary compensation for his share. Instead of allocating the share in kind, the court may determine the compensation against the will of the owner wishing to allocate it, when his share is insignificant, or the share can not be actually allocated, and at the same time he has no significant interest in using the property. In case if separation in kind is possible, however, in case of separation, the co-owner wishing to separate will not be able to get the corresponding share of his share, or on the contrary will exceed his share, in such case the corresponding monetary or other compensation will be provided.[45]

In case when cohabitants have created a common business they can also split the business. If the parties fail to agree on the division, the case may be discussed by a court.[46]

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40 Ibid, 1709.

41 *McCaffrey C. S.*, The Property Rights of Unmarried Cohabitants in the USA, Trusts & Trustees, Vol. 24, №1, February 2018, 101.

42 Ibid, 103.

43 *McCaffrey C. S.*, The Property Rights of Unmarried Cohabitants in the USA, Trusts & Trustees, Vol. 24, №1, February 2018, 104-105.

44 *Belov V. A.*, Civil Law, Special Part, Volume III, Absolute Civil Legal Forms, Moscow, 2013, 236-237 (in Russian).

45 Ibid, 233-234.

46 *Agallopoulou P.*, Financial Consequences of Cohabitation Between Persons of the Opposite Sex According to Greek Law, *Verschraegen B.(ed.),* Family Finances, Vienna, 2009, 298.

The Civil Chamber of the Supreme Court of Georgia has stated in one of its most recent rulings that the provision of the third part of article 1109 of the CCG "reflects the established tradition that relatives of the couple wishing them happy future marriage, are providing special gifts for them as they think that after a certain period they will marry. However, the legislator, in accordance with the provision of article 1151 of the CCG, does not link the fact of engagement to any binding legal consequence and sets the procedure for returning the engagement gift (which is often expensive) to the parties. "Detecting of de facto 'family life' in other cases, such as detecting paternity or the relationship between parents and children, may have legal implications[47] (comp. The European Court of Human Rights Judgment №18535/91 of 27 October 1994 in Kroon and others v. The Netherlands) and not in an engagement dispute."[48]

4. Use of Each Other's Property by De Facto Spouses

The use of one de facto spouse's property by another de facto spouse can also be problematic. During the period of de facto cohabitation outside of marriage, the non-owner de facto spouse may invest labor or financial capital in this property. In this case, it is necessary to find out whether any rights arise for a de facto spouse in the same way as during the marriage a spouse acquires (see the article 1163 of the CCG. Also, article 987, part 1). In this case, the de facto spouses' shared common property regime arises only when there is a relevant agreement between them. As a rule, de facto spouses do not enter into an agreement on the use of each others' property and there is only bona fide possession.

Greek scholars have suggested that marriage norms may be extended to cohabitation by analogy. In particular, they believe that the rule relating to marriage, that one spouse's contribution to the improvement of another spouse's property gives him or her certain rights, should also apply to cohabitation. Of course, if such a de facto spouse can approve the made improvements.[49]

According to the analysis of article 62 of the Family Code of Ukraine, the legal regime of commom property also includes the property of de facto spouses, which they owned before cohabitation, if the value of such property during their cohabitation increases significantly.

One of the most important issues when using each other's property by de facto spouses is the issue of housing use. Living together usually means enjoying the same living space. If the dwelling is owned jointly or by shared common property regime, then de facto spouses have joint rights to use it. It is advisable to assess the legal basis for living in a home owned by one de facto spouse.

According to the first part of article 155 of the CCG, possession arises from the voluntary acquisition of de facto possession on an item. The will to own means not the will determined for the authenticity of the transaction, but only the natural will of the person as it relates to the actual

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47 Comp. The Ruling of February 8, 2019 of the Chamber of Civil Cases of the Supreme Court of Georgia on the case №As-1251-2018, 19.

48 The Judgement of October 24, 2019 of the Chamber of Civil Cases of the Supreme Court of Georgia on the case №As-205-2019, 15-16.

49 *Agallopoulou P.*, Financial Consequences of Cohabitation Between Persons of the Opposite Sex According to Greek Law, *Verschraegen B.(ed.),* Family Finances, Vienna, 2009, 295-296.

possession of the thing.[50] One method of gaining possession is when an original owner allows to the new owner to possess the item, which may involve their co-ownership of the item.[51]

The Chamber of Civil, Entrepreneurial and Bankruptcy Cases of the Supreme Court of Georgia did not share cassator's opinion in one of its rulings. In particular, according to cassator, since he had been in an unregistered marriage with one of the defendant since 1994 and lived with him in the disputed apartment belonging to the other defendant (the de facto spouse's father) as a family member of the defendants', therefore, according to articles 159-162 of CCG, he had to be considered a bona fide possessor and thus his claim for the use of the apartment had to be satisfied. The Court of Cassation pointed out that although the cassator had settled in the disputed apartment with the permission of the homeowner and thus he should have been considered a bona-fide possessor, article 168 of the CCG provides termination of ownership for a bona fide owner if the owner makes a reasoned claim. In the present case, the chamber considered that the disputed apartment owner's claims against the plaintiff for the termination of ownership were substantiated, since he, as the owner and a person with a better right to possession, could refuse to extend the possession by the plaintiff.[52]

In connection with the use of each other's housing by de facto spouses, it should also be mentioned about article 571 of the CCG, according to which, if a tenancy agreement is concluded for a dwelling place and the tenant manages his/her common household together with his/her family members, then in the case of tenant's death, his/her family members shall enter into the legal relation with the landlord. They may terminate the tenancy agreement within the term determined by law. In this case, a de facto spouse must be considered as a member of the tenant's family and be given the right to exercise the given right. A similar approach is taken under the Italian law, according to which a de facto spouse is not entitled to claim for using the deceased de facto spouse's house, although he or she can replace the deceased de facto spouse as the tenant in the tenancy agreement.[53]

5. Legal Basis for Receiving Material Support

In case of a marriage, the issue to provide material support by spouses for each other, is determined by the law or by an agreement (article 1182 of the CCG). The relevant norms of the CCG can not be applied to de facto spouses, as family law recognizes only the marriage as the basis for arising these powers between a woman and a man (article 1151 of the CCG).[54] In addition, articles of the CCG that set out the alimony obligations for other family members (articles 1223-1231) apply to specific subjects of the family and also can not be used in favor of de facto spouses. At the same time, an agreement similar to the one provided for in article 1182 of the CCG can be concluded on the basis

50 *Totladze L.*, Commentary of the CCG, Book II, Tbilisi, 2018, Article 155, Field 8 (in Georgian).
51 Comp. ibid, Field 9.
52 The Ruling of October 25, 2002 of the Chamber of Civil, Entrepreneurial and Bankruptcy Cases of the Supreme Court of Georgia on the case 3K-731-02, motivational part.
53 *Panforti M.D.*, Informal Relationships, National Report: Italy, Section 49.
54 See: *Chikvashvili Sh.*, Family Law, Tbilisi, 2004, 26 – "One of the basic principles of family law is only the principle of recognition of a marriage registered in the relevant state body" (in Georgian).

of the principle of freedom of contract (the first part of article 319 of the CCG). With regard to such an agreement, it is important to assess which legal norms should apply to it.

The use of alimony norms by analogy is debatable, as the subjective composition of the said relationship is limited to those persons who are obliged under the family law norms to pay alimony in favor of their family members. In addition, the norms applying to alimony relations provided by the family law may even be considered as special (exceptional norms). Consequently, since it is not recomended to use the analogy of law, the relationship under the article 5 of the CCG should be regulated on the basis of general principles of law (analogy of justice).

A contract about material support is closest in its content to the contract of a gift, since as a gift, also the maintenance is carried out without compensation, and like gifts, the subject of material support during the maintenance is transferred to the de facto spouse's ownership. A promise to make a gift in the future, in accordance to article 525, part 3 of the CCG, obliges the person who made such a promise, if it was made in writing and notarized.[55] However, promising a gift does not actually mean making a gift, it gives rise to an obligation under the gift contract in the future. Accordingly, the gift obligation must be realized in the new gift contract, which must be in writing.[56] With regard to the maintenance agreement, concluding a new written gift contract on a monthly basis (to confirm that the promises have been fulfilled) will significantly complicate the process. However, applying the norms of gifts to the de facto spouse in relation to the issue under consideration may even put him or her in a better position than the spouse in the marriage. E.g. The obligation of the giver of the gift may be transferred to his heirs, if this is provided for in the contract of the promise of gifts, while the obligation to pay alimony is not transferred to the heirs of the defendant. Therefore, it is better to apply the general rules of the transaction provided for in the CCG to the maintenance agreement.

According to article 515-4 of the Civil Code of France, cohabitants must provide material assistance to each other in accordance with the terms of their civil covenant.

Under the Dutch law, in the event of separation, no alimony/maintenance duties are incurred by the partners towards each other, but these issues are usually covered by the cohabitation agreement.[57] In addition, in terms of the Dutch income taxes, couples enjoy the status of partners if their cohabitation agreement includes a mutual obligation of support and the partners are not relatives of each other's lateral (straight) line; none of the partners is a third party's partner.[58]

Under the article 1444, part 2 of the Greek Civil Code, in the event of separation, a party loses the right to alimony if he or she either marries another or cohabites permanently in a free union. It is also interesting to note that under the Greek Civil Code, cohabitation agreements are made within the framework of freedom of contract, which implies that they are not subject to the norms of Greek family law.[59]

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55 *Shengelia R.*, Commentary on the CCG, Book Four, Vol. I, Tbilisi, 2001, Article 525, 70 (in Georgian).

56 Ibid, Article 525, 71.

57 *Koele I.*, Property Rights of Unmarried Cohabitants in the Netherlands, Trusts & Trustees, Vol. 24, №1, February 2018, 118.

58 Ibid, 119.

59 *Agallopoulou P.*, Financial Consequences of Cohabitation Between Persons of the Opposite Sex According to Greek Law, *Verschraegen B.(ed.),* Family Finances, Vienna, 2009, 293-294.

Under the Italian law, de facto cohabitation, although it may be stable and long-lasting, does not give rise to rights and duties from an old/ended relationship.[60]

According to the first part of article 91 of the Family Code of Ukraine, a de facto spouse, like a spouse from a marriage, has the right to claim alimony under certain conditions, both as during the cohabitation and in case of its dissolution.

6. Inheritance Right

Pursuant to article 1336 of the CCG, the spouse is the first-degree heir of a deceased spouse, who has been granted by law the right to inherit, claim benefits, a pension for the loss of a breadwinner, and compensation, if appropriate circumstances. Also, unpaid salary, vacation money, hospital stay fees, etc.[61]

The Civil chamber of the Supreme Court of Georgia, in one of its rulings, failed to confirm cassator's marriage to deceased in accordance with the law and did not consider her as his first-degree heir. Therefore, the chamber did not consider her to have personal and property rights toward deceased's property.[62]

In view of the above said, there is an unjustified risk in the event of cohabitation if no will is drawn up by each de facto spouse, as the survived de facto spouse, in the absence of the will, will not receive a share of the deceased's inheritance.

De facto spouses may benefit from article 1385 of the CCG, according to which the testator has the right to charge the heir to whom the house, apartment or other dwelling devolves, to transfer the right of life tenancy to a person who lived with the testator for not less than one year prior to the opening of the estate.

It is interesting to note the interpretation of the European Court of Human Rights that a couple who are only in a religious "marriage" is treated under the article 8 of the European Convention on Human Rights, although this does not oblige a contracting state to recognize such a marriage in connection of inheritance rights, with respect to pension, etc.[63]

According to article 4:82 of the Dutch Civil Code, a testator is entitled to grant certain advantages compared with his or her heirs entitled to get compulsory portion from the inheritance. In addition, within 6 months after the death of a de facto spouse, the partner has the right to use the dormitory and household items if they had a common dormitory.[64] Couples also enjoy the status of

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60 *Panforti M.D.*, Informal Relationships, National Report: Italy, Section 47.

61 *Abramishvili L., Gugava A.*, Unregistered marriage and its legal regulation, "Justice and Law Journal", № 3 (63), 2019, field 8 (in Georgian).

62 The Ruling of November 22, 2019 of the Chamber of Civil Cases of the Supreme Court of Georgia on the case №AS-1153-2019, 21, 15.13.

63 Şerife Yiğit v. Turkey [2010], [GC], ECHR, 97-98, 102.

64 *Koele I.*, Property Rights of Unmarried Cohabitants in the Netherlands, Trusts & Trustees, Vol. 24, №1, February 2018, 117-118.

partners for the purposes of gift and inheritance taxes if they are officially registered at one address and have a cohabitation agreement with a notary.[65]

According to the Greek model, the ability of a survived cohabitant to inherit a portion of the remaining property by will does not work only if the will harms the interest of the other heir with the right to receive compulsory portion of inheritance by significantly reducing his share. Also, a will will be void if the heir leaves a certain amount of money to the surviving partner due to the sexual relationship between them. In addition, the cohabitant is not obliged to cover the costs of treatment or funeral expenses. If he covers these costs and does not represent the heir by will, he can claim reimbursement of the costs from the inheritance in accordance with the norms related to volunteering[66], and if the partner is the heir, then he must reimburse the above costs according to his share from the inheritance.[67]

Under the Italian law, partners can not be each other's legal heirs and the only way to get each other's inheritance is to make a will.[68] However, in the latter case, the heirs at law receiving mandatory share should not be affected.[69]

7. Conclusion

In response to the set goals, the research conducted found that the expenses incurred during the de facto family cohabitation outside of marriage are usually covered within the free development of the parties. Accordingly, the de facto spouse has no a legal basis to claim for reimburcement of material or intangible expenses incurred by him/her, except in specific cases defined by the CCG (articles: 987; 163, parts 2-3), since its performance was a natural process, which was conditioned by his/her own internal needs and not by the agreement between the parties. However, if the beneficial spouse performs the reciprocal performance, which will be based for his/her receipt of the benefit, he/she can no longer claim for refund, as the compensation he/she provided was based on moral obligations (article 976, part 2, the CCG).

With regard to the determination of the legal regime of ownership of property acquired during the cohabitation, it was established that under the CCG, article 173, part 1, participants of a de facto family cohabitation outside of marriage, on the basis of a transaction, can have both common (joint and shared) property. The practice of determining the shared ownership of property of de facto spouses' after the acquisition of the property depends significantly on their ability to prove the existence of an agreement between them on the purchase of the said property under the relevant regime.

It's true that de facto spouses can not enter into a marriage contract under the article 1172 of the CCG, although they can, within the scope of freedom of contract (article 319, part 1 of the CCG.),

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65 Ibid, 119.

66 *Agallopoulou P.*, Financial Consequences of Cohabitation Between Persons of the Opposite Sex According to Greek Law, *Verschraegen B.* (*ed.*), Family Finances, Vienna, 2009, 299-300.

67 Ibid, 301-302.

68 *Panforti M.D.*, Informal Relationships, National Report: Italy, Section 47.

69 The Civil Code of Italy, 16/03/1942, Article 536.

enter into a contract similar to this one, that is preferable to be done in a written form. Based on the problems revealed in the study, it is recomended to conclude the above-mentioned agreement in writing in the following cases: 1) the relationship is likely to last a long time and parties will have to run a common household; 2) either or both de facto spouse have significant financial assets; 3) joint financial investments are planned, for example: buying a house and/or running a joint business; 4) one cohabitant financially assists the other cohabitant; 5) one cohabitant moves into a house owned by another cohabitant. Also when they use other items belonging to each other; 6) They raise a child together and so on.

When buying a real estate during the cohabitation, it is better to register it on the name of both de facto spouse, indicating the legal regime of ownership. And when buying movable items and covering other household expenses, it is best for de facto spouses to run an appropriate calculation at the end of each month. Disputes concerning the division of property between the parties shall be settled in accordance with the general principles and rules of law regarding the division of property. In case the cohabitants have created a common business they can split it too. If the parties fail to agree on the division of the common business, the case may be heared by a court.

If during the period of de facto family cohabitation outside of marriage, a non-owner de facto spouse invests labor or financial capital in the property of other de facto spouse, the de facto spouses' share ownership regime arises only if there was a relevant agreement between them.

According to the case law of the Supreme Court of Georgia, in case of actual use of each other's property (housing) by de facto spouses, the rules of the CCG related to the bona-fide possession are applied and, consequently, the rule of termination of such ownership due to the owner's claim.[70]

An agreement similar to the one provided for in article 1182 of the CCG can be concluded on the basis of the principle of freedom of contract (the first part of article 319 of the CCG). With regard to such an agreement, it should be applied the general rules of the transaction provided for in the CCG too.

Pursuant to article 1336 of the CCG, as de facto spouse is not the heir of deceased according the law[71], there is an unjustified risk that in the presence of a de facto family relationship, each de facto spouse will not make a will for each other's interests.

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