

**Shalva Kipshidze\***

## **Recognition of the Right, as a Ground to Acquire Property Rights of the Illegally Occupied Plots of Land**

*The constitution of Georgia, article 19, stipulates the universal right to ownership, acquisition, alienation, and inheritance of property. The right to own property is a pillar to the modern democratic society development, on which it is based economic freedom and stable civil turnover. According to the established practice of the Constitutional Court of Georgia, “The constitutional-legal guarantee of property rights includes the obligation to create a legal base that ensures the practical realization of the right to own property and makes it possible to accumulate property through the purchase of the property.”<sup>1</sup>*

*According to Georgian law, one type of property acquisition is the recognition of property rights to illegally occupied plots of land in the absence of a document certifying the lawful possession (use) of land.*

*The purpose of this article is to discuss the recognition of the right as a basis for acquiring ownership to illegally occupied plots of land. To do this, logical analysis is used along with the presentation of the issue's informational and cognitive aspects and discussion of the judicial practice.*

**Keywords:** *property, illegally occupied plots of land, privatization, recognition, state property, commission for recognition.*

### **1. Introduction**

After the fall of the Soviet Union, in the transition from the socialist farming system to modern market relations in Georgia, privatization – the transfer of state property to private ownership – was considered a central direction of economic reforms.<sup>2</sup> Accordingly, the state land reform began, As a result, agricultural land used by individuals during the Soviet period was transferred to Georgian citizens.<sup>3</sup>

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\* PHD student of Ivane Javakhishvili Tbilisi State University; academic assistant of the faculty of law at Sulkhan-Saba Orbeliani University; invited lecturer of the faculty of law at Ivane Javakhishvili Tbilisi State University; invited trainer of the legal direction at LEPL Training Center of the justice of Georgia. Research Associate at the Davit Batonishvili Institute of Law, Leading Specialist at LEPL National Agency of State Property, Ministry of Economy and Sustainable Development of Georgia.

<sup>1</sup> A judgment of the Constitutional Court of Georgia on the case “Khatuna Tsotseria v. the Parliament of Georgia” December 29, 2020. no2/3/1337. II.1.

<sup>2</sup> *Kipshidze Sh.*, Privatization as a fundamental element of public management, Journal Orbeliani, № 4, 2021, 103 (in Georgian).

<sup>3</sup> The post-Soviet countries have a similar history, from which the experience of Germany, the Czech Republic, and Poland in the process of privatization is worth noting, in these countries the privatization

During the distribution of lands, the reform was flawed, a part of the population was not given an acceptance and delivery certificate or any other certificate of title, while a part of the population illegally occupied plots of land. Therefore, the legislator made it possible to obtain the property rights to illegally occupied plots of land in a simplified manner. For this purpose the parliament of Georgia adopted the law in 2007: the Law of Georgia “On Recognition of Property Rights of the Plots of Land Possessed (Used) by Natural Persons and Legal Entities under Private Law (“The law on recognition of property rights”). The law mentioned above, defined the status of illegally occupied plots of land and established the rules and procedures for obtaining ownership rights over them.

It should be highlighted, that the recognition of property rights to illegally occupied plots of land is characteristic of Georgian reality and is unfamiliar to the law of European Nations.

Accordingly, due to the uniqueness of the subject, primarily Georgian practice is discussed, however, the experiences of other countries are also represented.

Analyzing the recognition of property rights<sup>4</sup> and assessing present practice is a current issue. The above is confirmed by the large number of applications of interested persons in the property rights recognition commissions and the multitude of lawsuits, which especially increases the relevance of the research.

The present article will discuss the legislative acts of Georgia in terms of the recognition of property rights, as well as the assessment standards for the recognition of property rights in the process of administrative proceedings and the implementation of justice, and in conclusion, appropriate recommendations will be given.

## **2. Property Right as a Right protected by the Constitution**

According to the first section of Article 19 of the Constitution of Georgia the right to own property is “recognized and inviolable”. “Property is recognized and inviolable” means that legitimate property is protected. At the same time such property is trustworthy. The trust factor is an important aspect of the concept of ownership. As it is said, it establishes and legitimizes property”.<sup>5</sup> Property rights are the most extensive rights to control an object among the rights in the legal order.<sup>6</sup>

According to the definition of the Constitutional Court of Georgia “Property rights are a natural right, without which the existence of a democratic society is impossible. This stimulates individuals' private economic initiatives, which contributes to the development of economic relations, free entrepreneurship, a market economy, and normal, stable civil turnover. Meanwhile, the institution of private property is central to the proper functioning of a market economy; as such, it is one of the most

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reform was implemented with an accelerated and organic privatization strategy. See: *Sack D.*, Vom Staat zum Markt, Privatisierung aus politikwissenschaftlicher Perspektive, 2019, 4-5.

<sup>4</sup> Property rights are the source of the well-being of the democratic and social state. See: *Arsenault C.*, Property Rights for World's Poor Could Unlock Trillions in „Dead Capital“: Economist, Thomson Reuters Foundation, 2016, 14.

<sup>5</sup> *Zoidze B.*, *Constitutional Control and Order of Values in Georgia, Tbilisi, 2007, 96 (in Georgian).*

<sup>6</sup> *Schwab/Prütting*, Sachenrecht, 32. Aufl., 2005, Rdnr. 306.

important prerequisites not only for economic competition among owners but also for a democratic state and public order.”<sup>7</sup>

The Plenum of the Constitutional Court of Georgia in the case “A citizen of Denmark Heike *Kronqvist v. The Parliament of Georgia,*”<sup>8</sup> pointed out that “The right to purchase property implies the ability of a person to become the owner. A person's desire to acquire property is a normal social behavior characteristic of him/her. This aspiration is a kind of manifestation of personal freedom. The constitutional right to acquire property establishes a negative obligation on the state to not obstruct a person from acquiring property, and based on this, he/she can ensure his/her well-being. Property is the foundation for the independence and development of a person. A person's aspiration to create his own property for his own independence and well-being undoubtedly deserves respect from the state and it should be expressed in such legal regulations for the acquisition of property that ensure, on the one hand, the unhindered realization of the property rights and on the other hand, effective civil turnover.”<sup>8</sup>

Land is the most important economic asset for the state.<sup>9</sup> The recognition of property rights of the plots of land possessed (used) by natural persons and legal entities serves to encourage private ownership, “To promote the development of the land market and to bring the usage of land into the legal order”.<sup>10</sup>

### **3. Legal Grounds for Recognition of Property Rights**

#### **3.1. Definition of the Illegally Occupied Plots of Land**

The law of Georgia on recognition of property rights regulates the grounds, terms, and conditions, as well as the authorities that represent the state in the process of recognizing property rights to illegally occupied plots of land.<sup>11</sup>

According to the first article of the abovementioned law, the purpose of the law shall be, by recognizing the property rights (“recognition of property rights”), to use state-owned land resources in lawful possession (use), as well as state-owned land illegally occupied by natural persons, legal entities under private law, or any other organizational structures provided by law, and to facilitate land market development. The law distinguishes between two types of land: lawfully possessed (used) plots of land and illegally occupied plots of land. The purpose of the present article is to discuss the issue of the recognition of property rights to illegally occupied plots of land, therefore, we will discuss the latter.

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<sup>7</sup> A judgment of the Constitutional Court of Georgia on the case “Citizens of Georgia- David Jimshelashvili, Tariel Gvetadze and Neli Dalalashvili v. The Parliament of Georgia” July 2, 2007, № 1/2/384, II. 5.

<sup>8</sup> A judgment of the Constitutional Court of Georgia on the case “A citizen of Denmark Heike *Kronqvist v. The Parliament of Georgia,*” June 26, 2012. № 3/1/512. II. 37-38.

<sup>9</sup> *Dixon M.*, Modern Land Law, 7th Ed., Routledge, 2010, 31.

<sup>10</sup> A judgment of the Constitutional Court of Georgia on the case “GP. Grisha Asordia v. The Parliament of Georgia” December 27, 2013. № 2/3/522,553. II.18.

<sup>11</sup> The Law of Georgia on Recognition of Property Rights of the Plots of Land Possessed (Used) by Natural Persons and Legal Entities under Private Law, 11/07/2007.

While determining the purpose of the law on recognition, the factual and legal realities should be taken into account as they existed at the time of its adoption. By adopting the abovementioned law, the legislator encouraged private initiative and stimulated the utilization/usage of existing land resources and for this purpose, the state established a regime with certain benefits on state property, in particular, in case of privatization of the plots of land.<sup>12</sup>

According to the explanatory note to the aforementioned law: “the arbitrarily occupation of plots of land, which represents an important part of the state-owned land resources, on the one hand impedes the utilization of the fund of state-owned land and the development of the land market; on the other hand, besides citizens using state-owned plots of land, registration of the right to these lands was associated with a number of difficulties, and the current situation caused a hindrance to the growth of the revenue part of the state’s budget because the inability to identify the property rights on these lands at the National Agency of Public Registry excluded the possibility of making them an object of taxation. Along with the aforementioned actions, the state aimed to use land funds to promote the development of the land market and to bring illegally occupied lands into the legal order.”<sup>13</sup>

According to Article 2 of Paragraph “c” of the Law on Recognition of Property rights: “illegally occupied plots of land are illegally occupied state-owned agricultural or non-agricultural plots of land with a residential house (built, under construction or destroyed) or a non-residential building (built, under construction or destroyed) built upon it before entry into force of this Law, (July 11, 2007) as well as illegally occupied plots of land (with or without fixed structures built upon them) adjacent to a plot of land owned or lawfully possessed by an interested natural person, and its size should not exceed 1.25 hectares in the bar and in the highland settlement should not exceed 5 hectares, as defined in the law “On the Development of High Mountainous Regions,” and that plot of land at the moment of requesting recognition of the property rights should not be disposed of by the state.”

### **3.2. Plot of Land Subject to the Recognition of the Property Rights**

As previously stated, According to Paragraph “c” of Article 2 of the law on recognition of property rights, a state-owned agricultural or non-agricultural plot of land shall be the subject to the recognition of property rights. As a result, we must determine whether only land registered in the name of the state at the LEPL – National Agency of Public Registry (the Public Registry) is an object of recognition, or whether land registered in the name of the municipality is also an object of recognition.

The analysis of court practice<sup>14</sup> reveals that the commissions for the recognition of property rights (“the Recognition Commission”) and the courts have different approaches to the issue of the

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<sup>12</sup> A judgment of the Constitutional Court of Georgia on the case “ ‘GP. Grisha Asordia v. The Parliament of Georgia” December 27, 2013. II. 17.

<sup>13</sup> The explanatory note to the draft law of Georgia “on Recognition of Property Rights of the Plots of Land Possessed (Used) by Natural Persons and Legal Entities under Private Law by the Local Self-government” <[https://info.parliament.ge/ file/1/BillReviewContent/119949](https://info.parliament.ge/file/1/BillReviewContent/119949)> [31.08.2022].

<sup>14</sup> See, Chamber of Administrative Cases of Tbilisi Court of Appeals judgements: Case № . 38/1434-16 dated February 16, 2016. Case № . 38/1937-18 dated October 11, 2018. And Case № . 38/2644-19 dated

recognition of plots of land registered under the ownership of the municipality, and they refuse to recognize the property rights of the interested person.

Issues related to the governance, disposal, and transfer of state property are regulated by the Law of Georgia “On State Property”<sup>15</sup>, according to Article 2 of this law “State property is movable and immovable things and intangible assets owned by the state”. This Law does not apply to the cases determined by the Law of Georgia on the Recognition of Property Rights of the Plots of Land. That is the reason of ambiguity during the dispute resolution.

The municipal property is legally regulated by the Organic Law: “Local Self-Government Code”. According to this document the property of the municipality includes: the property assigned to a municipality by law, the property transferred by the State to the ownership of a municipality; the property that has been created, acquired or registered by a municipality according to the legislation of Georgia.<sup>16</sup> Accordingly, it is necessary to evaluate whether the legislator allowed the possibility of recognition of municipal property on illegally occupied land by adopting the law on recognition of property rights.

In 1992, the Cabinet of Ministers of the Republic of Georgia adopted decree N48 “On Reform of Agricultural Land in the Republic of Georgia” on the bases of which began the mass transfer of plots of land to private ownership. The homestead, garden, and country land, which were during the Soviet Union period registered in the form established by law, were transferred to the private ownership of the citizens of Georgia free of charge.<sup>17</sup>

It should be noted that all countries of the post-Soviet system have gone through the land reform. The process of privatization in East Germany is special and unique.<sup>18</sup> After the reunification of Germany was created a special body responsible for privatization under the Federal Ministry of Finance. The assignment of the mentioned body was the integration of the East German economy into the West German economy, the creation of the appropriate legal framework, and effective

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December 4, 2019. In the aforementioned judgements, the Court of Appeal refers to the relevant articles of the Local Self-Government Code and the Constitution of Georgia, according to which the power of the government and self-governing units are separated. A self-governing unit has the power to make a decision about all those issues that according to law are not under the authority of the government or an autonomous republic, and decision-making on these issues is not excluded from the authority of the self-governing unit by law. The state-owned lands are separated from the local self-government bodies and from the lands owned by the Ministry of Economy and it is incorrect to grant the self-governing units general authority to recognize property rights to the state-owned lands. Hence, according to the Court of Appeals, the recognition commission has the right to recognize property rights as a delegated authority by the legislator, which additionally confirms that only state-owned plots of land can be the subject of the recognition and not municipality-owned plots of land. Otherwise, it would violate the principles of delegated and own authority, as well as the completeness and exclusivity of own authority, and, of course, the principles of separation of central and local government – the principles of decentralization and subsidiarity. The recognition commission’s refusals to recognize property rights contain similar reasoning.

<sup>15</sup> The Law of Georgia “On State Property”, the Parliament of Georgia, 21/07/2010.

<sup>16</sup> The Organic Law, “Local Self-Government Code”, article 106, 05/02/2014.

<sup>17</sup> “On Reform of Agricultural Land in the Republic of Georgia” the decree adopted by the Cabinet of Ministers of the Republic of Georgia, N48, 18/01/1992 (Expiration Date 26/06/1997, № 786)

<sup>18</sup> *Kloepfer M.*, *Verträge als Instrumente der Privatisierung, Liberalisierung und Regulierung in der Wasserwirtschaft*, 2009, 31.

management of the privatization process.<sup>19</sup> In 1992, a state-federal body, the Property Management and Conversion Corporation, was established, which still carries out the privatization of agricultural lands and forestry areas.<sup>20</sup> Germany, in contrast to Georgia, applied a strategy of accelerated privatization, which meant privatization with social responsibility and oriented towards the market economy,<sup>21</sup> As a result, the state determined which property was private property and which asset could participate in economic turnover.<sup>22</sup>

In Georgia, The first legislative act that defined property rights is the Law of the Republic of Georgia “On Property Rights” adopted in 1993. In accordance with Article 3 of the named law, “Subjects (owners) of property rights in the Republic of Georgia are citizens of Georgia, stateless persons, legal entities and the state.” In addition, Article 12 of the same law determined: “State property includes the property of the Republic of Georgia and its autonomous republics’ and local administrative-territorial units’ (municipal) that are owned, used and disposed of the bodies authorized by the owner in accordance with the applicable legislation.<sup>23</sup> Thus, it is clear that arbitrary occupation and use of lands by Georgian citizens began in the period when there was no separated property of the state, the autonomous republic, and local self-government, and the land was owned only by the state.

The experience of the Czech Republic is interesting, where state/municipal property was privatized by issuing vouchers/transferring ownership to the voucher holder. All adult citizens of the country received a voucher that could not be bought or sold. Their owners could own state property, including shares in state-owned enterprises. This kind of privatization contributed to the formation of a class of private owners and the prevention of arbitrary occupation of state-owned lands.<sup>24</sup>

It should be noted, that before the adoption of the law on the recognition of property rights, the transfer of ownership rights was carried out by the relevant bodies (the State, local self-government bodies, the Ministry of Economic Development of Georgia, the National Agency of Public Registry and its territorial bodies). Also, transferring the plot of land from the state ownership to the ownership of the local self-government body did not exclude the possibility of declaring the used (illegally occupied) land as the private property of individuals or legal entities under private law.<sup>25</sup>

The Supreme Court of Georgia in a case explained in detail that “before the implementation of the law on the recognition of property rights, a person had possessed state-owned land. Mentioning the land as a state-owned does not mean that the land must necessarily be owned only by the state at the

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<sup>19</sup> Kornai J., Making the Transition to Private Ownership, F&D, 2000, 12-13.

<sup>20</sup> Christoph Rieger H., Die Privatisierung der Staatsunternehmen: Das Disinvestment-Desaster, 2001, 19.

<sup>21</sup> It meant the balanced development of rural territories in close cooperation with federal and local institutions, the reform covered a very short period of time, the 1990-1994 years and as a result of the reform state property transferred into private ownership swiftly. Himmelmann G., Politische Bestimmungsmerkmale der Privatisierungsdiskussion in der Bundesrepublik Deutschland. In Privatisierung und die Zukunft der öffentlichen Wirtschaft, Baden-Baden: Nomos, 1988, 107–176.

<sup>22</sup> Merkel W., Verstaatlichung, Privatisierung und Sozialdemokratie: ein westeuropäischer Vergleich, 1992, 252.

<sup>23</sup> The Law of the Republic of Georgia “On Property Rights”, Parliamentary Gazette, 15/07/1993.

<sup>24</sup> Kloepfer M., Verträge als Instrumente der Privatisierung, Liberalisierung und Regulierung in der Wasserwirtschaft, 2009, 42.

<sup>25</sup> The law of Georgia “On declaration of the non-agricultural land possessed (used) by Natural Persons and Legal Entities under Private Law as a private ownership” article 1 and 3. (Expiration date 11/07/2007)

time the application is considered. Transferring property from state to local ownership did not preclude recognition of property rights because privatization and transfer into private ownership had not occurred.”<sup>26</sup> In the mentioned case, the Court of Cassation determined unequivocally that illegally occupied land, can be municipal property too, based on reviewing the status of state property, its importance and the historical development of the legal framework related to the recognition of the right, by giving a perfect definition of the concept of state property. Therefore, the Court of Cassation considered that the recognition of property rights to such land is absolutely permissible. In the aforementioned case, it was explained that “municipal property is not a variety of state property, however, it represents an independent variety of public property. It is in the best interests of the population to have their property rights to the illegally occupied plot of land recognized. The realization of this right does not confirm the limitation of the property rights of the local self-government.”<sup>27</sup>

Despite mentioned definition made by the Supreme Court, in some cases, recognition commissions and courts refuse to register property rights of municipal-owned land.

In conclusion, we can say that the plot of land registered under the state or municipal property, is subject to the recognition of property rights, if it is not disposed of as of July 11, 2007.

### **3.3. Existence of Building as a Basis for Recognition of Property Right**

According to paragraph “c” of Article 2 of the Law on Recognition of Property Rights, illegally occupied state-owned agricultural or non-agricultural plot of land with a residential house (built, under construction or destroyed) or a non-residential building (built, under construction or destroyed) is subject to recognition.

The legislator distinguishes between the residential house and non-residential building, as well constructed and destroyed building. Therefore, in the process of evaluating a building, it is essential to determine its purpose. According to Article 2(f) of the Law on Recognition of property rights, a building is a structural system constructed of building materials and other wares which is firmly fixed to the ground, creates a covered space, and is enclosed by walls, columns and/or other enclosing structures, (including wooden structures), except for a temporary building; Accordingly, the building can exist not only in the form of a metal structure but also can be built with wooden material. However, according to Article 3, sub-paragraph “H” of the Law of Georgia on “Spatial Planning, Architecture, and Construction Code of Georgia”, a building is defined as a structural system constructed of building materials and other wares which are firmly fixed to the ground.<sup>28</sup>

In spite of the existing records, confirming the existence of the building is the most common problem in the practice of the court. Especially, if there is a destroyed building on the plot of land or a building built with a wooden structure. In the recognition commission, to recognize property rights,

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<sup>26</sup> A judgment of the Administrative Affairs Chamber of the Supreme Court of Georgia on the case № 86-504-501, dated October 28, 2019, (3-17).

<sup>27</sup> Ibid.

<sup>28</sup> The term “building” has a double meaning: it has an important legal nature for the construction order and the law on the planning of construction. See. Turava P., Kalichava K., Construction Law, Tbilisi, 2020, 177.

the burden of proof to confirm the statute of limitations of the building located on the plot of land, is on the interested person. The statute of limitations can be determined by an orthophoto (aerial photography) or an expert opinion, that will confirm the fact of the existence of a building-structure (built, under construction, or destroyed) on the plot of land before the entry into force of the law on recognition of property rights.<sup>29</sup>

According to the definition of the court of cassation, the legislator gave decisive importance to the location of the building, the appearance, and the condition of the building built on the applicant's plot of land. Accordingly, on the one hand, the applicant must prove ownership of the plot of land as well as the location of the building.<sup>30</sup> Because if the state building is located on the plot of land, a natural person could not have a legal claim on such land. Hence, while considering the building as an object of the state, the decisive importance should be given not to the fact of registration of the property rights in the name of the state, but by whom is the building built and for what purpose, because if the building is built under the order of the state, with the state's funds or by third parties, with the reservation of transfer to the state, we should consider such buildings as objects owned by the state.<sup>31</sup>

In one of the cases, the property rights recognition commission refused to recognize the property rights of the interested person. It was explained to the applicant that due to the lack of buildings and their purpose, it represented a temporary building.<sup>32</sup> The court of the first instance uphold the decision made by the commission<sup>33</sup> but the appellate court revised the decision of the lower instance and explained that the commission should have taken into account the testimony of the witnesses, the expert's opinion, which confirmed the statute of limitations of the building, also the fact

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<sup>29</sup> See, "On the Procedure for recognition of property rights of the plots of land possessed(used) by natural persons and legal entities under private law and an Approval of the Form of property Rights Certificate" the decree № 376, The Government of Georgia, dated July 28, 2016, article 2, paragraph 1, sub-paragraph "e" and the law on recognition, paragraphs 5<sup>1</sup> and article 3<sup>1</sup>.

<sup>30</sup> A judgment of the Administrative Affairs Chamber of the Supreme Court of Georgia on the case № 8b-1015(3-19), dated March 18, 2021.

<sup>31</sup> Ibid.

<sup>32</sup> In another case, the citizen had submitted an expert opinion to recognition commission which stated that the residential house was made of wood construction. The building was installed on wood beam under which a concrete base construction was made...the house was valid to live. The recognition commission do not take into consideration an expert's opinion and defined that a temporary building (made of wood) was placed on the plot of land, and that is the ground to reject the application. The Court pointed out that temporary building is made of construction elements, an *assemblable/disassemblable* or/and mobile system, which is connected to the ground by non-monolithic fastenings, in this case the building is placed on wood beam under which a concrete base construction was made. Accordingly, the mentioned should be considered as a building. See. A judgment of the Administrative Cases Panel of Tbilisi City Court, case No № 3/7960-17, dated December 26, 2017. It should be noted that mentioned decision remained in force by the decision of Tbilisi Court of Appeals, case № № 38/478-18 dated May 24, 2018. And of the Supreme Court of Georgia, case № 8b-1382(3-18) dated February 7, 2019.

<sup>33</sup> A judgment of the Administrative Cases Panel of Tbilisi City Court, case № 3/6919-16. dated February 23, 2017.



that the building was used for a living. Accordingly, the court decided to satisfy the applicant's request.<sup>34</sup>

#### **4. Bodies Authorized to Recognize Property Rights**

##### **4.1. Property Rights Recognition Commission for an Illegally Occupied Plot of Land**

The Law on Recognition of property rights and the decree № 376 of July 28, 2016, of the government of Georgia “On the procedure for recognition of property rights of the plots of land possessed (used) by natural persons and legal entities under private law and an approval of the form of property rights certificate” determines the bodies authorized to recognize property rights to illegally occupied lands and their authority.

The commission for the recognition of property rights to illegally occupied plots of land, which is part of the executive body of the relevant municipality (Tbilisi – the Mayor of Tbilisi Municipality), has been authorized to recognize property rights to illegally occupied plots of land, but in areas of systematic registration the public registry has the authority. In addition, the Government of Georgia can determine the authority of another body to recognize the right of ownership of the resort areas, mountain-ski centers, and areas with the recreational status of the Black Sea Coast defined by the relevant decree of the Government of Georgia.<sup>35</sup>

The authority to recognize property rights is delegated to a municipality for acquiring property rights of state, and the Ministry of Economy and Sustainable Development of Georgia supervises the process of implementation.<sup>36</sup>

The recognition commission is a collegial administrative body and its legal basis for establishment and activity is determined by the rules on recognition of property rights to plots of land possessed (used) by natural persons and legal entities approved by the relevant decree of the Government of Georgia.

The recognition commission is established by an individual administrative legal act, order of the mayor of the relevant municipality. The commission consists of officials of the Municipality's city hall. Members of the municipality's local assembly, can also be appointed as members of the commission (with their consent), but that number should not exceed half of the members of the commission. A representative of LEPL National Agency of State Property may also be appointed as a member of the commission, with the consent of the same agency. In the work of the commission, with the right of deliberative vote, competent experts/specialists with relevant knowledge may be invited,

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<sup>34</sup> A judgment of the Administrative Affairs Chamber of Tbilisi Court of Appeals, case № № 3/1839-18, dated December 26, 2018.

<sup>35</sup> The Law of Georgia “on Recognition of Property Rights of the Plots of Land Possessed (Used) by Natural Persons and Legal Entities under Private Law”, 11/07/2007, article 4.

<sup>36</sup> Ibid. article 4, paragraph 1<sup>2</sup>, state property shall be managed by the Ministry of Economic, according to the Law of Georgia “on State Property”, article 2.

as well as representatives of various public institutions. The number of commission members should be odd, but not less than 5 and more than 11.<sup>37</sup>

The members of the commission for the recognition of the property rights to illegally occupied plots of land shall not be remunerated for serving on the commission. This restriction shall not apply to members of the commission existing under the Mayor of Tbilisi Municipality for recognition of the property rights to illegally occupied plots of land. The activity of these members may be financed from the funds allocated for exercising the delegated powers in the amount and according to the procedure determined by the municipal assembly of Tbilisi.<sup>38</sup>

The recognition commission is authorized to consider and decide on the issue of recognition of property rights within the territory of the relevant self-governing unit.<sup>39</sup> The commission is independent and accountable to the Mayor of the relevant municipality, however this does not mean that the Mayor has the authority to check the legality or appropriateness of the commission's decision. No one has the right to influence and/or interfere in the commission's activities while it makes a decision. If the fact of using the plot of land is stated and the interested person meets the requirements of the law, the commission shall issue a certificate of the property rights and an approved cadastral surveying/measurement plan, which in addition to other cadastral data, should indicate the borders and the area of the plot of land of recognized property and any building located on it, and these are the grounds to register the property rights in the Public Registry<sup>40</sup>. The Commission's decision can be appealed directly to the court within 1 month of its announcement.

#### **4.2. LEPL – National Agency of Public Registry’s Authority to Recognize Property Rights of the Plots of Land**

In 2016, the Parliament of Georgia adopted the Law of Georgia, “On the Improvement of Cadastral Data and the Procedure for Systematic and Sporadic Registration of Rights to Plots of Land within the Framework of the State Project” and one of the primary goal is sporadic registration<sup>41</sup> of rights to plots of land in the entire territory of the country and in case of the systematic registration<sup>42</sup>

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<sup>37</sup> On the Procedure for recognition of property rights of the plots of land possessed(used) by natural persons and legal entities under private law and an Approval of the Form of property Rights Certificate” the decree № 376, The Government of Georgia, dated July 28, 2016, articles 5-6.

<sup>38</sup> The Law of Georgia “on Recognition of Property Rights of the Parcels of Land Possessed (Used) by Natural Persons and Legal Entities under Private Law”, 11/07/2007, article 4, paragraph 3.

<sup>39</sup> Proceedings are carried out in accordance with formal administrative proceedings defined in Chapter VIII of the General Administrative Code of Georgia. See in detail: the Law on Recognition article 11-12 and Order № 487 of the Minister of Justice of Georgia dated December 31, 2019, article 31.

<sup>40</sup> Ibid, article 18.

<sup>41</sup> Sporadic registration- registration, throughout the country, of titles to plots of land and of changes to registered data on the basis of an application and registration documents submitted by an interested person. See, The Law of Georgia “On the Improvement of Cadastral Data and the Procedure for Systematic and Sporadic Registration of Rights to Plots of Land within the Framework of the State Project”, article 3.

<sup>42</sup> Ibid., Systematic registration-within the framework of the Pilot Project, or a project of extreme state and public importance, registration, on a proactive basis, of titles to plots of land and of changes in the registered data.

(Systematic Registration) systematic performance of cadastral works on plots of land and the registration of title.

In 2021, with the amendments implemented in the abovementioned law and the law on recognition of property rights, within the framework of systematic registration, the National Agency of Public Registry was defined as the body authorized to recognize the property rights to the illegally occupied lands located in the geographical area (areas) determined by the order of the Minister of Justice of Georgia.

order № 798 of December 31, 2021, of the Minister of Justice on Determining Systematic Registration Geographic Area for Purposes of the Law of Georgia on Improvement of Cadastral Data and Procedure for Systematic and Sporadic Registration of Rights to Plots of Land defined that in all municipalities of Georgia, the Public Registry will make a decision on the recognition of property rights to illegally occupied lands, according to the procedure provided by the instruction on “About the Public Registry” approved by the order of the Minister of Justice of Georgia, except for self-governing cities (Tbilisi, Kutaisi, Poti, Batumi, Rustavi). However, recognition of property rights is still ensured by the recognition commissions in self-governing cities.

In addition, it should be noted that the systematic registration should be completed by January 1, 2025. After the completion of systematic registration, the recognition of property rights to the illegally occupied plots of land located in the relevant geographical area will continue, as usual, by the recognition commissions in the manner established by the legislation of Georgia.<sup>43</sup>

In the geographic area of systematic registration, within the framework of sporadic registration, the Public Registry is obliged to determine whether there is a document confirming the property rights or lawful possession (usage) of the plot of land or part of it. If it is ascertained that there is no document establishing the right to register an object and the interested person expresses his/her consent, the agency will consider the issue of recognition of the property rights. The interested person may obtain recognition of ownership rights to the illegally occupied plot of land if he or she was of legal age on September 20, 2007.<sup>44 45</sup>

If the object of registration does not meet the requirements established by the legislation, the agency decides to deny the registration.<sup>46</sup>

after making the decision of the public registry to deny registration, suspend, or terminate the registration process officially available, and in the case of publication of the decision within 30

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<sup>43</sup> “On the Improvement of Cadastral Data and the Procedure for Systematic and Sporadic Registration of Rights to Plots of Land within the Framework of the State Project”, For the purposes of the law of Georgia, on determining the geographic areas of systematic registration” Order № 798, of the Minister of Justice of Georgia dated December 31, 2021. Article 2.

<sup>44</sup> Edict № 525 of the President of Georgia “On the Procedure for recognition of property rights of the parcels of land possessed(used) by natural persons and legal entities under private law and an Approval of the Form of property Rights Certificate” dated September 20, 2007.

<sup>45</sup> On approval of the instruction “On Public Registry”, Order № 487 of the Minister of Justice of Georgia dated December 31, 2019. Articles 31 and 37<sup>5</sup>.

<sup>46</sup> Since the National Agency of Public Registry’s authority to recognize property rights came into force on January 1, 2022, and the Public Registry’s decisions have not been the subject of evaluation by the Court’s practice, I will not discuss this in detail at this stage.

calendar days after publication, may be appealed first at the National Agency of Public Registry and only afterward in court.<sup>47</sup>

## 5. Conclusion

Within the scope of this research, recognition of the right was discussed as a basis for the acquisition of property rights over the illegally occupied plot of land.

In conclusion, it can be said, that property rights are “closely connected with human dignity and freedom, they are the economic basis of human existence and activity”.<sup>48</sup>

Since the legislation allowed for the possibility of recognizing property rights, there should be appropriate legal guarantees for the realization of the said right. First of all, it is desirable to amend the law on recognition of property rights and give a clear definition of the concept of an illegally occupied plot of land, which decreases the denials of the recognition commissions to satisfy the application, and, in this regard, reduces disputes in court.

Also, it is necessary to specify what kinds of buildings<sup>49</sup> can be subject to recognition to exclude the possibility of arbitrary decision-making by the recognition commissions.

Likewise, in any other disputes, the court's interpretations have paramount importance. Based on the aforesaid, judges should give a broad definition to the problematic issues of legislation, which will contribute to the establishment of a uniform practice and raise the quality of dispute resolution.

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<sup>47</sup> See. The law of Georgia “On the Public Registry”, 820, 19/12/2008, article 29.

<sup>48</sup> *Kublashvili K.*, Basic human rights and freedoms, Tbilisi, 2022, 247. See: *Goo Sh.*, Sourcebook on Land Law, 3<sup>rd</sup> ed., Cavendish Publishing, 2002, 42.

<sup>49</sup> In this case, it is meant the general criteria, based on judicial practice, it is possible to further specify the definition of the term “building.”

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