

Defining the Legal Nature of Shared Rights

The current article is dedicated to defining the legal nature of shared rights, which has twofold importance, scientific accuracy, and practicality.

The roots of shared rights are in common property, which is part of property law. Therefore, logically, shared rights contain some elements of property law. In particular, the relationship of owners of shared rights with third parties is an external and property law-connected. This relationship has an absolute character. In addition, the internal fiduciary relationship between parties, which is related to the origins of the obligation law of shared rights, is also noteworthy.

The existence of shared rights in the obligation law is caused by the internal, relational, and personal nature of the existing relationship, by the non-injury of the interests of the other parties in the use of the shared rights by one party. The legal content of the rights and obligations of the parties is expressed in the powers of using, managing, and disposing of the shared object, taking into account the interests of other parties, also in the power of canceling the shared right, etc.

Shared rights have a merged legal nature: the internal relations of the shareholders are relative, and the relationships of the owners of shared rights with third parties are absolute. Accordingly, the specifics of this relationship depend on whether it concerns the internal rights and obligations of the shareholders or the interests of the co-sharers with third parties. The above-mentioned determines which field of civil law norms will be applicable concerning the mentioned relationship – property or obligation law.

Keywords: *Common property, Shared right, relative, obligational right, internal relationship of shareholders, mixed relationship*

1. Introduction

What is the legal nature of shared rights, and where is the place of this institution in the civil law system? This question is a crucial issue to which there is no uniform approach in the legal literature. In this regard, there are no monographic studies in the Georgian language, although there are several noteworthy foreign studies on the basic principles of shared rights.¹ It is quite clear that it is impossible to discuss every single aspect of shared rights in this article. However, within this article,

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¹ Schnorr R., *Die Gemeinschaft nach Bruchteilen (§§ 741-758 BGB)*, Tübingen, 2004; *Staudinger von. J., Langhein G.-H., Kommentar zum BGB*, Berlin, 2008; *Filatova U.B.*, Institute of common property law in the countries of the Romano-Germanic legal family (Germany, Austria, Switzerland, France and Russia: Comparative Legal Research), M., 2015 and others.

some of the problematic issues will be highlighted, based on which there will be defined the legal character of the shared rights.

In this matter, the relationship between common property and shared rights should be determined. Whether shared rights should be in the property law or obligation law?² Accordingly, this research aims to determine the legal nature of the shared right. Research also seeks to identify the specifics of the implementation of the rights and duties of the shareholders. Since rights and duties in this relationship determine the content of the legal relationship.

What is the importance of defining the legal nature of shared rights? It will specify which will be applied to the shared rights property law or obligation law principles and signs. The issue is determining the nature of the relationship between the participants and the legal consequences of the infringement. It will answer the question: what are the specifics of shared rights and the scope of realization of the shared rights by participants?

Accordingly, the presented article tries to determine the legal nature of shared rights in which the author use normative-dogmatic, synthesis, and analysis or comparative methods, which are both from the point of view of educational-methodical and scientific accuracy.

2. Connection of Common Property with Shared Rights

The property is owned by people of two or more in case of common property. Each individual is the co-owner of the property. There is only one specific norm of shared property in property law (CCG art. 173), whereas, the other legal relations are directed in different chapters of Georgian Civil Code or other special legislation. The shared property may be derived on the grounds of legislation or agreement (CCG art. 173-1). The shared property is divided into co-owned and share property.³

As for shared property, unlike joint property, shares themselves are defined here. Therefore, common shared property rights differs from the common joint property rights.⁴

Shared property relates to separate objects such as things, claims, and rights. Each co-owner has not actual share (like shared obligation) but an ideal share in the property.⁵ In shared rights, each participant has the right to an ideal share in property, which is expressed as a share in the common right. Above-mentioned determines both the scope of the implementation of legal rights and obligations between the participants, as well as the content of the legal responsibility of the participants in relations with third parties.⁶

As for the shared property, unlike the co-owned property, shares themselves are not defined here. Therefore, the co-owner of the property lacks the ability to dispose of shares of property, unlike

² See *Bichia M.*, Several Aspects of Establishing the Ontological Nature of Shared rights (Analysis of Theory and Practice), In: Proceedings of the XVIII International Scientific and Practical Conference “Social and Economic Aspects of Education in Modern Society”, Warsaw, October 28, 2019, 54.

³ See *Zoidze B.*, Georgian Property Law, 2nd ed., Tbilisi, 2003, 102 (in Georgian).

⁴ Civil law, In 4 volumes, Vol. II, Property law, Inheritance law, Exclusive rights, Personal non-property rights, TexTbilisiok, Ed. *Sukhanova E. A.*, 3rd edition, M., 2006, 120 (in Russian).

⁵ See *Fikentscher W., Heinemann A.*, Schuldrecht, 10. Auflage, Berlin, 2006, 372.

⁶ *Staudinger von. J., Langhein G.-H.*, Kommentar zum BGB, Berlin, 2008, § 741 (Rn. 59, 256), § 742 (Rn. 1).

the participant of shared property.⁷ In common shared property share applies not only to individual objects or rights but also to the property as a whole, which is separated from the common property. The content of the property separated from the common property may be a separate object as an exception, for example, a plot of land for a house. In addition, with co-owned property each owner's right extends to the entire property. In shared property, the owner's share in the property is ideal. And in co-ownership, share can be determined if the property is divided. However, before the division, it is considered that the shares of all the participants are equal.⁸ For example, according to the Civil code of Georgia article 1159, if otherwise is not defined by mutual agreement of the spouses, they shall have equal rights to the spousal property. According to the first paragraph of the same article, any property acquired by the spouses during their marriage shall be treated as their joint property (spousal property). Possession, use, and disposal of this property depend on the mutual agreement of the spouses. Therefore, co-ownership, in which the owners have ownership rights to undivided shares of property, differs from shared ownership. Difference is caused the object of co-ownership is property, but the object of shared ownership is only a separate right.⁹

Moreover, following article 953 of the Civil Code of Georgia, a shared unit differs from a co-owned unit in that it is a property unit. Joint activity (partnership) acts against third parties based on common rights. Co-owned property is regulated by the norms governing shared rights. However, co-shared unity is considered as the unit connected to the property. Co-owned unity is considered legal unity and transforms the co-owned unity into a union of property. A characteristic of most co-ownership is that the co-owners cannot independently dispose of the shared object or their share.¹⁰

Common co-owned ownership¹¹ is a union of persons whose members cannot be changed, and the members represent a single whole (unit) in external relations. A partnership is an association around the property (not around persons). As each co-owner has powers in common rights, the co-sharer has both his vote and his sphere by disposing of his share. The purpose of shared ownership is not to take into account the opinion of each co-owner separately, but to create conditions for co-owners to use the shared object as efficiently as possible. The judgment of the majority is necessary for the effective management and use of the common property. Common shared ownership does not depend on the change of members and is created around the property, therefore the change of co-owners is allowed.¹²

⁷ *Filatova U.B.*, Institute of Common Property Law in the Countries of the Romano-Germanic Legal Family (Germany, Austria, Switzerland, France and Russia: Comparative Legal Research), M., 2015, 334 (in Russian).

⁸ See *Zoidze B.*, Georgian Property Law, 2. Ed., Tbilisi, 2003, 102 (in Georgian).

⁹ *Fikentscher W.*, *Heinemann A.*, Schuldrecht, 10. Auflage, Berlin, 2006, 665.

¹⁰ *Baur F.*, *Stürner R.*, Sachenrecht, 18. Auflage, München, 2009, § 3 Rn. 25 and hereinafter; *Filatova U.B.*, Institute of common property law in the countries of the Romano-Germanic legal family (Germany, Austria, Switzerland, France and Russia: Comparative Legal Research), M., 2015, 329-330 (in Russian).

¹¹ Common joint ownership is a shared co-ownership right.

¹² See *Filatova U.B.*, Institute of Common Property Law in the Countries of the Romano-Germanic Legal Family (Germany, Austria, Switzerland, France and Russia: Comparative Legal Research), M., 2015, 388 (in Russian).

According to the opinion in the legal literature, it is not suitable to have shared rights in the circle of statutory obligations. In this regard, shared rights are considered an institution of property law, because they are related to the rights and obligations of two or more co-owners of real estate.¹³ Therefore, it is required to define why common ownership provided by the property law is placed in the obligatory law in the form of shared rights.¹⁴ Sharing this point of view would allow us to explain the norms that existed before the amendment (Articles 210-232) of the Civil Code of Georgia “ON HOMEOWNERS' ASSOCIATIONS” (Articles 210-232), which are currently regulated by a separate law. Most likely, these norms also created a problem of systematization since the provisions included in the property law could not be logically connected with the co-ownership rights in the obligation law – legal obligations.

The common property itself implies a collision of two aspects: on the one hand, unity, in which being in means subordination to the rules developed by this unity, and on the other hand, the right of ownership, as complete domination over the thing, absolute property rights.¹⁵

3. Concept of Shared Rights and Prerequisites for Usage

The legislator started the section of legal obligations in the Civil Code with the chapter regulating shared rights, which includes provisions from Article 953 to Article 968. A share right is a right owned by more than one person. If several persons are jointly entitled to a right, then the rules of shared rights shall apply unless the law provides to the contrary (Art. 953).¹⁶

In common shared ownership, there is a common right, which is considered as togetherness of rights (shares) of several persons on a shared object. Each co-owner has a share in the common right, which in its content is not equal to the right of common property or private property. Common property does not match the shared co-ownership right. I.e., to exercise common powers, it is not sufficient to have only a share, but it is necessary to unite everyone's share. Such possession, use and disposal of an item is one of the forms of manifestation of common ownership, namely the separation of a share. In Germany, Austria, Switzerland, and France, common ownership generally establishes itself by changing the function and disposing of the item. The co-ownership right creates opportunities that belong to the individual sphere of the co-owner. This includes some possibilities as follows: disposal of shares, the use of a part of the thing in proportion to the share or its use for a certain time. The disposal of the share in the right is not considered only the individual sphere of the co-owner, since any disposal affects the interests of other co-owners.¹⁷

¹³ *Willems H.*, Comparative Analysis of Georgian and Dutch Obligatory Law, in the book: The Law of Obligations, ed. Kvirilashvili Kh., Tbilisi, 2006, 97 (in Georgian).

¹⁴ *Fikentscher W., Heinemann A.*, Schuldrecht, 10. Auflage, Berlin, 2006, 665.

¹⁵ *Filatova U.B.*, Institute of common property law in the countries of the Romano-Germanic legal family (Germany, Austria, Switzerland, France and Russia: Comparative Legal Research), M., 2015, 385 (in Russian).

¹⁶ See *Klunzinger E.*, Grundzüge des Gesellschaftsrechts, 16. Auflage, München, 2012, 17; *Klein-Blenkers Fr.*, Rechtsformen der Unternehmen, Köln, 2009, 184.

¹⁷ See *Filatova U.B.*, Institute of Common Property Law in the Countries of the Romano-Germanic Legal Family (Germany, Austria, Switzerland, France and Russia: Comparative Legal Research), M., 2015, 142 (in Russian).

Hence, for the rights to be considered shared, the following requirements must be met: 1) Civil rights; 2) several persons; 3) these persons should have this right; 4) The law should not allow the possibility of using another rule of regulation of the given relationship.¹⁸

➤ Shared rights include the civil right, i.e., the ability of a person recognized by civil law to demand the debtor to perform an action or to refrain from it, as well as to perform an action with the help of the court to defend his interests.¹⁹ Along with this right, there is the duty of another person (shareholder), which is actually aimed at the exercise of the right. Hence, there is a correlation between right and duty; a right has meaning only when there is a corresponding duty, a right without a duty loses its legal character.²⁰ In addition, shared rights can be found in family relations (Common property of spouses), inheritance relations, etc. Therefore, the scope and meaning of shared rights are wide.²¹

➤ The relationship based on common ownership is characterized by the plurality of persons having ownership rights to a specific object. Both individuals and legal entities can be the owners of shared rights.²² Therefore, it is not allowable to have a shared right with only one person, because this will lead to the termination of the shared right.²³ Accordingly, in the case of shared rights, the right to a share must be owned by several persons, otherwise, the existence of shared rights is excluded.

➤ Moreover, for the existence of shared rights, it is required to establish a legal connection between the civil rights and these persons, precisely, the right must belong to the person (co-owners).

➤ The applicability of the institution of shared rights requires the exemption of any other contractual or statutory basis. If such a rule exists, then this special rule will apply to this relationship (Agency without Specific Authorisation) (Civil Code of Georgia, Art.953)

For example, **when performing other's affairs without an authorization, the initiator has neither the duty nor the authority to perform the affairs.** However, in the case of **shared rights, the participants have authority over the common object.** Therefore, it is not considered that he was performing the affairs of others. Moreover, provisions of performing others' affairs without authorization are still not applicable if the individual conducts a transaction for another person in the belief that it is his/her own (Civil Code of Georgia, Art.975). In this case, the possibility of using the provisions (Civil Code of Georgia, 969-974) of performing other people's affairs without authorization is excluded.²⁴

The second paragraph of Article 956 of the Civil Code gives the co-sharer the right to take measures necessary for maintaining the object even without the consent of other part shareholders. This provision provides the right to manage other people's affairs in the same way as one's own. The shareholder, who uses his authority recognized in the second paragraph of Article 956 of the Civil

¹⁸ See *Bichia M.*, Legal obligational law, 2nd ed., Tbilisi, 2018, 58 (in Georgian).

¹⁹ *Alexandrov N. G.*, Legality and legal relations in Soviet society, M., 1955, 108-109 (in Russian).

²⁰ See *Surghuladze I.*, Government and law, Translator: *Gamkhrelidze O.*, Tbilisi, 2002, 110 (in Georgian).

²¹ See *Bichia M.*, Legal Obligational Relations, Tbilisi, 2016, 44 (in Georgian).

²² Civil law, In 4 volumes, Vol. II, Property law, Inheritance law, Exclusive rights, Personal non-property rights, Textbook, Ed. *Sukhanova E.A.*, 3rd ed., M., 2006, 117 (in Russian).

²³ *Schmidt K.*, in: *Müko-BGB*, 7. Auflage, München, 2017, § 741, Rn. 8.

²⁴ Decision № As-649-610-2011 of the Civil Affairs Chamber of the Supreme Court of Georgia, dated October 4, 2011.

Code, genuinely only exercises his right in the form of a property right. The excess of authority by the co-shareer is considered not as an infringement, but as an intervention in the authority of other shareholders. This shareholder is similar to a third person, who intervenes in the rights of the sharer and is similar to the performer of someone else's affairs within the meaning of Article 969 of the Civil Code. However, the shared right differs from the agency of other people's affairs without authorization in that the sharer protects the shared object while exercising his right.²⁵ Accordingly, when a person has the right to interfere in another's affairs, the provisions of agency other's affairs without authorization is not applicable to this relationship, since there is no authority to do other's affairs when performing other's affairs without assignment.

In addition, if one of the shareholders of the shared right suffers certain necessary expenses directly for the storage of the object, the other participants will be enriched, and there is also a causal connection between the enrichment of the other participants and the result (damage) caused by the expenses incurred by one of the participants. However, unjust enrichment has a subsidized character, i.e. it retreats to another rule for the relationship. If there is no contractual or other legal basis for compensation of incurred expenses, and the relationship between the parties has arisen on the basis of the rules on shared rights, the case should be resolved within the framework of co-ownership rights.²⁶

Accordingly, the content of the relationship based on shared rights includes all the property and obligatory rights and obligations that may belong to several persons on one property. The inseparability of an item can give rise to both shared rights and shared duties.²⁷ Co-heirs shall reduce the inheritance or the inherited objects following the common right of the heirs to the shares related to the conditionally inherited objects or their division quota at the time of the personal contribution of the heir to the association of persons. For example, when inheritances are defective, their value will automatically decrease for all co-heirs.²⁸

4. Specific features of shared rights in the obligation law

4.1. The ground of origin

The rights and obligations of the shareholders of share rights derive from the law, and the relations between them are regulated by the law²⁹, which exists without the consent of the co-owners.³⁰

²⁵ See *Schnorr R.*, Die Gemeinschaft nach Bruchteilen (§§ 741-758 BGB), Tübingen, 2004, 228-229, 232.

²⁶ See Decision № As-649-610-2011 of the Civil Affairs Chamber of the Supreme Court of Georgia, dated October 4, 2011.

²⁷ See *Shotadze T.*, Comparative Analysis of Common property and Rights in Common According to the Civil Code of Georgia, Journal of Law, № 2, 2009, 20 (in Georgian).

²⁸ *Eberl-Borges Chr.*, Die Erbauseinandersetzung, Tübingen, 2000, 455.

²⁹ See *Akhvlediani Z.*, Obligation law, 2nd Tbilisi, 1999, 251-252 (in Georgian); *Kübler F., Assmann H.-D.*, Gesellschaftsrecht, Die privatrechtlichen, Ordnungsstrukturen und Regelungsprobleme von Verbänden und Unternehmen, 6. Auflage, Lehr- und Handbuch, Heidelberg, München, Landsberg, Berlin, 2006, 1, 29.

³⁰ *Kirkpatrick Me J., Stuhler E., Francois H., Cosciani C., Fantozzi A., Gloden Joseph Me, Van der Heyde M.*, Steuervorschriften für die überbetriebliche Zusammenarbeit oder Fusion landwirtschaftlicher Betriebe, II. BR Deutschland, 84, Februar, 1972, 6.

Often, owners of shared rights do not have any document reflecting the agreement, except for the document of origin of the right (extract, inheritance certificate). Such shared property relations should be regulated by law. In addition, the property may be jointly owned by several persons under the right of rent or lease, which implies the existence of a contract, which excludes legal obligation. However, when it comes to issues not regulated by the agreement, priority is again given to legal regulations. Therefore, the same relationship is regulated by different institutions.³¹

4.2. Relative Nature of the Relationship

Firstly, Article 954 of the Civil Code institutes the possibility of defining special regulations and considers their priority over general norms. According to the mentioned provision, it is possible to deviate from the established rule by the superiority of special norms, which indicates the dispositional nature of this provision.³² The correspondent of the mentioned provision in the German Civil Code (GCC) is Article 742, according to which, in case of doubt, the presumption applies that the shareholder have an equal share. However, it is not suitable to distribute shares equally, and deviation from the established rule of equality is allowed if there is an agreement between the shareholders, a special rule, or special circumstances. In this case, the special rule of interpretation of the law takes precedence over the general rule.³³ For example, when several persons create an invention, the proportion of share is determined in proportion to the co-inventor's contribution to its inventions, unless the parties have agreed otherwise. Article 742 of the GCC is used when the contribution cannot be determined.³⁴

The use and administration of the shared object and the cancellation of the right belong to an obligation law relationship since it is based on mutually agreed action by the shareholders.³⁵ The content of the right to the fruit is a confirmation of this. Authority stipulated in Art.955 of the Civil Code does not have a nature of property law, since each part owner shall be entitled to the portion of the fruit proportionate to his/her share. In this case, the circle of persons of the relationship (creditor and debtor) is specified. Therefore, the right of the shareholders to the fruit has a relative nature. In addition, when using the shared object, the shareholder must take into consideration the interests of other shareholders. So as not to interfere with others' right. This provision also outlines the relative nature of the relationship between the shareholders.³⁶

Shareholders right to use share extends to the entire common object. However, according to Art.955 of the Civil Code paragraph 2 each part shareholder may use the thing held in common in

³¹ See *Shotadze T.*, Comparative Analysis of Common property and Shared Rights According to the Civil Code of Georgia, Journal of Law, № 2, 2009, 19-20 (in Georgian).

³² *Staudinger von J., Proff v.*, BGB, 2015, § 741, Rn. 6

³³ *Schmidt K.*, in: MÜKO-BGB, 6. Auflage, München, 2013, § 742, Rn. 1, 3.

³⁴ BGH GRUR 1979, 540 (LS 2, 541) – Biedermeiermanschetten; *Schmidt K.* in: MÜKO-BGB, 6. Auflage, München, 2013, § 742, Rn. 4.

³⁵ *Staudinger von J.*, Kommentar zum Bürgerlichen Gesetzbuch: mit Einführungsgesetz und Nebengesetzen, München, 2007, 350.

³⁶ On the essence of the relative relationship, see *Bratus S. N., Ioffe O. S.*, Civil law, M., 1967, 41 (in Russian).

such a way as not to impair the use by the rest of the shareholders.³⁷ This refers to the actual (and not legally permissible) usage. If the shareholders of street A has used the street for himself, sharer B cannot rely on the fact that theoretically he should have had the opportunity to use this street to justify his compensation claim. The independent use of the mentioned object is due to the privileged position of owner A. Thus, the use of shared rights should be in line with the interests of shareholders. Anyone can have the full (unlimited) right to use the property as long as it does not interfere with the use of other shareholders. This is specified in the first paragraph of Article 170 of the Civil Code. To the extent that the rights of the co-owner are related to the relationship of the co-owners with other co-owners, the right to use the shared object becomes relative. The parties should jointly (agreed) settle the use of the territory or the use of a shared object for a certain time. However, the problem of managing a shared property arises only when both parties require the use of the country house at the same time. Thus, if one of the two co-owners does not have an interest in using the shared country house, the other can live here at any time and as long as he is allowed to do so.³⁸

The management of shared objects is also noteworthy. The power of management is an active and purposeful action. It provides to protect and maintain the object, taking into account the interests of all co-owners to preserve, improve, and profit from the object. In the legal regulation of shared property management, the corporate nature of co-owners relationships can be seen to some extent.³⁹ In addition, the fulfillment of shared request, forgiveness of debt and postponement of common debt belong to the scope of joint management of the shared object, which, according to the first part of Article 956 of the Civil Code, is the responsibility of the owners of shares.⁴⁰ However, each shareholder (co-owner) can take measures necessary for the storage of the object without the consent of other shareholders (the second part of Article 956 of the Civil Code).

Article 956 of the Civil Code regulates not only the right of the co-owner but also the duty, if necessary, to act for the interests of other shareholders and to maintain the shared object, taking into account the functional purpose.⁴¹ Accordingly, the purpose of Article 956 of the Civil Code is to regulate the rights and duties of the co-owner, if necessary, to act independently in the interests of other shareholders to preserve the shared object, according to its value.

Thus, the norms on the management of shared objects (Articles 956 and 957 of the Civil Code) have an obligatory law character.⁴²

³⁷ *Staudingers von J.*, Kommentar zum BGB mit Einführungsgesetz und Nebengesetzen, Neubearbeitung von Engel N., Langhein G-H., Mayer J., Berlin, 2008, § 743, Rn. 34.

³⁸ *Schnorr R.*, Die Gemeinschaft nach Bruchteilen (§§ 741-758 BGB), Tübingen, 2004, 177-178.

³⁹ *Filatova U.B.*, Institute of common property law in the countries of the Romano-Germanic Legal Family (Germany, Austria, Switzerland, France and Russia: Comparative Legal Research), M., 2015, 204-205, 211 (in Russian).

⁴⁰ *Kroppholler I.*, German Civil Code – Educational Commentary, revised by F. Jacob and M. Von Hinden, 13th edition, translators: *Darjania T., Chechelashvili Z.*, Tbilisi, 2014, 301-302 (in Georgian).

⁴¹ Ruling № As-600-2019 of the Civil Affairs Chamber of the Supreme Court of Georgia dated November 14, 2019 (in Georgian).

⁴² See *Schnorr R.*, Die Gemeinschaft nach Bruchteilen (§§ 741-758 BGB), Tübingen, 2004, 8.

Taking into account the right of pre-emptive rights in the case of shared rights is also relative. By agreement of the parties, it can be established that the other shareholders have the right of pre-emptive rights during the sale of the share (second sentence of Article 959 of the Civil Code).⁴³

According to Article 967 of the Civil Code, if upon cancellation of shared right, the thing held in common is allocated to one of the part shareholders, then each of the remaining part owners shall be liable, pro rata to his/her share, in the same manner as a seller is liable for a legal or material defect in a thing. For a benefit to be attributed to a person, legal obligatory (and not by property law) “transfer” (it means reaching an agreement – M.B.) is enough. Accordingly, the “allocation” established by Article 967 of the Civil Code of Georgia exists when the benefit legitimately passes to the recipient. In addition, when distributing equal shares, distribution can be made by drawing lots among shareholders (Article 963 of CCG). Therefore, if the object is subject to division according to the rules of the law or in accordance with the intent of the testator, the obligation legal order will arise in the first place, before the property good is transferred according to the rules.⁴⁴

4.3. Internal Relations

The common interest of the sharers is not limited to the possession of shared objects. It creates a special legal relationship between the sharers, which is reflected in Article 955 of the Civil Code. Here, the relationship arising from the specific internal shared ownership is understood: since the external relationship, in the sense of Article 953 of the Civil Code, does not mean the authority over the shared ownership. In this case, the plurality of persons determines the internal relations arising from co-ownership with the help of this unity. Therefore, the person who conferred the right to possess of a shared object trusts other persons who can transfer ownership of the property based on a fiduciary relationship. It turns out that an independent owner owns a common object partly for himself and partly for another.⁴⁵

Only the unit of shares constitutes a full right, which is why all acts of disposal must be carried out by agreed decision.⁴⁶

In addition, the first part of Article 955 of the Civil Code should be considered as an obligation law provision that establishes the internal relations of the participants, such as the distribution of the fruits of a shared object. The content of this provision should be the requirement considered in obligation law. If, according to the second part of Article 955 of the Civil Code, a co-sharer can use the shared object without the prior consent (permission) of the other co-sharer, the provisions of Article 955 of the Civil Code should prohibit him from taking the fruit without the consent of the other

⁴³ See Decision № As-646-607-2011 of the Civil Affairs Chamber of the Supreme Court of Georgia dated June 30, 2011 (in Georgian).

⁴⁴ *Eberl-Borges C.*, Die Erbauseinandersetzung, Tübingen, 2000, 435-436.

⁴⁵ *Schmidt K.*, Das Gemeinschaftskonto: Rechtsgemeinschaft am Rechtsverhältnis – Eine rechtsdogmatische Skizze zu den §§ 421, 427, 428, 432, 705 und 741 BGB, In: “Festschrift für Walther Hadding zum 70. Geburtstag”, herausgegeben von *Häuser F., Hammen H., Heinrichs J., Steinbeck A., Siebel U. R., Welter R.*, Berlin, 2004, 1097.

⁴⁶ See *Filatova U.B.*, Institute of common property law in the countries of the Romano-Germanic legal family (Germany, Austria, Switzerland, France and Russia: Comparative Legal Research), M., 2015, 388 (in Russian).

co-sharers. Accordingly, under Articles 956 and 957 of the Civil Code, the acceptance of the fruit is always in the scope of subject management.⁴⁷

Shared nature and common management of shared property is explained by the fact that in the sense of the first part of Article 170 of the Civil Code, the second part of Article 956 of the Civil Code bases collective powers on the principles of common ownership. According to the second part of Article 956 of the Civil Code, the co-owner has the right to use the object in the same way as an independent owner only under the conditions that he does not harm the benefits of other co-owners. If the right of another co-owner is violated, then the right to joint use is blocked. The second part of Article 956 of the Civil Code, on the implementation of necessary measures, applies to the maintenance of the subject. The above applies the individual right of a person, and not the right that an individual co-sharer uses for the unity of co-sharers. Thus, the right established in the second part of Article 956 of the Civil Code differs from the authority to carry out other people's affairs without the existing assignment in the sense of Article 969 of the Civil Code.⁴⁸

Simultaneously, each sharer can use the shared object in a way that does not harm the benefit of the other co-sharers (the second part of Article 955 of the Civil Code). Shared rights in this form stipulate the general rule of prohibition of the abuse of the right, which prohibits usage the right only to harm a third party.⁴⁹ The main thing is that when the second part of Article 955 of the Civil Code defines the internal relationship of the co-owners, which includes the modified right of use of the owner established by the first part of Article 170 of the Civil Code, the decision can be made only in agreement with the other co-sharers. A sharer who transfers the object of use to a third party for lease is equal to the owner, who can independently use his right. This may concern the leasing of the object to a third party.⁵⁰

Internal relations between co-owners are not absolute but relative. For the realization of the right by the co-owners, the formation and expression of their common, unified will require reaching an agreement directly between the co-owners regarding these or other issues, for example, on the use and disposal of common property. Thus, during such an agreement, obligatory legal relationships arise between co-owners.⁵¹

4.4. Personal Nature

Obligatory law regulates relations between persons regarding “personal” rights arising from contract, tort, unjust enrichment, or other basis established by law. It is possible that a personal right is challenged only against a certain person, and only a specific person can file a claim. The “personal” nature of the right is also expressed in the fact that the right cannot be realized without the person (debtor), and between the right and the thing stands the debtor's autonomous will, action, on which the

⁴⁷ *Schnorr R.*, Die Gemeinschaft nach Bruchteilen (§§ 741-758 BGB), Tübingen, 2004, 204

⁴⁸ See *Schnorr R.*, Die Gemeinschaft nach Bruchteilen (§§ 741-758 BGB), Tübingen, 2004, 224-225

⁴⁹ On the misuse of the right, see *Chanturia L.*, General part of civil law, Tbilisi, 2011, 108-110 (in Georgian).

⁵⁰ *Schnorr R.*, Die Gemeinschaft nach Bruchteilen (§§ 741-758 BGB), Tübingen, 2004, 175.

⁵¹ Civil law in 4 volumes, Vol. II, Property law, Inheritance law, Exclusive rights, Personal Non-property Rights, Textbook, ed. *Sukhanova E. A.*, 3rd ed., M., 2006, 119 (in Russian).

existence of the right directly depends.⁵² Even in co-ownership rights, the internal relationship of the shareholders has a personal character. In the case of common shared ownership, it refers to the unity of persons (and not around the property).⁵³ In this unit, a personal legal relationship arises in which it looks like a legal entity. Based on this, according to some opinions, the governing norms of the union are applicable in this situation.⁵⁴

The “personal” character of the right is reflected in the powers of ownership, use, and disposal of joint property of the spouses, the exercise of rights which is based on mutual agreement (Article 1159 of the Civil Code). The use of co-ownership by a co-owner includes the pledging of the common property in an agreement with other co-owners or encumbrance in favor of his interests (the second part of Article 173 of the Civil Code). For example, if a person takes a loan from the bank and uses a jointly owned car as collateral, the mortgagors of the property will become co-owners.⁵⁵

According to Article 1159 of the Civil Code of Georgia, spouses have equal rights to jointly-owned property. Spouses should own, use and dispose of such property by mutual agreement. According to Articles 50 and 1160 of the Civil Code, the confirmation of the other spouse is needed to dispose of the property. According to the first part of Article 1160 of the same code, when disposing of the common property of the spouses, a mutual agreement of the spouse is required, regardless of which spouse disposes of the said property. In the absence of such an agreement, if one of the spouses disposes of the common property, such disposal will be considered against the law (Article 54 of the Civil Code). In addition, according to the second part of Article 1160 no transaction made by one of the spouses in connection with the administration of the matrimonial property may be declared void upon request of the other spouse on the ground that: a) he/she had no knowledge of the transaction; b) he/she disagreed with the transaction. Accordingly, when the interest of the co-owner spouse conflicts with the interests of the bona fide acquirer of co-owned property, the law considers the bona fide acquirer more worthy of protection, because the presumption is that spouses agreed to the will expressed by the other. The basis of this legal presumption is the family attitude of the spouses, directly the status of wife and husband. In addition, when one of the spouses disposes the common property, this action implies that the other spouse will have the same rights and obligations.⁵⁶

⁵² *Todua M.*, Some features of the application of the norms regulating the obligation law relations according to the Civil Code of Georgia, in the book: “Obligatory Law”, ed. *Khvralashvili Kh.*, Tbilisi, 2006, 8 (in Georgian).

⁵³ *Filatova U.B.*, Institute of common property law in the countries of the Romano-Germanic legal family (Germany, Austria, Switzerland, France and Russia: Comparative Legal Research), M., 2015, 388 (in Russian).

⁵⁴ *Staudinger von J.*, Kommentar zum Bürgerlichen Gesetzbuch: mit Einführungsgesetz und Nebengesetzen, München, 2007, § 741 ff. Rz. 24.

⁵⁵ See *Zoidze B.*, Georgian property law, 2. Ed., Tbilisi, 2003, 103-104 (in Georgian).

⁵⁶ See *Bichia M.*, Characteristics of the Regime of Spouses’ Material Relationship according to the Practice of Georgian Courts, Journal “Justice and Law”, № 1, 2019, 89-90 (in Georgian).

4.5. Request Performance

The fate of the infringed right (or the dispute) depends on whether this right is property or obligatory. The interests of the authorized person **in property relations can be satisfied at the expense of the beneficial character of item, but in obligatory legal relations** – through the implementation of actions determined by the debtor. The point is that the actions of the participants in obligatory and property legal relations are regulated in different ways.⁵⁷

In contrast to the property relationship in the **obligation-legal relationship, the debtor performs an active action** and brings material benefit to the authorized person. Property legal relations are realized by the action of the authorized person himself. His legal interest will be fully satisfied if no one opposes his behavior.⁵⁸ For example, according to Article 960 of the Civil Code, each co-sharer is responsible for the expenses related to the shared object in proportion to the other co-sharer. According to Article 965 of the Civil Code, **the co-sharers are joint debtors, and if one of the co-sharer fully covers the costs of property maintenance, he has the right to claim a proportional part of the expenses.** This right, in turn, has a relative nature.

4.6. Interconnection of Co-sharers' Interests

It is also significant that the interest of one participant is tied to the interests of other participants. The interdependence of the interests of the participants can be explained with the help of the use of the shared object, management, cancellation of the shared right, and other aspects.

Usually, when another co-owner is damaged during the use of the shared object defined in the second part of Article 955 of the Civil Code, the liability arises only under Article 992 of the Civil Code. Here arises the anti-infringement (preventive) function. **The co-owner must use the shared object that it does not harm the other co-sharer, since he does not have the right of ownership over this object,** but only the right of legal use with the obligation legal relationship. Therefore, if the co-owner arbitrarily treats the object as the owner general liability arises according to Article 992 of the Civil Code.⁵⁹

The legislator has linked the rules of decision-making on the management and use of the common object to the interdependence of the interests of the co-sharers. The point is that the co-sharers jointly participate in the management of the shared object taking into account the proportionality of the shares. According to the first part of Article 957 of the Civil Code, the decision on the running and use of the features of the shared object is made by the majority of votes, which is determined according to the shares. The vote of the co-sharers is determined in proportion to the

⁵⁷ *Todua M.*, Some Features of the Application of the Norms Regulating the Obligation Law Relations according to the Civil Code of Georgia, in the book: “Obligatory Law”, ed. *Khviralashvili Kh.*, Tbilisi, 2006, 8 (in Georgian).

⁵⁸ See *Kobakhidze A.*, Civil Law, I, General Part, Chapter, 2001, 102-103 (in Georgian).

⁵⁹ See *Schnorr R.*, Die Gemeinschaft nach Bruchteilen (§§ 741-758 BGB), Tübingen, 2004, 185-187.

shares. For instance, when the car is owned by more than one person, they can govern the days of use of the car for each co-sharer, or other rules for its use.⁶⁰

If the co-sharers do not agree on the management and use of the shared object, **each co-sharer has the right to demand the use of shared objects within the rational consideration of other co-sharers interests. In addition, this use should not lead to a reduction in co-sharers right to use the shared object;** The share of the co-sharers can be reduced only with his consent (parts two and three of Article 957 of the Civil Code).

Therefore, co-owners enjoy the shared property equally, unless there is a different agreement between the co-sharers. The legislation does not recognize the restriction of the use of the property without proper justification. In a specific case, objective circumstance does not exist that would give the defendant the right to use the property in common ownership, not as a co-owner, but individually, only for his interests.⁶¹

According to court practice use of a shared object may limit the legal interest of other co-owners of this object to enjoy the common property (Part 2 of Article 955 of the Civil Code). Therefore, the freedom to use the thing is limited. The reason is the existence of other co-owners and consideration of their interests.⁶² The contractual burden of the owned thing for the benefit of another person should not destroy the right of ownership (Articles 170 and 961 of the Civil Code). In addition, the agreement of parties concerning the method of using real estate (land) does not cancel or change the regime of acquiring ownership rights to real estate. For determining the ownership rights of the parties, preference is given to the record of the public register.⁶³

As for the cancellation of the share right, it also has obligatory legal content⁶⁴ because it is related to the interests of the co-sharers.

According to court practice, *cancellation of the shared right by division of item causes co-ownership to be transferred to the regime of individual ownership. It is not allowed to divide the shared object that the legal regime of individual ownership applies to one part, and the regime of common ownership applies to the other part.*⁶⁵

Sharer can protect the ownership by canceling the share right. According to the definition of the Supreme Court of Georgia, by law, the shared right belongs to the category of legal obligations. The rights and duties of the co-sharers are derived from the law, and, therefore, the relationships between them are also regulated by the law. The only restriction for the exercise of this right is that the right of

⁶⁰ See Decision № As-547-517-2011 of the Civil Affairs Chamber of the Supreme Court of Georgia dated June 16, 2011 (in Georgian).

⁶¹ Decision № As-1169-1098-2012 of the Civil Affairs Chamber of the Supreme Court of Georgia of November 8, 2012 (in Georgian).

⁶² Decision № As-336-321-2015 of the Civil Affairs Chamber of the Supreme Court of Georgia dated June 24, 2016 (in Georgian).

⁶³ Decision № As-496-472-2013 of the Civil Affairs Chamber of the Supreme Court of Georgia dated January 9, 2014 (in Georgian).

⁶⁴ *Staudinger von J.*, Kommentar zum Bürgerlichen Gesetzbuch: mit Einführungsgesetz und Nebengesetzen, München, 2007, 350.

⁶⁵ Ruling № As-41-41-2016 of the Civil Affairs Chamber of the Supreme Court of Georgia of July 4, 2016 (in Georgian).

the co-sharer to cancel the shared property must not affect the destructively of the other co-sharer's property rights. Therefore, according to Article 963 of the Civil Code, cancellation of the shared right by division in kind is allowed, only if the shared object is divided (1) into uniform parts and (2) this is done without reducing the value. It is not allowed to cancel the share right if the property rights of all participants are not in line with their ideal share. The separation of the ideal share of only one co-owner in such a way that only his interests (the state before the division of the shared object) are protected does not justify the cancellation of the shared right by division in kind in the context of Article 963 of the Civil Code, when the condition (value) of the ideal share of other co-owners is not preserved.⁶⁶ Both cases imply that the object separated in kind should not lose the purpose it had before the separation. This object should not be deprived of the function that it performed for the owner. Equal shares will be distributed among the co-sharers by voting.⁶⁷

According to the dominant theory in Germany, the authority derived from the share is a property legal relation one, and the unity of the shareholders creates an obligation-legal relationship. Thus, the share is in the field of commercial law, and the unity is an obligation-legal relationship. Within the framework of this unity, the powers to use the shared object, established by Part 2 of Article 955 of the Civil Code, and the powers to cancel the shared right reflected in Article 963 of the Civil Code have a obligation-legal nature.⁶⁸

Therefore, the external relationship, in which the co-owners appear as one whole, is an absolute property relationship, while the internal relationship between the co-owners has an obligation-legal character. Ultimately, the relationship arising from fractional ownership (ie, fractional shared rights) in common property is an absolute-relative relationship. This proves the ambiguity of fractional property. Therefore, it is considered a mixed legal relationship.⁶⁹ The concept of relativity of property powers and requirements within the framework of shared rights is not new. It is traced to Engländer, according to which the right to share is a constituent part of the share of the particular shareholders. Therefore, shared right includes “quasi-absolute”, “limited absolute” or “relatively property” authority.⁷⁰

Thus, the dualistic approach to the legal nature of shared rights is due to the non-uniform attitude to the main essence of ownership, namely, the fact that it is manifested in property and obligation-legal relations. Shared rights reflect the obligation-legal aspects of ownership that arise on the basis of the law.

⁶⁶ Decision № AS-1977-2018 of March 22, 2019 of the Civil Affairs Chamber of the Supreme Court of Georgia (in Georgian).

⁶⁷ Decision № AS-332-309-2010 of the Civil Affairs Chamber of the Supreme Court of Georgia dated October 28, 2010 (in Georgian).

⁶⁸ Larenz K., Lehrbuch des Schuldrechts II, 13. Aufl. München, 1994, 375; Schnorr R., Die Gemeinschaft nach Bruchteilen (§§ 741-758 BGB), Tübingen, 2004, 7; Filatova U.B., Institute of common property law in the countries of the Romano-Germanic legal family (Germany, Austria, Switzerland, France and Russia: Comparative Legal Research), M., 2015, 143 (in Russian).

⁶⁹ Filatova U. B., Institute of common property law in the countries of the Romano-Germanic legal family (Germany, Austria, Switzerland, France and Russia: Comparative Legal Research), M., 2015, 387-388 (in Russian).

⁷⁰ Engländer K., Die regelmäßige Rechtsgemeinschaft, Teil 1., Grundlegung II Anhang, Berlin, 1914, 209.

5. Conclusion

According to the study, it is difficult to determine the legal nature of shared rights. Since it concerns, **on the one hand, the external relationship arising from the share, and on the other hand, the internal fiduciary relationship between the shareholders, which is relative.**⁷¹

In the beginning, it is important to note that the origins of shared rights derive from **common property, which belongs to property law.** Accordingly, it is natural that the shared right contains certain elements of the property law, although in the obligation law it changes in content and acquires other signs. This, in turn, conditions the spread of the signs of obligatory law relationship concerning the obligation arising from shared rights. Also, the scope of shared rights is wide and is not limited to property or obligatory law relations; it can be found in any civil law relationship.

It was determined that the internal fiduciary relations between the **shareholders are regulated by the norms on shared rights, which are relational and personal in nature.** In this relationship, the request is fulfilled by the active action of the debtor, **and the actions of the co-sharer are binded by the interests of other co-sharers.** Considering these signs, the legislator placed co-ownership rights in the private part of the obligation law – in the statutory obligations part. In addition, the legal basis of the obligation law relations of shared rights is reflected in the mutually agreed management and disposal of the shared object, in not allowing the share of the sharer to be reduced, in the use of the shared object without harming the benefits of other participants, in-kind cancellation of shared right into uniform parts of the object and by dividing it without reducing the value. Violation of these rules generates specific legal consequences and is associated with neglecting the interests of co-sharers.

The study made it clear that if the protection of the interests of the co-sharers is defined directly, this internal relationship has an obligation-legal character, and in the relationship of the participants with third parties, the case concerns an absolute (property) legal relationship. Therefore, whether there is an internal relationship between the co-sharers or an external relationship between the co-sharers with third parties, the specifics of this relationship can be easily established. This helps to identify which field of civil law provisions is applicable – norms of property or obligation law.

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⁷¹ See *Bichia M.*, Several Aspects of Establishing the Ontological Nature of Shared Rights (Analysis of Theory and Practice), Proceedings of the XVIII International Scientific and Practical Conference "Social and Economic Aspects of Education in Modern Society", Warsaw, October 28, 2019, 54-57.

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