Ivane Javakhishvili Tbilisi State University
Faculty of Law

Journal of Law

№1, 2020

უნივერსიტეტის
გამომცემლობა

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"De Facto Marriage" - Nature, Term, Signs, Subjects and Concept

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. Different interpretation of the named norm contradicts its normative content. Nevertheless, there are frequent cases of "De facto marriages" between men and women, which, due to the legal ignorance of its consequences, leads to the appeal of the persons involved in the relationship to the judiciary bodies and to the interest of researchers of the field. The purpose of the present study is to compare the named social institution with marriage, as to the most similar legal institution to assess and determine the legal nature of cohabitation outside of marriage. In addition, to determine the full terminological designation of the relationship, the socio-legal features, the characteristics of its subject and according to all above said the concept of the relationship.

Keywords: *"de facto marriage", cohabitation outside of marriage, transaction, de facto public relation, de facto family cohabitation outside of marriage, absence of registration, living together, common household, de facto spouses.*

1. Introduction

According to the social tendencies of the last decades, the "family" can exist independently from the law. An increase in the number of divorces[1] may not indicate the unpopularity of marriages, but studies show that those who have never been in marriage, are more likely to choose cohabitation.[2] It is important to note that, cohabitation outside of marriage is seen as a choice of couples, which is largely no longer socially stigmatized, because of its causing reasons.[3] Due to many social factors, couples may find it impossible to marry (e.g. study or unemployment reasons, lack of housing, etc.), or ideologically did not share the importance of marriage. At the same time, the increase in such cohabitation cases is a cause for concern about the legal ignorance of its consequences.[4]

Although cohabitation is ultimately the couple's voluntary choice, it is often based on coincidence rather than the couple's deliberate decision. Replacing marriage with cohabitation is usually a

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1 <https://www.geostat.ge/ka/modules/categories/324/gankortsineba> [30.04.2020] (in Georgian).

2 *Rodgers M. E.*, Understanding Family Law, London, 2004, 36, <https://www.geostat.ge/ka/modules/categories/323/kortsineba> [30.04.2020] (in Georgian).

3 *Diduck A., O'Donovan K.*, Feminist Perspectives on Family Law, Abingdon, 2006, 39.

4 Tsiala Pertia v. The Parliament of Georgia, №1351 Constitutional Lawsuit of September 12, 2018. Appeals against the constitutionality of the normative content of the Article 1151 of the Civil Code of Georgia, which stipulates that "the rights and obligations of spouses arise only from a marriage registered in accordance with the rules established by the legislation of Georgia."; *Burton F.*, Family Law, London, 2003, 41.

lengthy process. Establishing regular sexual relations, common dwelling, or common household often takes weeks, months, and years.[5] In addition, sometimes a couple maintains a separate dwelling, even though they are engaged in a common household.

Social practice shows that there are different categories of cohabitants, with different goals and perspectives. Some couples in cohabitation are hardly different from married couples, so many relationships are often referred to as cohabitation outside of marriage, non-marital cohabitation's relation,[6] marriage-like relationship, civil marriage, unregistered marriage, or "de facto marriage".

Article 1151 of the Civil Code of Georgia (hereinafter referred to as - CCG) states that, the personal and property rights and duties of spouses arise only from a marriage registered in accordance with the legislation of Georgia. Pursuant to the practice of the Supreme Court of Georgia, another interpretation of the norm is in contrary to its normative content.[7] According to the practice of the European Court of Human Rights (hereinafter referred to as - ECHR), the notion of family within the framework of article 8 of the European Convention on Human Rights is not limited to marital relations and may include other de facto family ties.[8]

The purpose of the present study is to compare the named social institution with the marriage, as to the most similar legal institution to assess and determine the legal nature of cohabitation outside of marriage. In addition, to determine the full terminological designation of the relationship, the socio-legal features, the characteristics of its subject and according to all above said the concept of the relationship. This study will provide an initial theoretical basis around the cohabitation, that will facilitate its further complex study, be it the aspects of legal ignoring of the consequences of the relationship, the possible mechanism of legal development of the institute, etc. From a practical point of view, the results of theoretical research may be used by the legislator in case of strengthening the institution of cohabitation outside of marriage, when working on relevant amendments.

2. Nature

According to the article 1106 of the CCG,[9] "marriage is a voluntary union of a woman and a man for the purpose of creating a family, which is registered with a territorial office of the Legal Entity under Public Law – Public Service Development Agency of the Ministry of Justice of Georgia".

Mainly there is discussed three versions about the nature of marriage: marriage - transaction; marriage - mystery; marriage - a special category of institution. The institution of marriage as a

5 *Thornton A., Axinn W. G., Xie Y.,* Marriage and Cohabitation, The University of Chicago Press, USA, 2007, 79.

6 *Kropholler I*., German Civil Code, Study Commentary, *Darzhania T., Chechelashvili Z. (Trans.)*, *Chachanidze E., Darjania T., Totladze L. (ed.)* 13th Revised Edition, Tbilisi, 2014, §138, Field 8 (in Georgian).

7 The Ruling of March 16, 2016 of the Chamber of Civil Cases of the Supreme Court of Georgia on the case №As-7-7-2016, 33; The Ruling of January 12, 2012 of the Chamber of Civil Cases of the Supreme Court of Georgia on the case №As-1653-1641-2011; 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.

8 Van der Heijden v. the Netherlands, [2012], ECHR, 50; Johnston and Others v. Ireland, [1986], ECHR, 56.

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

transaction was born in Roman law, which considered marriage to be a civil-legal transaction. In this sense, marriage had little to do with human relationships. At the same time, the exclusion of divine and moral composition was seen as a fair idea that these institutions existed beyond the legal regulation.[10] Marriages took place in a written form and during the process witnesses were presented.[11] Exists an opinion pursuant to which the term often used in the definition of marriage - union[12] reflects the mutual will of the persons entering into the marriage to live together, that causes for them certain rights and responsibilities[13] and not its special nature. The deal is precisely an expression of the will of the parties to achieve the desired legal result.[14]

The theory of marriage - mystery, itself, emerged with the rise of the role of the Christian Church, which considered marriage to be a sacred mystery. It is noteworthy, that according to Western tradition, the participation of a representative of the church in the performance of the sacrament of marriage was secondary and not obligatory.[15] In contrast, the Orthodox Church considered not only the in-depth involvement in the performance of marriage, its form and termination, but also the joint regulation of the institution of marriage by the church and the state.[16] The regulation of personal and property relations has traditionally been within the competence of the state, while procedural matters (performance and termination of marriage) have been within the competence of the Church.[17] It should be stated, that the procedural issues related to marriage have also been transferred to the competence of the state after the February Revolution of 1917.[18]

The definition of marriage as a special institution is a more modern phenomenon and is a kind of unity of the first two theories. Proponents of this theory[19] more or less acknowledge the existence of various elements of the transaction in the institution of marriage, but deny the nature of its unconditional transaction.[20] It can be said, that the theory does not include anything qualitatively new in itself.

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10 <https://ka.wikipedia.org/wiki/%E1%83%A5%E1%83%9D%E1%83%A0%E1%83%AC%E1%83%98%E1%83%9C%E1%83%94%E1%83%91%E1%83%90>, [30.04.2020] (in Georgian).

11 *Laneyrie-Dagen N*., How to Read Paintings, 2007, 4-5.

12 *Surguladze I*., Government and Law, Part One, Tbilisi, 2002, 62, "Legal relation is any life connection, if it is defined by the norm of law." (in Georgian).

13 *Orlova N. V*., Legal Regulation of Marriage in the USSR, Moscow, 1971, 23 (in Russian).

14 The idea of marriage – transaction is shared e.g. by *Chanturia L.* - *Chanturia L*., Commentary of the CCG, Book I, Tbilisi, 2017, Article 50, Field 3 (in Georgian).

15 *Emelina (Tishchenko) L. A*., Development of Family Law in Russia: Theoretical and Historical - Comparative Analysis, Monograph, Moscow, 2000, 16 (in Russian).

16 Comp.: "On the approval of the Constitutional Agreement between the State of Georgia and the Apostolic Autocephalous Orthodox Church of Georgia" the Resolution of October 22, 2002 of the Parliament of Georgia, the Constitutional Agreement between the State of Georgia and the Apostolic Autocephalous Orthodox Church of Georgia, Article 1, Clause 1, LHG, 116, 27/11 / 2002.

17 *Emelina (Tishchenko) L. A*., Development of Family Law in Russia: Theoretical and Historical - Comparative Analysis, Monograph, Moscow, 2000, 14-18 (in Russian).

18 The Code of Laws on Marriage, Family, and Guardianship with Amendments, State Publishing House, Moscow, 1/08/1933, Chapter 1, Paragraph 2; Chapter 4, Paragraph 19, 19/11/1926 (in Russian).

19 *Jorbenadze S*., Soviet Family Law, Tbilisi, 1957, 174 (in Georgian); *Ninua E*., Some Legal Aspects of Spousal Relations, "Justice and Law", № 3 (34), 2012, 45 (in Georgian) - "Marriage is not only a voluntary union between a man and a woman, but also a law determining legal fact.".

20 Comp. *Krotov M. V*., Civil Law, Vol. 3, Moscow, 2004, 372 (in Russian).

Comparing the above-mentioned theories, it becomes clear that the main distinguishing criterion between them is who is considered the guarantor of free will of the parties. The named element of the relationship - the expression of free will, that intends achieving a legal result, should be considered as a determining criterion for the nature of the transaction. The mechanism for ensuring free will of the parties is the law, the enforcement of which is prerogative of the state.

Marriage, like a transaction,[21] is the result of a voluntary agreement between the parties, it requires the protection of a written form, there is established a system of conditions that determines the authenticity of the marriage, and so on. Opponents of the marriage - transaction state that, when entering into a marriage, the parties do not specify the subject of the agreement[22] and that the powers of the parties are not agreed (about the property rights a marriage contract is an exception).[23] Nevertheless, the rights and obligations of spouses still arise, but by force of law and not agreement. The subject of the agreement does not need to be specified in each particular case, it is one and is expressed in the essence of the marriage. Individuals expressing the will to marry trust the subject of the relationship defined by the legislature, they agree with it and want it.

With regard to cohabitation outside of marriage, there is an opinion that it has the nature of transaction too. Some authors believe that cohabitation outside of marriage is based on a transaction not expressly provided by law.[24] Transactions provided by law, as well as those not directly covered by law, but not contradicting it, are a type of a legal fact.[25] According the articles 10 and 319 of the CCG persons are not prohibited to enter into lawful transactions not directly considered by the law or other legal act. In view of the above said, the parties may agree to be in marriage-like relationship and they may determine the property and non-property aspects of their relationship, although this does not mean that this will be a legal recognition of cohabitation outside of marriage, as an institution itself. In the latter case, there might exist only the freedom of the parties – to enter into a transaction directly unforeseen by the law and determine its content within the scope of the freedom of civil turnover. At the same time, even in the absence of a special agreement between the cohabitants, certain rights may still arise between them, but they will be related not directly to the cohabitation outside of marriage and to it as to a legal fact, if it will be recognized as a lawful transaction not directly considered by the law, but to other legal facts. For example, the right to property share acquired by the cohabitants will be due to the fact that both of their funds (legal obligations, shared rights)[26] were spent on its acquisition and not because they are cohabiting. It follows, therefore, that an agreement on cohabitation itself cannot be considered as a transaction, since it is not an action, which aims achieving

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21 By the nature of the relationship under consideration, a bilateral transaction-agreement is implied; *Chanturia L.*, Commentary of the CCG, Book I, Tbilisi, 2017, Article 50, Field 3 (in Georgian).

22 *Yugay O. D.*, On the Question of the Concept and Legal Nature of Marriage, Journal of Family and Housing Law, No. 3, 2006, 26-30 (in Russian).

23 The CCG, Article 1172, Part 1.

24 *Manankova R. P.*, Explanatory Note to the Project Concept of the New Family Code of the Russian Federation, Tomsk, 2008, 29 (in Russian).

25 *Belov V. A.*, Civil Law, General Part, Volume II, Persons, Benefits, Facts, Moscow, 2011, 466 (in Russian).

26 The CCG, Articles: 953-968.

a legal result, despite the will of the parties. If the signs of the mentioned relationship will be strengthened by the legislation, it would be possible to discuss it in the context of transaction.

It should be noted that the transaction is concluded if the parties have agreed on all its essential terms. According to the article 327, part 2 of the CCG, the terms of the contract are essential, on which an agreement must be reached at the request of one of the parties, or which are considered as such by the law. Each type of the contract has a "minimum content" defined by the law and created by those conditions, on which the agreement should be done, otherwise the contract will not be concluded.[27] For example, if the condition to live together with the future de facto spouse is a condition upon which the necessity of the parties' agreement is derived from the minimum content of the relationship itself, their specific place of residence, i.e. the definition of a common address should be considered as a condition, for which an agreement is a requirement of one or both parties. In view of all abovementioned, for the purpose to determine the content of the relationship, it is necessary to ascertain the signs of the social institution. If these signs will be strengthened by the law, they will determine the "minimum content" of the relationship and accordingly, its essential terms.

When considering cohabitation outside of marriage as a transaction, it should be mentioned about its form. Since local legislation does not recognize such an institution and it can only be a free agreement between the parties (de facto public relation), that does not aim achieving a legal result, in such a case its form is also the subject of an agreement between the parties. And if the legislation strengthens the signs of de facto cohabitation, the form of such an agreement depends on the model that the state chooses to determine the existence of a relationship.

3. Term

Cohabitation outside of marriage is often referred to as "de facto marriage" and even "civil marriage." These terms are not legally correct, because they do not meet legal logic. The notion of "de facto marriage" has never been strengthened at the legislative level in Georgia, while marriage and civil marriage have always been seen as the union of woman and man registered by the relevant state body.

It should be noted that according to the double theory in general theory of law, the legal relationship is a special kind of (ideological, so opposite to de facto relation) public relation, which by its formal side is the effect of the legal regulation, while from its content side is the result of de facto public relation, that exists in parallel with them.[28] Accordingly, it is a legally incorrect term - de facto marriage / transaction, since a transaction under the CCG, including a lawful provision not directly provided for by law under the articles 10 and 319 of the CCG, is an action that aims achieving a legal result.

Marriage is a civil act (fact of legal significance),[29] the registration of which is the registration of a fact of legal significance.[30] The legal fact differs from other real facts only in that they are

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27 *Baghishvili E.*, Commentary of the CCG, Book III, Tbilisi, 2019, Article 327, Field 8 (in Georgian).

28 *Belov V. A.*, Civil Law, General Part, Volume I, Introduction to Civil Law, Moscow 2011, 376 (in Russian).

29 The Law of Georgia on "Civil Status Acts", Article 3, Subparagraph "A", Website, 111228058, 28/12/2011.

important to the law.[31] In view of all above said, the incorrectly established term - "de facto marriage", or other named terms can be replaced by the following terminological description - de facto family cohabitation outside of marriage (i.e. without registration of a civil act). In addition, it indicates existence of de facto family cohabitation. It should also be noted that, if the relationship will be strengthened at the legislative level, i.e. If the de facto public relationship will be framed within the framework of a legal relationship, it would be appropriate to develop a kind term that responds to the nature and content of the legal relationship established by law.

4. Signs

The main purpose of marriage is to create a family, but this goal is not legally guaranteed. The legal mechanism of marriage can only protect the personal and property rights of spouses, thus contributing to the functioning of the family and its stability. As some authors point out, an agreement on de facto family cohabitation outside of marriage, unlike marriage, is primarily intended to regulate property issues.[32] It should be noted that de facto family cohabitation outside of marriage, as a social event that is not recognized by law, is completely free from legal elements. Consequently, if the parties agree about it, the agreement itself will not be of a property nature. As for certain rights, that may arise between the parties, derive from other facts e.g. the right to the property share acquired by the de facto spouses will be due to the fact that both of them have spent the money on its purchase and not because they are cohabiting. Accordingly, if the legislation does not recognize the named institution, in this case the agreement of the parties about de facto family cohabitation outside of marriage has personal purposes and concerns only cohabitation and the production of a common household.

In order to assess de facto family cohabitation outside of marriage, when there is not the legal framework defining it, the ECHR takes into consideration the fact of the parties living together,[33] the length of the relationship, as well as the extent of responsibilities the couple reveals toward each other by having common children,[34] in general if there really exists or not close personal relations between them,[35] etc.

As a result of comparing de facto family cohabitation outside of marriage with marriage, as with the most similar legal institution to it, it's possible to define its essential signs. At the same time, it should be noted that since comparison is made with the institute of marriage under the CCG, it is possible that this or that sign of this institute might be defined differently when compared with the institution of marriage given by the legislation of another state.

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30 Ibid., Article 3, Subparagraph "A", "C".

31 *Belov V. A*., Civil Law, General Part, Volume II, Persons, Benefits, Facts, Moscow, 2011, 454 (in Russian).

32 *Kosova O. Yu*., Family and Inheritance Law of Russia, Moscow, 2001, 69 (in Russian); Comp.: *Chanturia L*., General Part of Civil Law, Tbilisi, 2011, 6 (in Georgian).

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

34 X, Y and Z V. The United Kingdom, [1997], ECHR, 36.

35 *Baarsma N. A*., The Europeanisation of International Family Law, Hague, 2011, 62; Paradiso and Campanelli v. Italy, [2017], ECHR, 140; *Livermore M*., The Family Law Handbook, Third Edition, Pyrmont, 2013, 34.

4.1. Hetero Character

With regard to a marriage, article 12 of the European Convention on Human Rights stipulates that a man and a woman who have reached the marriageable age, have the right to marry and to found a family in accordance with the national law. The first clause of the article 30 of the Constitution of Georgia[36] establishes the heterosexual nature of marriage. Therefore, according the Georgian legislation, the first sign of de facto family relation outside of marriage should be its heterosexual nature.[37]

In case of legal regulation of the question in review, an important issue would be whether it is possible to consider a relationship as the de facto family cohabitation outside of marriage, when one of the cohabitants changes his/her sex during such a relationship. This issue should first be discussed in relation with marriage.

The ECHR has stated that a person who officially changes sex and acts as a person of the opposite sex is entitled with right to enter into a marriage with the person of the same sex as he/she had before sex reassignment.[38]

According to some researchers, a person who has changed his/her sex should have the right to marry, but the marriage registry should has an obligation to provide information about this to the other party, as this party may not be psychologically prepared to marry such a person and hope to have children in the family.[39] In the case of de facto family cohabitation outside of marriage, such a procedure is not possible as registration is not provided. Although in case of legal regulation of such a cohabitation, specific procedure might be considered by the relevant authority.

Later, in case of a legal settlement of de facto family cohabitation outside of marriage, if a person, who in his/her relevant official documents has changed notification about sex and notifies about this the person with whom he or she wishes to cohabit, their relationship must be admissible. In case, if this requirement is not met, it will be possible to refuse acknowledgement of de facto family cohabitation outside of marriage, on the grounds that the person does not have the voluntary consent to such a feature of his/her partner. In case if the change of sex takes place during the period of persons' cohabitation, such a relationship must be considered terminated from the moment, when (if that happens) in the relevant documents changes are made.[40] It is noteworthy that by the judgement of the

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36 The Georgian Parliamentary Gazette, 31-33, 24/08/1995.

37 It is noteworthy, for example, that in France (The Civil Code of France, Articles: 515-1; 515-8, 21/03/1804), In Irland **(**The Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, Ireland, Article 3, 19/07/2010**)** and in some other countries, same-sex cohabitation is recognized and protected equally to the de facto family cohabitation outside of marriage of persons of different sexes.

38 Goodwin V.T.UK, [2002], ECHR, 56, 97-104.

39 *Maleina M. N*., Changing the Biological and Social Sex: Prospects for the Development of Legislation, Journal of Russian Law, №. 9, 2002, Moscow, 58 (in Russian).

40 *Basiladze N*., Legal Challenges of Sex Change in Marriage, Justice and Law, №1 (61), 2019, 175-176. (In Georgian); For the interests of the parties, there is an opinion that they should have the right to maintain the marriage, because of the weighted interest. Such an agreement between the parties shall be dealt in accordance with the clause 2 of article 10 of the CCG, according to which civil relations' participants may carry out any action not prohibited by law, including those not directly provided by law. According to the

ECHR, the applicant, who was in marriage and wanted to change the record of sex in the civil act, was refused because he was in marriage.[41]

4.2. Voluntariness

Voluntary nature should be considered as a second sign of de facto family cohabitation outside of marriage. In respect of marriage, volunteering means the full and free consent of both parties.[42] Such an understanding of voluntariness is acceptable also for the relationship under consideration.

It is interesting to note the issue of voluntariness of de facto family cohabitation outside of marriage, when even one party is mistaken about the nature of this relationship. Entry into cohabitation is a de facto act, which in the case of cohabitants' desire (if the legislation regulates this relationship) should be given legal significance. Consequently, it is important the existence of willingness toward the nature of the relationship and its consequences.

The issue about the existence of de facto family cohabitation outside of marriage can be disputed if one of the parties is mistaken about the characteristics of his/her partner and in his or her uniqueness as of an individual. Some authors consider it as a trait of an individual to have a dangerous and severe illness.[43] Concealment of such diseases in the event of de facto family cohabitation outside of marriage should be considered as a deception of the partner.[44] Volunteering, as an essential sign of de facto family cohabitation outside of marriage, will not be on the face, when cohabitation is based on deception,[45] as well as on compulison.[46]

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first clause of article 319 of the CCG, the subjects of private law can enter into agreements that are not provided by law, but do not contradict it. Accordingly, if the marriage is to be maintained in which one of the spouses has changed the record of the civil act on sex, this would have been inconsistent with the first clause of the article 30 of the Constitution of Georgia, which stipulates marriage between a man and a woman.

41 Hamelainen V. Finland, [2014], ECHR, 108, 110-113.

42 The Convention on "Consent to Marriage, Minimum Age for Marriage and Registration of Marriages", Article 1, Clause 1, 7/11/1962; The Universal Declaration of Human Rights, Article 16, Clause 2, 10/12/1948.

43 *Haderka I*., Entering into a Marriage, Legal Aspects, Zaporozhchenko L. (translated from Czech), Moscow, 1980, 165 (in Russian); *Darjania T*., Commentary on the CCG, Book I, Tbilisi., 2017, Article 74, Field 4 - The essential quality of the counterpart, according the content and purpose of the transaction, may be age, health condition, sex, etc. In addition, the error in the qualities of the counterpart must be substantial according the civil turnover (in Georgian); *Kereselidze D*., General System Concepts of Private Law, Tbilisi, 2009, 330 − It is important that the counterpart's personality and personal qualities are the basis of the transaction, and this should be evaluated by objective criteria, so that the error in the qualities does not equate to the error in the motive. (in Georgian).

44 *Rusishvili G*., Commentary of the CCG, Book I, Tbilisi, 2017, Article 81, Field 1 − Deception violates the freedom of expression of will when making a transaction (in Georgian); See: *Kikoshvili S*., Lack of Will in Georgian Law, Journal. "Review of Georgian Law", Special Edition, 2008, 17 ¬ "Deception is done by hiding the information provided to the other party by silence." (in Georgian); *Kropholler I*., German Civil Code, Commentary, *Darzhania T., Chechelashvili Z. (Trans.)*, *Chachanidze E., Darjania T., Totladze L. (ed.)* 13th revised edition, Tbilisi, 2014, §123, field 4 (in Georgian).

45 *Chanturia L*., Commentary of the CCG, Book I, Tbilisi, 2017, Article 61, Fields: 19-21 (in Georgian).

46 The Criminal Code of Georgia, Article 1501, LHG, 41 (48), 13/08/1999.

4.3. Absence of Registration

The absence of its registration by the state's relevant service should be considered as the third sign of de facto family cohabitation outside of marriage.[47] Some researchers note that, de facto family cohabitation outside of marriage should differ from marriage only in the absence of a registration act.[48] Consequently, if the de facto cohabitants decide to marry, there should be no impediments to the marriage. Practice abroad shows that it is possible to register cohabitation in a different way from the registration of marriage and in another state body.[49] At the same time, it should be noted that, if the cohabitation outside of marriage is a legal relationship regulated by law, the existence of a component of its registration directly depends on the model that the state chooses to regulate the relationship. E.g. If the existence of an extramarital cohabitation is confirmed by a couple's relevant agreement, or by a court's assessment, the registration of the agreement will no longer be necessary to confirm the fact.

4.4. Living Together

Living together can be considered as the fourth sign of de facto family cohabitation outside of marriage. The fact of living together was the main evidence of existence of the relationship under the RSFSR's Code on Marriage, Family and Custody Laws, 1926.[50] The similar position is reflected in most normative acts abroad.[51]

Living together must be actual, that is, the couple must live together (in one apartment, one house). Two person may be registered at one address, but in fact they have lived in different places, in this case living together will not take place. In addition, the lack of a common address is not evidence that individuals do not live together. Couples, whether they are married or cohabiting in an actual family cohabitation, have periods when they have a long distance relationship. During this period (whether due to their profession or other reasons), the couple can live in different countries,[52] and at the same time their unified household can be stopped. While cohabitation may not be the main criterion for determining the stability of a long-term relationship, it is still a factor, that can outweigh the doubts that may arise about the existence and authenticity of a family relationship.

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47 The CCG and other laws of private law provide cases when for the validity of a transaction it is necessary to be protected by another additional form, in particular, the expression of will before a special state body. An example of this is marriage.

48 *Tarusina N. N.*, Marriage in the Russian Family Law, Eroslavl, 2007, 148 (in Russian); See: *Chikvashvili Sh.*, Family Law, Tbilisi, 2004, 69. "Marriage registration is established in order to protect the personal and property rights and duties of both the state and public interests, as well as the spouses and their children.". (in Georgian).

49 Ley 11/2001, de 19 de Diciembre, de Uniones de Hecho de la Comunidad de Madrid, Articulo 1, Cláusula 1, 19/12/2011; Civil Code of France, Article 515-1, 21/03/1804.

50 The Code of Laws on Marriage, Family, and Guardianship with Amendments, State Publishing House, Moscow, 1/08/1933, Chapter 1, Paragraph 3, 19/11/1926 (in Russian).

51 The De facto Relationships Act 2005, Island, Act No. 5 of 2006, Introductory Part, 28/02/2006; The Civil Code of France, Article 515-8, 21/03/1804; The Family Law Act 1975, Australia, №53, Introductory Part, 1975; The Civil Code of The Republic of Lithuania, Article 3.229, 18/07/2000.

52 Oliari and Others v. Italy, [2015], ECHR, 169; Vallianatos and Others v. Greece, [2013], ECHR, 49, 73.

It should be noted that even in the absence of life at one address, there may still be enough nodes[53] for family life, since the existence of a strong connection is sometimes independent from living together.[54] For example, the wife and husband may have been living apart during the working week, but they may have spent the holidays together. Such a form of cohabitation must also be permissible for a de facto family cohabitation outside of marriage, under the condition that the time spent together regularly takes place. In the latter case, parties must be required not only to spend time together, but also to live at the same address together, and this must be done regularly.

It should be noted that joint living should not be equated with living together. Cohabitation involves living together, but it's only one part of it. Cohabitation may occur in the absence of living together. For example, married people may live in different locations, but may live together. Article 1157 of the CCG allows spouses to do so, i.e. Joint living is possible without living together, and this is important, because in the absence of cohabitation, fictitious marriage,[55] or such marriage may take place, when marital relations are terminated. Common life is the mutual unity of family interests (spiritual, economic, property, children's issues, etc.), the need for people to have a constant relationship with each other, the need for mutual care, even though they may not living together.[56] In the latter case, it is important that family members enjoy being together.[57]

The cohabitants had to act in such a way that third parties perceived them as spouses. This sign is sometimes referred to in legal acts as "couple" living together as a family.[58] At the same time, its publicity should not be considered as a sign of a relationship.[59] Latter is true, because according to the first clause of the article 15 of the Constitution of Georgia, a person's personal and family life is inviolable. Consequently, its protection should not be depended on the couple's disclosure of the relationship to third parties. However, if necessary, the testimony of third parties may be used to confirm the existence of de facto family cohabitation outside of marriage.

4.5. Common Household

Common household production should be considered as the fifth sign of a de facto family cohabitation outside of marriage. Household farming is one of the non-specific functions of the family.[60] It is closely connected with living together. Lawyers understand this as satisfying daily needs by obtaining food, preparing food, cleaning the house, washing laundry, buying household items,

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53 Kroon and Others v. The Netherlands, [1994], ECHR, 30; Shakhmatov V. P., Legislation on Marriage and Family, Tomsk, 1981, 126-127 (in Russian).

54 Vallianatos and Others v. Greece, [2013], ECHR, 49, 73.

55 The CCG, Article 1145.

56 *Belkova A. M., Vorozheikin E. M*., Soviet Family Law, Moscow, 1974, 33-34 (in Russian).

57 Comp. Olsson v.Sweden (no. 1), [1988], ECHR, 59.

58 The Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, Ireland, Article 172, Clause 1, 19/07/2010; The Family Code of Ukraine, Article 74, Clause 1, 10/01/2002.

59 Comp. *Tarusina N.N*., Essays on The Theory of Russian Family Law, Yaroslavl, 1999, 74 (in Russian).

60 *Eriashvili N.D., Belsky D.I., Kravchenko A.I., Kurganov S.I.,* Sociology for Lawyers, Tbilisi, 2011, 139 (in Georgian).

buying personal necessities, and so on.[61] It is argued that the production of a common farm should not be equated with a common budget,[62] but that the production of a common farm proves the existence of a common budget.[63] A shared budget does not necessarily mean that de facto spouses should combine all of their income, but some portion of their income should be spent on certain common household needs. It is interesting to note that one of the rulings of the Chamber of Civil, Entrepreneurial and Bankruptcy Cases of the Supreme Court of Georgia, considers the care of the parents of one of the cohabitants by another cohabitant to be a joint household.[64]

4.6. Relationship Continuity

As the sixth sign of a de facto family cohabitation outside of marriage, it is advisable to consider its definite continuity. As it is well known, cohabitation can last from a few days to several years, or even forever. The ECHR takes into account duration when assessing the existence of a de facto family cohabitation outside of marriage.[65] If the issue is regulated at the legislative level, such a mechanism may be envisaged, according to which not any cohabitation of a woman and a man may be known as a de facto family cohabitation outside of marriage, but only one that would be sufficiently stable in terms of continuity. At the same time, if the relationship needs to be confirmed, the continuation of the relationship will create an opportunity to assess the existence of signs of a de facto relationship. This mechanism will also be a kind of prevention in relation to fictitious relationships.[66]

In many countries, which have regulatory acts for a de facto cohabitation (eg France, etc.), the minimum duration of a relationship is not specified at all. The term mentioned in the Autonomy of Madrid and the Republic of Lithuania should not be less than 12 months,[67] 2 year is defined in Catalonia, however, in order to gain certain rights, before the expiration of this period, the parties may notarize their cohabitation.[68] At the same time, it is not allowed to set a maximum term, as the determination of the term will be in conflict with the essence of a relationship. Also interesting is the example of Ireland, which sets a 5-year standard for a relationship, but in case of having children, the term can be reduced to 2 years.[69] The reason for increasing this time may be the break in cohabitation continuity and common farming. The above-mentioned terms are related to granting the status of a

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61 *Tarusina N. N*., Marriage in Russian Family Law, Yaroslavl, 2007, 143 (in Russian).

62 *Kurilenko O. G.,* Regulation of Marriage Relationships, according to the Legislation of the Russian Federation: Dissertation of the Candidate of Legal Sciences, Moscow, 2003, 17 (in Russian).

63 *Manankova R. P.,* Explanatory Note to the Project Concept of the New Family Code of the Russian Federation, Tomsk, 2008, 11 (in Russian).

64 Judgment of the Chamber of Civil, Entrepreneurial and Bankruptcy Cases of the Supreme Court of Georgia, December 16, 2003, on Case №As-595-1248-03.

65 X, Y and Z V. The United Kingdom, [1997], ECHR, 36.

66 Comp.: The CCG, Article 1145.

67 Ley 11/2001, de 19 de Diciembre, de Uniones de Hecho de la Comunidad de Madrid, Articulo 1, Cláusula 1, 19/12/2011; Civil Code of The Republic of Lithuania, Article 3.229, 18/07/2000.

68 Ley 25/2010, de 29 de Julio, Del Libro Segundo del Código Civil de Cataluña, Relativo a la Persona y la Familia, Articulo 234-1, 29/07/2010.

69 The Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, Ireland, Article 172, Clause 5, 19/07/2010.

qualified cohabitants, which gives them the right to appeal to the court regarding property, residence and pension due to cohabitation.[70]

4.7. Sexual Relations

When characterizing the signs of a de facto family cohabitations outside of marriage, it is important to consider the issue of sexual relations. The existence of sexual intercourse should not be an independent sign for mentioned relation. Foreign lawmakers have such a position.[71] In this regard, some researchers point out that individuals who do not have the ability to have sexual relations, due to age or a particular disease, may be involved in a de facto family cohabitation outside of marriage, but despite this, cohabitants should aim to live as a husband and a wife.[72] Although one of the specific functions of a family is sexual control,[73] it does not deprive individuals who do not have sexual abilities the right to have cohabitants.

Accordingly, the absence of children should not be a necessary characteristic for a de facto family cohabitation outside of marriage, although it would be prudent to take having children into account when assessing existence of a relationship.[74] The birth of a child in a family can be considered as one of the reasons that may lead to a reduction of the defined minimum term for living together.

5. Subjects

It is necessary to consider a number of issues concerning the subjects of a de facto family cohabitation outside of marriage. Firstly, it should be noted that, married couples are called as spouses, wives, and husbands, While those outside of a marriage may be called “de facto cohabitants,” “non-marital cohabitants,” just “cohabitants”[75] and “de facto spouses”.

It is debatable whether 18-year-olds can enter into a de facto family cohabitation outside of marriage. For example, the legislation of Catalonia (The Catalan law of July 29, 2010 "On Persons and the Family", Art. 234-2, P. "A") and the French law (The Civil Code of France, Art. 515-1) require the age of 18 years from cohabitants. At the same time, there is no such restriction for simple cohabitation in France.[76]

According to the first part of the article 1108 of the CCG, marriage is allowed from the age of 18. In case of regulation of de facto relations by law, a person who has reached the age of 18 should be

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70 Ibid., Articles 173-175, 187.

71 The Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, Ireland, Article 172, Clause 3, 19/07/2010.

72 *Douglas G*., An Introduction to Family, “OXFORD University Press”, Oxford, 2004. 50.

73 *Eriashvili N.D., Belsky D.I., Kravchenko A.I., Kurganov S.I*., Sociology for Lawyers, Tbilisi, 2011, 138 (in Georgian); *Malcolm C. Kronby*, Canadian Family Law, 10th edition, Ontario, 2010, 9; *Livermore M*., The Family Law Handbook, Third Edition, Pyrmont, 2013, 34.

74 X, Y and Z V. The United Kingdom, [1997], ECHR, 36.

75 *Kosova O.Yu*., “Actual Marriages“ and Family Law, Journal of Jurisprudence, №3, 1999, 106-107 (in Russian).

76 The Civil Code of France, Article 515-8, 21/03/1804.

able to enter into cohabitation, but if the legislation provides for the minimum duration of the relationship, the person must be not only 18 years old, but after he/she reached the age of 18 year, it must be gone that minimum duration of time defined for recognizing that kind of de facto relation. A different model would be at odds with the state's approach to the minimum age limit for personal family relationships.

As a sign of the mentioned relationship's subject might be considered that the cohabitants should not be presented in another de facto family cohabitation outside of marriage or marriage,[77] that is also considered in almost all relevant legal acts of foreign countries.[78] Notwithstanding the abovementioned, a person in such a relationship must be entitled to marry at any time, including to another person. In this case, it is advisable to consider the de facto family cohabitation outside of marriage ended. Also, if a person in a de facto family cohabitation outside of marriage enters into another cohabitation of the same nature with another person, the first relationship must be terminated. If the marriage or the first de facto family cohabitation outside of marriage exists at the beginning of the relationship, but it is interrupted at the time the issue is assessed - it is advisable to report the relationship existed, but the moment for starting the relationship should be considered the moment when a marriage or a de facto relation is terminated. This sign of the relationship under consideration stems from the existence of monogamy, that is, the relationship between one man and one woman. In addition, if the marriage is considered void on any ground, the existence of a de facto family cohabitation outside of marriage may be recognized from the moment of entering info de facto cohabitation.

When describing the subjects of a de facto family cohabitation outside of marriage, the question arises as to whether relationship can be considered as a de facto family cohabitation outside of marriage, when one of cohabitants is a person in need of psychosocial support (hereinafter - beneficiary of support). According to the article 1120, part 1, subparagraph "e" of the CCG, marriage is not allowed if the person is the beneficiary of support and he/she has not entered into a marriage contract provided in the part 2 of article 1172 of the CCG. In parallel with this article, it should be noted that in the case of a de facto family cohabitation outside of marriage, the parties can not enter into a marriage contract, that is a kind of guarantee for protection of the property rights of the beneficiary of support. However, a beneficiary of support may enter into an agreement with his or her future de facto spouse to agree on the settlement of property issues within their cohabitation, be it financial matters related to household production, property acquired during their cohabitation or otherwise. At the same time, in case of entering family cohabitation outside of marriage (if this kind of agreement is followed by a legal result) or signing a contract for regulating property issues it should be taken into account provisions of the article 58^1 and 1120 (subparagraph "e") of the CCG.

It is interesting to assess the existence of a de facto family cohabitation outside of marriage, if one of the cohabitants is an adult with limited legal capacity.[79] Pursuant to the article 1108, part 2 of

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77 The CCG, Article 1120, Part 1, Subparagraph "A".

78 Ley 25/2010, de 29 de Julio, Del Libro Segundo del Código Civil de Cataluña, Relativo a la Persona y la Familia, Articulo 234-2, Cláusula "C", 29/07/2010; Ley 11/2001, de 19 de Diciembre, de Uniones de Hecho de la Comunidad de Madrid, Articulo 2, Cláusula 1, "B", 19/12/2011; The Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, Ireland, Article 172, Clause 1, 19/07/2010.

79 The CCG, Article 14, Part 2.

the CCG, the marriage of an adult with limited legal capacity shall be permitted with the prior written consent of the guardian. In case of limited legal capacity, entering into a de facto family cohabitation outside of marriage should depend on the consequences of such relationship. If the relationship under consideration is not legally regulated and does not have any legal consequences for the couple, then the person, despite his limited legal capacity, should be able to enter the relationship without restrictions. In case, if the de facto family cohabitation outside of marriage will be a legally regulated institution, that gives the parties some personal and property authority, similar to marriage, it would be valid to enter it on the basis of the prior written consent of the caregiver of a person with limited legal capacity.

It should be noted that due to the nature of a de facto family cohabitation outside of marriage, entry into it through a representative should not be allowed.[80]

The absence of a close relative[81] connections between the cohabitants should be considered as a sign of the subject of a de facto family cohabitation outside of marriage. In particular, according to the first part of article 1120 of the CCG, marriage is not allowed directly between relatives of the ascending and descending branch, between biological and non-biological siblings, and between adoptive parents and adopted children. The same limitation should be imposed for a de facto family cohabitation outside of marriage. Intimate relationships with relatives may actually take place, but such relationships should not be protected by law as potentially dangerous relationships from a medical-biological point of view. Similar restrictions apply, for example, in France and the Republic of Lithuania.[82]

6. Conclusion

The investigation revealed that Articles 10 and 319 of the CCG do not prohibit persons from entering into lawful transactions that are not provided for by law or other legal act. In view of the above said, parties may agree to be in a similar relationship to the marriage and they can determine the property and non-property aspects of their relationship, although this does not imply that it would legally recognize cohabitation as an institution. Moreover, even in the absence of a special agreement between the cohabitants, certain rights may still arise between them, but they will relate not directly to cohabitation and to it as a legal fact, if it is considered a lawful transaction directly provided by law, but to other legal facts. Consequently, an agreement on cohabitation cannot be considered as a transaction, since it is not an action aimed at achieving a legal result, regardless of the will of the parties. In case the signs of this relationship are strengthened by the legislation, it will be possible to discuss it in the context of the transaction.

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80 Ibid., Article 103, Part 2; Comp. *Antropova I. R.*, On the Legal Nature of the Marriage Agreement in Modern Family Law of Russia, Bulletin of the Udmurt University, Series of Economics and Law, №2, 2013, 114-115 (in Russian).

81 See: *Eriashvili N. D., Belsky D. I., Kravchenko A. I., Kurganov S. I.*, Sociology for Lawyers, Tbilisi, 2011, 137 – Kinship is combination of people, who share common ancestry. In addition to blood relations, there is a social institution of "recipient kinship" related to the adoption of a child (in Georgian).

82 The Civil Code of France, Articles: 163, 515-2, 21/03/1804; The Civil Code of The Republic of Lithuania, Article 3.17, 18/07/2000.

Marriage is a civil act (a fact of legal significance)[83], the registration of which is the registration of a fact of legal significance.[84] A legal fact differs from other real facts only in that they are important to the law.[85] Due to the above said, the incorrectly established term - "de facto marriage", or other named terms can be replaced by the following terminological notation – de facto cohabitation outside of marriage (i.e. without the registration of a civil act). This term indicates that there is no marriage, i.e. registration of a civil act. In addition, it points out that in fact there is family cohabitation. It should also be noted that in case of strengthening the relationship in question at legislative level, i.e. If de facto relations in question fall within the framework of a legal relationship, it would be appropriate to develop a term that addresses the nature and content of the legal relationship enshrined in law.

Based on the comparison of de facto family cohabitation outside of marriage to marriage as to the most similar legal institution, its main features were distinguished. In addition, it should be noted that since the comparison was made directly with the institution of marriage provided by the CCG, it is possible that when comparing with the institution of marriage under the law of another country, this or that sign of de facto family cohabitation outside of marriage is defined differently.

As the first clause of article 30 of the Constitution of Georgia[86] defines the heterogeneous nature of marriage, its heterosexual character was named as the first sign of a de facto family relationship outside of marriage.[87]

The second sign of de facto family cohabitation outside of marriage was defined his voluntariness. With regard to marriage voluntariness is understood as full and free consent of both parties.[88] Such understanding of voluntariness is acceptable to the relationship in question as well.

As it is argued that de facto family cohabitation outside of marriage should differ from marriage only in the absence of a registration deed,[89] if the de facto cohabitants decide to marry, there should be no impediments to the marriage between them. Accordingly, the third sign of de facto family cohabitation outside of marriage was stated the absence of its registration in the relevant state service.[90]

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83 The Law of Georgia on "Civil Status Acts", Article 3, Subparagraph "A", Website, 111228058, 28/12/2011.

84 Ibid., Article 3, Subparagraph "A", "C".

85 *Belov V. A*., Civil Law, General Part, Volume II, Persons, Benefits, Facts, Moscow, 2011, 454 (in Russian).

86 The Georgian Parliamentary Gazette, 31-33, 24/08/1995.

87 It is noteworthy, for example, that in France (The Civil Code of France, Articles: 515-1; 515-8, 21/03/1804), In Irland **(**The Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, Ireland, Article 3, 19/07/2010**)** and in some other countries, same-sex cohabitation is recognized and protected equally to the de facto family cohabitation outside of marriage of persons of different sexes.

88 The Convention on "Consent to Marriage, Minimum Age for Marriage and Registration of Marriages", Article 1, Clause 1, 7/11/1962; The Universal Declaration of Human Rights, Article 16, Clause 2, 10/12/1948.

89 *Tarusina N. N*., Marriage in the Russian Family Law, Eroslavl, 2007, 148 (In Russian); See: *Chikvashvili Sh*., Family Law, Tbilisi, 2004, 69. "Marriage registration is established in order to protect the personal and property rights and duties of both the state and public interests, as well as the spouses and their children." (in Georgian).

90 The CCG and other laws of private law provide cases when for the validity of a transaction it is necessary to be protected by another additional form, in particular, the expression of will before a special state body. An example of this is marriage.

The fourth sign of de facto family cohabitation outside of marriage is living together. Living together must be de facto, i.e. the couple must live together (in one apartment, in one home). It should be noted that even in the absence of living at the same address, there may still be sufficient nodes for family life,[91] since the existence of a strong connection is sometimes independent from living together.[92]

Co-production of a household was considered as the fifth sign of de facto family cohabitation outside of marriage. Household production is one of the non-specific functions of the family.[93] It is closely related to life together.

The sixth sign of de facto family cohabitation outside of marriage is its definite continuity, since the European Court of Human Rights takes into account its duration when assessing the existence of de facto family relations.[94]

Having sex is not an independent sign of de facto family cohabitation outside of marriage. Consequently, the absence of children is not a necessary feature of the relationship.

Participants of de facto family cohabitation outside of marriage can be referred to as "de facto cohabitants", "cohabitants outside the marriage", simply "cohabitants"[95] and "de facto spouses".

According to the first part of article 1108 of the CCG, marriage is allowed from the age of 18. If the de facto family cohabitation outside of marriage is regulated by law, a person who has reached the age of 18 shall be able to enter into cohabitation, but if the law provides for a minimum duration of the relationship, the person must be not at least 18 years old when his or her relationship is considered as de facto family cohabitation outside of marriage, but the minimum duration of cohabitation specified by law must have expired after the age of 18.

The sign of the subject of the relationship was considered to be that the cohabitants should not be in another de facto family cohabitation outside of marriage or in marriage,[96] which is provided for in almost all relevant legal acts of foreign countries.[97]

In case of de facto family cohabitation outside of marriage, the parties cannot enter into a marriage contract, which is a kind of guarantee of protection of the property rights of a beneficiary of support. However, the beneficiary of support may enter into an other agreement with the future de facto spouse under which they will agree to settle property issues within their cohabitation.

According to article 1108, part 2 of the CCG, the marriage of an adult with limited capacity is allowed with the prior written consent of his/her custodian. In case of limited capacity, entering into de facto family cohabitation outside of marriage should depend on its consequences. In case when the

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91 Kroon and Others v. The Netherlands, [1994], ECHR, 30; Shakhmatov V. P., Legislation on Marriage and Family, Tomsk, 1981, 126-127 (in Russian).

92 Vallianatos and Others v. Greece, [2013], ECHR, 49, 73.

93 *Eriashvili N.D., Belsky D.I., Kravchenko A.I., Kurganov S.I.,* Sociology for Lawyers, Tbilisi, 2011, 139 (in Georgian).

94 X, Y and Z V. The United Kingdom, [1997], ECHR, 36.

95 *Kosova O. Yu*., "Actual Marriages" and Family Law, Journal of Jurisprudence, №3, 1999, 106-107 (in Russian).

96 The CCG, Article 1120, Part 1, Subparagraph "A".

97 Ley 25/2010, de 29 de Julio, Del Libro Segundo del Código Civil de Cataluña, Relativo a la Persona y la Familia, Articulo 234-2, Cláusula "C", 29/07/2010; Ley 11/2001, de 19 de Diciembre, de Uniones de Hecho de la Comunidad de Madrid, Articulo 2, Cláusula 1, "B", 19/12/2011; The Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, Ireland, Article 172, Clause 1, 19/07/2010.

relationship in question is not legally regulated and does not cause any legal consequences for the couple, then the person, despite the limited capacity, should be able to enter into relationship without restriction. However, if the de facto family cohabitation outside of marriage will be a legally regulated institution, like marriage, it will be valid to enter into it with the prior written consent of the custodian of a person with limited capacity.

It should be noted that due to the nature of de facto family cohabitation outside of marriage, it should not be allowed to enter through a representative.[98]

The absence of close kinship[99] between cohabitants was also considered as a sign of the subject of de facto family cohabitation outside of marriage.

Based on the analysis of signs and other characteristics (the legal nature of institution, term, subjects and other characteristics) of the relationship identified as a result of the study, the concept of the institution under consideration can be formulated as follows – de facto family cohabitation outside of marriage is a de facto existing voluntary public relation of an indefinite period of time between an adult woman and a man, for the purpose of living together and producing a common household, that is unregistered in the relevant body of the state in accordance with the rules established for registration of marriage, or a voluntary transaction of an indefinite period of time, that is concluded by them for the same purposes (in case if the legislation strengthens the signs of the mentioned relationship), which are characterized by the existence of close personal relations between the couple. In addition, there should be no close kinship between the couple and neither of them should be in the same kind de facto relationship or marriage with another person.

Bibliography:

1. Universal Declaration of Human Rights, 10/12/1948.
2. European Convention on Human Rights, 4/11/1950.
3. Convention on "Consent to Marriage, Minimum Age for Marriage and Registration of Marriages", 7/11/1962.
4. Constitution of Georgia, the Georgian Parliamentary Gazette, 31-33, 24/08/1995.
5. "On the approval of the Constitutional Agreement between the State of Georgia and the Apostolic Autocephalous Orthodox Church of Georgia" the Resolution of October 22, 2002 of the Parliament of Georgia, the Constitutional Agreement between the State of Georgia and the Apostolic Autocephalous Orthodox Church of Georgia, LHG, 116, 27/11 / 2002.
6. Law of Georgia on "Civil Status Acts", Website, 111228058, 28/12/2011.
7. Ley 11/2001, de 19 de Diciembre, de Uniones de Hecho de la Comunidad de Madrid, 19/12/2011.
8. Ley 25/2010, de 29 de Julio, Del Libro Segundo del Código Civil de Cataluña, Relativo a la Persona y la Familia, 29/07/2010.
9. Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010, Ireland, 19/07/2010.

[98] The CCG, Article 103, Part 2; Comp. *Antropova I. R.*, On the Legal Nature of the Marriage Agreement in Modern Family Law of Russia, Bulletin of the Udmurt University, Series of Economics and Law, №2, 2013, 114-115 (in Russian).

[99] See: *Eriashvili N.D., Belsky D.I., Kravchenko A.I., Kurganov S.I.*, Sociology for Lawyers, Tbilisi, 2011, 137 – Kinship is combination of people, who share common ancestry. In addition to blood relations, there is a social institution of "recipient kinship" related to the adoption of a child (in Georgian).

10. De facto Relationships Act 2005, Island, Act No. 5 of 2006, 28/02/2006.
11. Family Code of Ukraine, 10/01/2002.
12. Civil Code of The Republic of Lithuania, 18/07/2000.
13. Criminal Code of Georgia, LHG, 41 (48), 13/08/1999.
14. Civil Code of Georgia, the Parliamentary gazette, 31, 24/07/1997.
15. Family Law Act 1975, Australia, №53, 1975.
16. Code of Laws on Marriage, Family, and Guardianship with Amendments, State Publishing House, Moscow, 1/08/1933, Chapter 1, Paragraph 2-3; Chapter 4, Paragraph 19, 19/11/1926. (In Russian).
17. Civil Code of France, 21/03/1804.
18. Paradiso and Campanelli v. Italy, [2017], ECHR, 140.
19. Oliari and Others v. Italy, [2015], ECHR, 169.
20. Hamelainen V. Finland, [2014], ECHR, 108, 110-113.
21. Vallianatos and Others v. Greece, [2013], ECHR, 49, 73.
22. Van der Heijden v. the Netherlands, [2012], ECHR, 50.
23. Goodwin V.T.UK, [2002], ECHR, 56, 97-104.
24. X, Y and Z V. The United Kingdom, [1997], ECHR, 36.
25. Kroon and Others v. The Netherlands, [1994], ECHR, 30.
26. Olsson v.Sweden (no. 1), [1988], ECHR, 59.
27. Johnston and Others v. Ireland, [1986], ECHR, 56.
28. The Ruling of March 16, 2016 of the Chamber of Civil Cases of the Supreme Court of Georgia on the case №As-7-7-2016, 33.
29. The Ruling of January 12, 2012 of the Chamber of Civil Cases of the Supreme Court of Georgia on the case №As-1653-1641-2011.
30. 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.
31. Tsiala Pertia v. The Parliament of Georgia, №1351 Constitutional Lawsuit of September 12, 2018.
32. *Antropova I. R*., On the Legal Nature of the Marriage Agreement in Modern Family Law of Russia, Bulletin of the Udmurt University, Series of Economics and Law, №2, 2013, 114-115 (in Russian).
33. *Baarsma N. A*., The Europeanisation of International Family Law, Hague, 2011, 62.
34. *Baghishvili E*., Commentary of the CCG, Book III, Tbilisi, 2019, Article 327, Field 8 (in Georgian).
35. *Basiladze N*., Legal Challenges of Sex Change in Marriage, Justice and Law, №1 (61), 2019, 175-176 (in Georgian).
36. *Belkova A. M., Vorozheikin E.M*., Soviet Family Law, Moscow, 1974, 33-34 (in Russian).
37. *Belov V. A*., Civil Law, General Part, Volume II, Persons, Benefits, Facts, Moscow, 2011, 454, 466 (in Russian).
38. *Burton F*., Family Law, London, 2003, 41, 50.
39. *Chikvashvili Sh*., Family Law, Tbilisi, 2004, 69 (in Georgian).
40. *Chanturia L*., *Darjania T., Rusishvili G.,* Commentary of the CCG, Book I, Tbilisi, 2017, Article 50, Field 3., Article 61, Fields: 19-21; Article 74, Field 4; Article 81, Field 1 (in Georgian).
41. *Chanturia L*., General Part of Civil Law, Tbilisi, 2011, 6 (in Georgian).
42. *Diduck A., O'Donovan K*., Feminist Perspectives on Family Law, Abingdon, 2006, 39.
43. *Douglas G*., An Introduction to Family, "OXFORD University Press", Oxford, 2004. 50.

44. *Emelina (Tishchenko) L. A*., Development of Family Law in Russia: Theoretical and Historical - Comparative Analysis, Monograph, Moscow, 2000, 14-18 (in Russian).
45. *Eriashvili N. D., Belsky D.I., Kravchenko A.I., Kurganov S.I.,* Sociology for Lawyers, Tbilisi, 2011, 137-139 (in Georgian).
46. *Haderka I.*, Entering into a Marriage, Legal Aspects, *Zaporozhchenko L.* (trans. from Czech), Moscow, 1980, 165 (in Russian).
47. *Jorbenadze S*., Soviet Family Law, Tbilisi, 1957, 174 (in Georgian).
48. *Kereselidze D*., General System Concepts of Private Law, Tbilisi, 2009, 330 (in Georgian).
49. *Kikoshvili S*., Lack of Will in Georgian Law, Journal. "Review of Georgian Law", Special Edition, 2008, 17 (in Georgian).
50. *Kosova O. Yu*., "Actual Marriages" and Family Law, Journal of Jurisprudence, №3, 1999, 106-107 (in Russian).
51. *Kosova O. Yu*., Family and Inheritance Law of Russia, Moscow, 2001, 69 (in Russian).
52. *Krotov M. V*., Civil Law, Vol. 3, Moscow, 2004, 372 (in Russian).
53. *Kropholler I*., German Civil Code, Study Commentary, *Darzhania T., Chechelashvili Z. (Trans.)*, *Chachanidze E., Darjania T., Totladze L. (ed.)* 13th Revised Edition, Tbilisi, 2014, §123, Field 4 §138, Field 8 (in Georgian).
54. *Kurilenko O. G.,* Regulation of Marriage Relationships, according to the Legislation of the Russian Federation: Dissertation of the Candidate of Legal Sciences, Moscow, 2003, 17 (in Russian).
55. *Laneyrie-Dagen N*., How to Read Paintings, 2007,4-5.
56. *Livermore M*., The Family Law Handbook, Third Edition, Pyrmont, 2013, 34.
57. *Knorbyb M. C.*, Canadian Family Law, 10th edition, Ontario, 2010, 9.
58. *Maleina M. N*., Changing the Biological and Social Sex: Prospects for the Development of Legislation, Journal of Russian Law, №. 9, 2002, Moscow, 58 (in Russian).
59. *Manankova R. P.,* Explanatory Note to the Project Concept of the New Family Code of the Russian Federation, Tomsk, 2008, 11, 29 (in Russian).
60. *Ninua E*., Some Legal Aspects of Spousal Relations, "Justice and Law", № 3 (34), 2012, 45 (in Georgian).
61. *Orlova N. V*., Legal Regulation of Marriage in the USSR, Moscow, 1971, 23 (in Russian).
62. *Rodgers M. E.*, Understanding Family Law, London, 2004, 36.
63. Shakhmatov V. P., Legislation on Marriage and Family, Tomsk, 1981, 126-127 (in Russian).
64. *Surguladze I*., Government and Law, Part One, Tbilisi, 2002, 62. (In Georgian).
65. *Tarusina N. N*., Marriage in the Russian Family Law, Eroslavl, 2007, 143, 148 (in Russian).
66. *Tarusina N. N*., Essays on The Theory of Russian Family Law, Yaroslavl, 1999, 74 (in Russian).
67. *Thornton A*., William G. Axinn, Yu Xie, Marriage and Cohabitation, The University of Chicago Press, USA, 2007, 79-80.
68. *Yugay O. D*., On the Question of the Concept and Legal Nature of Marriage, Journal of Family and Housing Law, No. 3, 2006, 26-30 (in Russian).
69. <https://www.geostat.ge/ka/modules/categories/324/gankortsineba> [30.04.2020]. (in Georgian).
70. <https://www.geostat.ge/ka/modules/categories/323/kortsineba> [30.04.2020]. (in Georgian).
71. <https://ka.wikipedia.org/wiki/%E1%83%A5%E1%83%9D%E1%83%A0%E1%83%AC%E1%83%98%E1%83%9C%E1%83%94%E1%83%91%E1%83%90> [30.04.2020]. (in Georgian).