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Opening Inheritance on the Household Estate

Following the legislative changes related to the household estate in the Civil Code of Georgia, it is difficult to find a single article that provides any rules for the opening and receipt of inheritance. The term “household” has been substituted with “family farmstead”, although this amendment appears to have been made without adequate justification, with the exception of the selection and reduction of the rights of the heirs. Consequently, it is essential to use the term “household” in the title of the work to comprehensively raise awareness of the problem. The Public Registry must examine inheritance relations in the households in the process of registering property rights. The absence of comprehensive regulation calls into question the rights of the heirs of the household, the stability of civil turnover, and leads to an increase in claims by citizens. The objective of the present study is to provide a legal analysis of the inheritance relations within a household, with a view to highlighting the potential mistakes that the public registry may find in the execution of its duties.

Keywords: Civil Code of Georgia, Household, Registration of Rights, Legal Heir, Testamentary Heir.

*Communis error facit jus***

1. Introduction

The Household property is full of inconsistent, erroneous and incorrect registration practices. The present research will focus on the technical-terminological, substantive and judicial practice issues. Critical overview is necessary to understand architecture of the problem and develop an effective mechanism for protecting the rights of household heirs (members), so as not to diminish their rights, not to establish incorrect practice and inadequately increase numbers of claimants in the court. Firstly, it's important to study current rules for opening the estate in the household and after that, identify a way to solve those problems. To achieve the aim: normative, analytical and synthesis methods are used.

2. Main Problem of Opening Inheritance on the Household Estate and Drawing Solutions

Article 1323 of the Civil Code of Georgia, which was incomplete but foundational, was repealed in 2019.¹ Consequently, when interpreting Article 1513¹, it is necessary to consider the case

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** (The Latin phrase) common error makes law.

law related to the repealed article; otherwise, the article will lack legal meaning. The new article has acquired the meaning of determining the time and place of death of a household member, which can be considered as disputed. The new article, titled “Opening inheritance on the shared property of a household”, contrasts with its predecessor, “Opening inheritance in a household”.²

Despite changes, the legislation remains unchanged in its intention to simplify the status of heirs of a household.³ The main content of the repealed article is reflected in the new article, while the first and second parts of Article 1513¹ of the civil code is not directly related to Article 1421 and requires the clarification of the data in the archive record of the household book, the fact of the death of a household member, the status of the last member and other notarial, registration and judicial procedure.

Household does not constitute an independent subject; it is not a legal entity or a partnership which acts with joint liability. The content of the property rights of a household and the development of effective mechanisms for protecting heirs have been determined to be outside the scope of legislative and registration processes.⁴ It was not until 2019 when the legislator acknowledged that the establishment of an inheritance on the shared property of a household in the event of the death of the last member was unconstitutional and restricted the rights of other members and heirs. This was a one-sided assessment. About the problem the Constitutional Court of Georgia had reported as early as 2005.⁵

The analysis reveals deficiencies in the consideration of the heir's claim, pertaining to both the substance of the right and the specifics of registration. If a legislative change reduces a notary's ability to exercise notarial authority⁶ that demands attention.⁷ Citizens have consistently endeavoured to solve the challenges inherent in household property within the context of the other relations.⁸ The legislator had not any initiative to determine mechanisms for protecting the rights of household heirs.

Legislation becomes not comparable the content of the right to property and inheritance, and its accessibility, become diminished. Professor Besarion Zoidze notes that “the diminish of the rights and

¹ See Law of Georgia “On Amendments to the Civil Code of Georgia”, 25/06/2019.

² See: *Shengelia R., Akhvlediani Z., Chanturia L.*, Commentary on the Civil Code of Georgia, Book V, Family and Inheritance Law, Tbilisi, 2000, 377-379; *Shengelia R., Shengelia E.*, Family and Inheritance Law (Theory and Practice), Tbilisi, 2019, 427-428; *Chitoshvili T.*, Main Legal Aspects of the Origin of Ownership Rights to Property, Tbilisi, 2006, 28-29, 80-85.

³ Explanatory Note on the Draft Law of Georgia “On Amendments to the Civil Code of Georgia” (№07-3/294/9).

⁴ *Shengelia R.*, The Necessity of Improving the Mechanisms for Protecting the Interests of Subjects of Inheritance Relations, “Life and Law”, №1-2(57-58), 2022, 95.

⁵ See: Decision of the Constitutional Court of Georgia “Citizen of Georgia Dina Popkhadze vs. the Parliament of Georgia”, №1/4/258, 22/02/2005, The Constitutional Court notes that during the session and preparation for the substantive consideration of the case, the need for improving the legislative regulation of the relations provided for by the disputed norm – Article 1323 of the Civil Code of Georgia was identified.

⁶ Order №71 of the Minister of Justice of Georgia, 31/03/2010 Articles 77 et seq.; Law of Georgia “On Notary”, Article 38, Paragraph 1, Subparagraphs “a”, “b”, “c”, “d” and “e”.

⁷ Comp. *Boki R.*, Notary’s Obligation to Protect the Weak Party of the Contract, “Georgian-German Journal of Comparative Law”, №11, 2020, 3.

⁸ *Bichia M.*, Legal Significance of De facto Family Relationship, “Law and World”, №5(1), 2019, 31-33.

the content of property, no matter how it is done, is unacceptable”⁹ In his opinion, the registration system is characterised by an inappropriate situation where the benefits and responsibilities of ownership are mutually exclusive and require the owner, the future heir, to relinquish their right or refuse the inheritance.¹⁰

The position of the legislator is unclear, although it is evident that the legislator does not intend to develop the articles regulating the household and does not take into account the content of household property.¹¹ It is therefore recommended that efforts be directed towards the transformation of household property and the protection of the rights of heirs, rather than changing of concepts that are unattainable without the owner's consent and active involvement.

The challenge lies in adapting the articles of the Civil Code of Georgia on inheritance law to the household context.¹² It is also necessary to clarify whether the provisions of the Law of Georgia “On the Procedure for Systematic and Sporadic Registration of Rights to Land and Improvement of Cadastral Data” and the Order of the Minister of Justice of Georgia on Approval of the Instruction “On the Public Registry” are in accordance with constitutional norm. A notary and a public registry consider this issue differently within the scope of their activities, which makes it impossible to solve the problem at first stage.

The legislation does not provide a direct definition of the categories of heirs of a household. However, based on the judicial practice, the following concepts can be established: a) the last member of the household; b) the legal or testamentary heir who is household member; c) the legal or testamentary heir who is not a member of the household; d) a person without status or the state as heir to inherit heirless estate.

There is no mechanism to grant status to a person related to the household and determine the grounds for the request. Consequently, notaries attach importance not to the interpretation of several articles, but to the narrow interpretation of Article 1421 of the Civil Code. It is unreasonable to require to the heir to perform an action that is not actually required or to present a document confirming the right, in such a way as to exclude the right of this heir to the estate. When it is unacceptable to abolish the universal right to private property, the heir of the household cannot become a private owner since decades. A comparison of civil and administrative court disputes clearly demonstrates the difficulties encountered by citizens in registering their estate. There is a lack of clarity in the regulation of household property among the legislator, notary and public registry. However, it is imperative to recognise that the attainment of success, as evidenced by statistical data, is not a permanent. Errors

⁹ Zoidze B., The Evolution of Property Rights in Georgian Law, Proceedings of the Joint Conference: Property and Legal Stability: Transformation of the Concept of Property, Tbilisi, 2015, 117.

¹⁰ See: Zoidze B., Reception of European Private Law in Georgia, Tbilisi, 2005, 265-266; Zoidze B., “The Concept of Constitutionality of Normative Content” in the Decision of the Constitutional Court of Georgia in the “Nodar Dvali’s Case” Regarding the Good Faith Acquisition of Property, “Private Law Review”, №3-4, 2021-2022, 2022, 12-13.

¹¹ Meskhidze E., Property Registration System in Georgia, Proceedings of the Joint Conference: Property and Legal Stability: Transformation of the Concept of Property, Tbilisi, 2015, 293.

¹² Comp. Chitoshvili T., Household in Georgian Law, Tbilisi, 2004, 10. See: Basedow J., Development of Property Law in the European Union, Collection: Property and Legal Stability: Transformation of the Concept of Property, Tbilisi, 2015, 61-62.

committed within the registration of the property in the process of land reform serve as the genesis for contentious proceedings in courts.

The Civil Code of Georgia does not provide a definition of the “household”. However, the courts have developed a variety of interpretations¹³ and often disregarding the right or interest of the surviving heir in the household property.¹⁴ In different municipalities across Georgia, the property registered as a household varies depending on the local land fund and land use customs.¹⁵ In circumstances where the right of the heir to the household is contested, there is a risk that the agricultural land constituting the household, as a resource may, under certain factual circumstances, become the property of the state.¹⁶ Consequently, the legislator, the public registry and the courts are responsible to the heir, thereby introducing a new ways to solve problems.¹⁷

The court of first instance determined that following the abolition of the collective farm, the property of the farm belonged to the plaintiff and the defendant by right of co-ownership.¹⁸ The farm was defined by the agricultural land plot and the building previously existing on it. However, since the plaintiff was not indicated as the owner in the real estate record, the court did not examine his legal status over the disputed property and the claim was dismissed. Subsequently, the Appellate Chamber overturned the initial ruling on the household, determining that it was not a collective farm household but rather a household of workers and servants. The Appellate Chamber concluded that the property was co-owned by the plaintiff and the defendant. However, the Appellate Chamber explained that the building belonging to the household had ceased to exist on the land plot, and that ownership rights had not been registered in the public registry by the household members. The Appellate Chamber determined that agricultural land was the property of the state, as set out in Article 19, Paragraph 4 of the Constitution. It is evident that the Appellate Chamber's ruling infringes on the rights of the household owners. The reasoning of the Appellate Chamber suggests that unregistered agricultural household plots will unconditionally become state property. The Supreme Court of Georgia has adopted a different reasoning regarding the legal form of a household and the exclusion of heirs. The Supreme Court determined the necessity of correctly defining a household and its inseparability from the heirs of the household. This decision confirms the problem that the heirs of a household may face today. The registration authorities and notaries are not adequately attuned to the particular requirements of household owners, and the designation of household property and associated rights is frequently problematic. The issue of the court's capacity to evaluate the particular requirements of the proprietors, a responsibility that falls to the public registry, is one that is readily apparent. In another

¹³ Decision of the Supreme Court of Georgia №as-7-2019, 11/06/2020.

¹⁴ Comp. *Shengelia R., Shengelia E.*, Family and Inheritance Law, 2015, 410.

¹⁵ Comp. *Zoidze B.*, The Impact of Fundamental Rights on Private Autonomy: Expansion or Restriction of Private Autonomy (Review of the Practice of the Constitutional Court of Georgia), Collection: Private Autonomy as a Fundamental Principle of Private Law, 2020, 101.

¹⁶ *Khelia G., Kalichava K.*, Handbook of Administrative Sciences, 2018, 235-236.

¹⁷ See.: *Maxwell D.*, The Human Right to Property – A Practical Approach to Article 1 of Protocol No.1 to the ECHR, Bloomsbury Publishing, 2022, 200-202; *Ruggeri L., Kunda I., Winkler S. (eds.)*, Family Property and Succession in EU Member States National Reports on the Collected Data. University of Rijeka Faculty of Law Research Collection of Reports, 2019.

¹⁸ Decision of the Supreme Court of Georgia №as-7-2019, 11/06/2020.

case, the Court of Appeal declined to examine the circumstances that had been stipulated as the foundation for the claim. Instead of examining these circumstances, the Court of Appeal, at its own initiative, invoked new circumstances based on the inheritance certificate and considered the receipt of the inheritance of one of the defendants, who died in the dispute and his son was recognised as a co-owner of the entire area of the agricultural land plot and the residential house, together with other members of the household.¹⁹

Household property has acquired characteristic definitions: it is unspecified, unregistered, non-functional and disputed. The progress of the state reform of land registration and the achieved results are vital, but within the framework of this reform, the special needs of household owners should also be taken into account. It is unacceptable to register household property for persons who died years ago or are not related to the household, as this endangers the interests of the living heirs of the household. The public registry is obliged to exercise greater discernment in distinguishing between live and deceased citizens when registering property rights. Inconsistent proceedings are accompanied by erroneous theoretical views on the registration of household property, and it is unacceptable to deny the property interests of Georgian citizens.²⁰ The authorities are duty-bound to interpret the laws adopted for the benefit of society in a thorough manner.

The analysis of household book entries indicates that the ownership right of a land plot is registered on the basis of unmistakable confirmation of membership, exclusively for the household member whose membership is confirmed. Individuals who are indicated in the household book entries with special notes are not registered in the register of rights to immovable property.²¹ This deviates from the original purpose of the action and has evolved into a legislative instrument that curtails rights. The registration service has deviated from its primary function and has led to the establishment of a discriminatory, unjustified, and illegal boundary between household owners and their heirs, thereby denying the latter their property and the right to protect it.²² This predicament is particularly disconcerting as it precludes the heirs from acquiring a document that would confirm their ownership and enable them to dispose of their property during their lifetime.²³

The Supreme Court of Georgia explained the formulation of Article 1513¹ of the Civil Code of Georgia: With the dissolution of collective farms, the legal basis for the existence of the collective farm household was eliminated, resulting in its dissolution. Consequently, the property that was previously the possession of the household and concurrently the shared property of the household members no longer constitutes the property of the household, but rather becomes the shared property

¹⁹ Decision of the Supreme Court of Georgia №as-1257-1197-2014, 10/05/2016.

²⁰ See: *Alexander S. G., Peñalver M. E.*, An Introduction to Property Theory, Cambridge University Press, 2012; *Dutta A., Basedow J. and Others*, Comments on the European Commission's Proposal for a Regulation of the European Parliament and of the Council on Jurisdiction, Applicable Law, Recognition and Enforcement of Decisions and Authentic Instruments in matters of Succession and the Creation of a European Certificate of Succession, Max Planck Private Law Research Paper, 2010.

²¹ Order №487 of Minister of Justice of Georgia, 31/12/2019, Art. 40.

²² Decision of the Constitutional Court of Georgia “Citizens of the Hellenic Republic – Prokopis Savvidis and Diana Shamanidi vs. the Parliament of Georgia”, №3/10/1267,1268, 07/12/2018.

²³ *Shengelia E., Leonidze I.*, Estate Household vs. Family Household (Frustra Pugna), “Besarion Zoidze 70”, Tbilisi, 2023, 364-375.

of the members of the household, apportioned equally amongst them.²⁴ This definition is of historical significance, as evidenced by Article 1513¹ following the abolition of Article 1323 of the Civil Code.²⁵ In the context of registering ownership rights in a household, the only recognised mechanism is the opening of an inheritance on the shared property.

The legislative change did not yield any positive results, as it resulted in a selective restriction of the rights of the heirs of the household. To illustrate this point, we may consider a case in which the court assessed the division of the household into several households, in the divide judgment of which the grandson remained a member of the original household. However, the court determined that this did not constitute a basis for confirming his right to the property of the original household, since he was not mentioned in the grandfather's household record. The court expounded that, while the grandson may have been raised by the grandfather and resided with him, this alone did not constitute membership of the household. The court emphasised that active participation in the management of the household's shared property and economy was a prerequisite for membership. The court's decision was predicated on contradictory evidence, and it was concluded that the grandfather had not expressed his intention for the grandson to become a full member of the household. This position is arguably erroneous, as in a disorderly registration system, the responsibility is on the heir or the deceased to act.²⁶ A grandson's entitlement to his grandfather's family property is extinguished, yet this reality changed by the 2019 legislative amendment, which stipulates the distribution of the family estate among the deceased members of the family.

The Supreme Court of Georgia has sought to address the prevalence of legal disputes pertaining to household plots by undertaking a re-interpretation of pertinent decisions, thereby establishing guidelines that recognise and protect the rights of household plot owners.²⁷ However, the court's substantial workload has hindered the effective resolution of these disputes. In such cases,²⁸ the necessity to ascertain specific requirements is implied; nevertheless, the court, operating within the framework of the Civil Procedure Code, is not empowered to spearhead large-scale registration initiatives.²⁹ The registration policy implemented by the state has, to date, resulted in the fragmentation of inheritance relations within households³⁰ and the alienation of household members from the freedom to own, use and manage household plots.³¹ Within the framework of the state land

²⁴ Decision of the Supreme Court of Georgia №as-186-2019, 24/02/2021.

²⁵ Zoidze B., Reception of European Private Law in Georgia, Tbilisi, 2005, 266-267.

²⁶ Decision of the Supreme Court of Georgia №bs-415(k-19), 26/09/2019.

²⁷ Comp. Decision of the Constitutional Court of Georgia "*Remzi Sharadze v. the Minister of Justice of Georgia*", №2/2/867, 28/05/2019, II-2.

²⁸ See: *Zalucki M.*, Impact of the EU Succession Regulation on Statutory Inheritance, Comparative Law Review, №23, 2017, 223-225; *Zalucki M.*, Attempts to Harmonize the Inheritance Law in Europe: Past, Present, and Future, Iowa Law Review, Vol. 103, №5, 2018, 2337-2338.

²⁹ The reasoning and perspective of the practice of the Administrative Chamber differs from the Civil Chamber.

³⁰ *Leonidze I.*, Limitation of Freedom of Will in the Household – the Problem of Private Property of Georgian Citizens, "Law and World", №29, 2024, 177-179.

³¹ Comp. *Zarandia T.*, *Mchedlidze N.*, Protection of Property Rights by Georgian Legislation and the European Convention on Human Rights), "Lado Chanturia 60", Tbilisi, 2023, 192. Also see: *Sirdadze L.*,

registration reform, the aforementioned problems have been exacerbated by heterogeneous registration practices. It should be assessed whether the authorized person is performing their duties correctly, whether the 2019 legislative amendment has impacted the operational rules, and whether they are thoroughly investigating the subject matter.

3. Conclusion

The present study highlighted the challenges associated with establishing the right to inherit shared household property. One major issue is the household certificate, which heirs cannot amend by simply applying to a notary or registration authority. Due to the ambiguity of legal definitions surrounding “household” and related concepts, heirs often struggle to substantiate their claims effectively. The prevalence of poorly supported claims leads to contentious outcomes. When the provisions of the inheritance law under the Civil Code of Georgia are applied without considering the specific details of the household, it results in the violation of legitimate heirs' rights and the validation of claims from unauthorized individuals.

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