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## Agricultural Land as a Resource of Special Importance and Practical Aspects of Privatization

*Article 19 of the Constitution of Georgia affirms and strengthens the universal right to ownership, including the rights to acquire, transfer, and inherit property. According to the Constitution, agricultural land is considered a resource of special importance. It may be owned only by the state, a self-governing unit, a citizen of Georgia, or an association of Georgian citizens. Exceptional cases can be defined by organic law.*

*The issue of foreign ownership of agricultural land remains a challenge in Georgia to this day. It has been the subject of multiple deliberations by the Constitutional Court, ultimately leading to constitutional amendments.*

*The purpose of this article is to examine the practical aspects of privatizing agricultural land as a resource of special importance. The study employs logical analysis and presents both informational and cognitive perspectives on the issue. It also discusses relevant legislation and comparative international experience.*

**Keywords:** *Ownership, Privatization, State property, Agricultural land, Electronic Auction, Privatization, Direct sale privatization.*

### 1. Introduction

After the collapse of the Soviet Union, the transfer of state property into private ownership through the process of privatization was considered a central aspect of the transition from the socialist system of agriculture to a modern market economy.<sup>1</sup> Accordingly, following a state land reform, agricultural land that had been used during the Soviet period was transferred into the ownership of Georgian citizens.<sup>2</sup>

The privatization of agricultural land is aimed at improving the economic condition of the country and providing a function for uncultivated land s. Only Georgian citizens have the right to own

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<sup>1</sup> *Kipshidze Sh.*, Privatization as a fundamental element of public administration, Zhurn. “Orbeliani”, No. 4, 2021, 103 (in Georgian).

<sup>2</sup> Post-Soviet countries have a similar history, in which the experience of Germany, the Czech Republic, and Poland in the privatization process, where privatization reform was carried out with an accelerated and organic privatization strategy. See: *Sack D.*, Vom Staat zum Markt, Privatisierung aus politikwissenschaftlicher Perspektive, 2019, 4-5.

agricultural land, with certain exceptions defined by law that also allow foreign nationals and legal entities established by them to hold ownership.

This paper discusses the importance of agricultural land as an asset, particularly valuable to the country and its forms of privatization. However, a separate chapter is devoted to the right of ownership of an alien on agricultural land.

It should also be noted that the issue of privatization of agricultural land is regulated differently based on the legislation of European countries. According to the European Commission's Directive 2017/C 350,<sup>3</sup> all EU countries have the right to regulate this issue by internal regulation. Therefore, this article primarily focuses on Georgian practices due to the specific nature of the topic; However, it also incorporates the experience of a foreign country for comparative analysis.

## **2. Agricultural Land as a Resource of Special Importance**

### **2.1. Concept and Classification of Agricultural Land**

Ownership of the land has always been of great importance. In Georgia, regulating private property began in the 90s of the last century, after the collapse of the Soviet Union. The collapse of the socialist system and the desire to transition to a market economy brought to the forefront the task of privatizing state-owned entities of the so-called “people's economy”.<sup>4</sup>

Agricultural land reform was launched in Georgia based on Resolution N48 of the Cabinet of Ministers of the Republic of Georgia of January 18, 1992. According to the resolution, the purpose of the reform was “The increase of the norm for household plots, the transfer of land into private ownership, the establishment of market relations in agriculture, the expansion of food production, and the overcoming of the economic crisis.”<sup>5</sup> As a result of the reform, the public was provided with the documents confirming the right to land in its possession, which was a significant achievement at that time. The land was divided into targeted categories; This still plays an important role in the development of the state's economy and the provision of food independence.

The definition and classification of agricultural land are determined by the Organic Law of Georgia “On the Ownership of Agricultural Land” (hereinafter, ownership of Agricultural Land).

According to Article 3, subparagraph “a”, *agricultural land* is defined as: “Land classified as pasture, hayfield, arable land (including land occupied by perennial crops), or household plot, which is used or may be used for agricultural purposes, with or without existing structures.”

According to the decision of the Constitutional Court of Georgia, “The objective use of agricultural land plays an important role in the development of the state's economy and in ensuring food security. Considering the necessity of developing the farming structure and the indirect positive

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<sup>3</sup> <[https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AC%3A2017%3A350%3AFULL#ntr5-C\\_2017350EN.01000501-E0005](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AC%3A2017%3A350%3AFULL#ntr5-C_2017350EN.01000501-E0005)> [08.03.2025].

<sup>4</sup> Sack D., Vom Staat zum Markt, Privatisierung aus politikwissenschaftlicher Perspektive, 2019, 6.

<sup>5</sup> “On Agricultural Land Reform in the Republic of Georgia”, Resolution of the Cabinet of Ministers of the Republic of Georgia, N48, 18/01/1992 (Invalid 26/06/1997, No 786) (in Georgian).

effects of restrictions imposed on land classified as agricultural, the legislator has the discretion to define state agricultural policy through land categorization and other instruments.<sup>6</sup>

During the land reform, one of the most important categories was arable land, which was allocated to peasants residing in rural areas. According to current legislation, arable land (including land occupied by perennial crops) is defined as a plot of agricultural land used for cultivating crops, with or without existing agricultural or auxiliary facilities, or as a plot of land that, considering its soil and climatic conditions and natural-geographic location, can potentially be used for such purposes.<sup>7</sup> Arable land constitutes the highest-intensity category of land use, and its privatization has had a decisive importance for the development of the private sector. It serves as the primary source of income for the rural population and also contributes to the advancement of agriculture.

Legislation defines *hayfield* as an agricultural land covered with grass or shrub vegetation used for producing hay, silage, ensilage, grass meal, or other types of forage for livestock, including land with or without agricultural and auxiliary facilities; also, a land considering its soil and climatic conditions and natural-geographic location, is suitable for such use.<sup>8</sup>

The transfer of the hayfield to private ownership was a prerequisite for the development of farming. By privatizing this category of land, the state was able to cope with the challenges for rural families that hindered the development of farming. The Government of Georgia's Resolution No. 265 of 2017, "On the Approval of the State Program for the Rational Use of State-Owned Hayfields and Pastures in Mountainous Regions," defines the scope of the program, under which hayfield land parcels located in mountainous regions may be transferred for use to agricultural cooperatives through leasehold rights.<sup>9</sup>

Pasture is land of the lowest intensity.<sup>10</sup> According to the law, pasture land is an agricultural land covered with herbaceous plants and shrubs (natural or cultivated), which is used for grazing (feeding), with or without the agricultural or auxiliary facilities, taking into account its soil and climatic conditions and natural-geographical location.<sup>11</sup>

As Georgia faces a shortage of pasture land, following subparagraph "z.a" of paragraph 1 of Article 4 of the Law of Georgia "On State Property", pastures are not subject to privatization, except for those that were leased before July 30, 2005.

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<sup>6</sup> Decision No 1/6/666 of 22 June 2017 of the Constitutional Court of Georgia on the case "Citizen of Georgia Shota Jibladze v. the Parliament of Georgia", II, 13.

<sup>7</sup> Law of Georgia on Determining the Purpose of Land and Sustainable Management of Agricultural Land, Article 3(d), 25.06.2019 (in Georgian).

<sup>8</sup> Ibid., Article 3(c).

<sup>9</sup> Resolution N265 of 29 May 2017 of the Government of Georgia "On the Approval of the State Program for the Rational Use of State-Owned Hayfields in High Regions" (in Georgian).

<sup>10</sup> Although the law does not define what constitutes "intensity" and clarify what is meant by its degree or level, it allows for the reclassification of land from one category to another, specifically, from a lower to a higher intensity category of agricultural land. For details, see Article 8, paragraphs 3 and 4 of the Law of Georgia on Determining the Designated Use of Land and Sustainable Management of Agricultural Land.

<sup>11</sup> Law of Georgia on Determining the Purpose of Land and Sustainable Management of Agricultural Land, Article 3(b), 25.06.2019 (in Georgian).

## **2.2. Legalized Status of Agricultural Land**

According to paragraph 4 of Article 19 of the Constitution of Georgia, agricultural land as a resource of special importance shall be owned only by the state, a self-governing unit, a citizen of Georgia, or an association of citizens of Georgia. Exceptional cases may be determined by organic law.<sup>12</sup> The need to regulate the issue at the constitutional level, which arose after the decisions adopted by the Constitutional Court of Georgia in 2012,<sup>13</sup> 2014<sup>14</sup> and 2018<sup>15</sup> will be considered in detail below.

The preamble of the law of land ownership recognizes the land in the territory of Georgia as the national wealth of the state, which has special political, social, economic, ecological and cultural value for the performance of state tasks and the realization of basic human rights, considers the rational use of agricultural land as an exhaustible resource of special importance and follows the principles of protecting public and private interests; The law establishes ownership rights over agricultural land, supports the implementation of the state policy on sustainable land management, ensures national security, and promotes the development of the local economy. Accordingly, the law is based on four key principles:

- Establishment of ownership rights over agricultural land concerning public and private interests;
- Promotion of the state policy on sustainable land management;
- Protection of national security policy;
- Development of the local economy.<sup>16</sup>

Land holds special significance for the state.<sup>17</sup> As the Federal Constitutional Court of Germany stated in one of its decisions: “As land cannot be reproduced and is irreplaceable, its use must not be entirely left to the unrestricted forces of the free market or the discretion of individual interests. A just legal and social order requires that public interests be given greater consideration and expression about land than with other forms of property.”<sup>18</sup>

Thus, the purpose of the state is to preserve agricultural land as an exhaustible resource for as long as possible and to promote the development of local farming, which ensures the country's food security. In order to achieve these legitimate goals and the necessary societal/state needs, it remains one of the real and effective levers of the state to restrict the right of ownership of agricultural land and its use at the same time, within reasonable limits.<sup>19</sup>

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<sup>12</sup> On June 25, 2019, the Organic Law of Georgia on Agricultural Land Ownership was adopted by the Parliament of Georgia.

<sup>13</sup> Decision N3/1/512 of 26 June 2012 of the Constitutional Court of Georgia on the case “Danish citizen Heike Chronicle v. the Parliament of Georgia”.

<sup>14</sup> Ruling N1/2/563 of 24 June 2014 of the Constitutional Court of Georgia on the case “Austrian citizen Matthias Hutter v. the Parliament of Georgia”.

<sup>15</sup> Ruling N3/10/1267,1268 of the Plenum of the Constitutional Court of Georgia of 7 December 2018 on the case “Greek citizen Prokopi Savvid and Diana Shamanidi v. the Parliament of Georgia”.

<sup>16</sup> See, the detailed explanatory note to the Law on the Ownership of Agricultural Land <https://info.parliament.ge/file/1/BillReviewContent/214999> [06.03.2025].

<sup>17</sup> *Dixon M.*, *Modern Land Law*, 7th Ed., Routledge, 2010, 30.

<sup>18</sup> *VerfGE* 21, 37 [82], See, A. Firtskhalashvili, *The Legal Dimension of the Social Function of Property*, *Journal of Constitutional Law*, Issue No. 2/2022, 24.

<sup>19</sup> *Jennings R.*, *Oppenheim’s International Law*. London, 1992, 121.

### **3. Privatization of Agricultural Land**

Privatization of the state-owned land is realized by the Law of Georgia “Type of State Property” (hereinafter-Property Law), according to which the forms of privatization of agricultural land are: auction, direct sale, direct sale based on competitive selection and direct sale of leased agricultural land, transfer of ownership free of charge.<sup>20</sup>

Agricultural land shall be privatized by electronic auction or public auction<sup>21</sup> by the National Agency of State Property (“the property administrator”).<sup>22</sup> Privatization of state-owned agricultural land that has not been leased is carried out through direct sale, in the form of direct sale or based on a competitive selection process, following a decision by the Government of Georgia. In contrast, the privatization of leased agricultural land through direct sale is carried out by the property management authority.

#### **3.1. Privatization of agricultural land through an electronic auction**

According to Article 3 of the Property Act, “The purchaser of state property (except for the cases of privatization of state-owned agricultural land and state-owned movable property) may be a citizen of Georgia or a foreign country or a legal entity under private law or an association of persons in which the participation share of a state body or a municipality/municipalities is less than 25%, as well A non-entrepreneurial (non-commercial) legal entity established by the state, another entity or jointly by the state and another entity; the National Bank of Georgia, A National Regulatory Authority,

Proceedings on privatization in the form of an electronic auction shall start with the application of an interested person or on the initiative of the property administrator.

The application of an interested person must meet the requirements established by Article 78 of the General Administrative Code. Based on the application, the property administrator prepares the land for privatisation and, in case of making a positive decision, issues an order on the privatization of the “immovable item” by electronic auction.<sup>23</sup>

Information on the privatization of the “immovable property” through auction shall be published on the website of the electronic auction system ([www.eauction.ge](http://www.eauction.ge)) or the official website of the National Agency of Property ([www.privatization.ge](http://www.privatization.ge)). The time limit for the auction shall be determined by the property administrator.

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<sup>20</sup> Law of Georgia on State Property, Article 7, 21.7.2010. Based on the relevance of the issue, this article will discuss the privatization of “real estate” in the form of an electronic auction and direct sale (in Georgian).

<sup>21</sup> In practice, a public auction is almost no longer used, and state property is privatized through an electronic auction.

<sup>22</sup> According to Article 2(H<sup>1</sup>) of the Law of Georgia on State Property, the manager of state-owned property is The National Agency of State Property (in Georgian).

<sup>23</sup> The order on privatization issued by the LEPL National Agency of State Property constitutes an individual administrative-legal act and may be appealed either to the Ministry of Economy and Sustainable Development of Georgia or to the common courts. See Article 1, paragraph 8 of the Law on State Property.

To participate in the auction, an interested party is required to submit an unconditional and irrevocable bank guarantee (BG). The amount of the bank guarantee shall be determined by the privatization authority in each specific case. The bank guarantee is calculated based on the initial privatization value of the “immovable property”.<sup>24</sup>

An electronic auction can be conditional or unconditional. During the electronic auction of the conditions, when the investment is defined as an obligation, a person interested in purchasing “an immovable item” must submit a bank guarantee to the property administrator before signing the relevant purchase agreement; IT must comprise less than 10% of the investment exceeding the term for fulfilling the investment obligations (including the payment of penalties imposed under the relevant agreement for failure to comply with such obligations) by at least 4 months.

If the privatization of the immovable property is not completed at the initial auction, the property administrator shall be authorized to offer it at a repeated auction and may reduce the starting privatization price by up to 50%. Should the property remain unsold at the repeated auction, the initial privatization price may be subject to further reduction.

The purchaser of “an immovable item” must ensure the payment of the privatisation amount within 30 calendar days after the auction. A legal entity registered in Georgia shall submit documentation to the property administrator no later than 30 calendar days after the auction (including the legal entity's charter and, in the case of a joint-stock company, the extract from the National Agency of Public Registry issued by the authorized register) which determines the dominant partner(s). If the business partner(s) of the legal entity who won the auction are not legal entity/entities registered in Georgia, the information about each subsequent business partner is required. In addition, the auction results shall be rendered void, and the winning side shall not be entitled to the return of the submitted bank guarantee if the bidder fails to submit the required information/documentation within the prescribed timeframe or if the winning bidder is not eligible to acquire agricultural land through an auction process.<sup>25</sup>

### **3.2. Privatization of Agricultural Land Through a Direct Sale**

Article 10 of the Law of Georgia on State Property governs the privatization of an “immovable item” through a direct sale. A direct sale refers to the transfer of state property to an interested party through negotiations. The decision to privatize through a direct sale is made by the Government of Georgia, while the privatization process is initiated by the property management agent.<sup>26</sup> The initiation is made in the form of a draft ordinance.

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<sup>24</sup> See, Resolution No. 15 (13.01.2011) of the Government of Georgia on the approval of the privatization income through a direct sale of state-owned agricultural land under lease; the initial privatization price for non-leased agricultural land to be sold via auction by administrative-territorial units, and the determination of the initial annual usage fee for the auction-based transfer of non-privatized state-owned agricultural land for use.

<sup>25</sup> Law of Georgia on State Property, Articles 6 and 9, 21.07.2010 (in Georgian).

<sup>26</sup> Initiation – placing an issue on the agenda on one’s own initiative. <http://www.nplg.gov.ge/gwdict/index.php?a=term&d=6&t=18100> [07.03.2025].

Privatization through a direct sale may be carried out either with conditions or unconditionally. In the case of conditional privatization, the draft ordinance must include information on the privatization terms and the bank guarantee required to secure the fulfillment of the conditions. The draft ordinance consists of the ordinance itself and an explanatory note.

The ordinance of the government of Georgia on the privatization of an “immovable item” must include the following requisite information:

- the type of ordinance;
- its title;
- the date and place of issuance;
- the legal basis;
- the privatization conditions (if conditional privatization is applied);
- information on the bank guarantee;
- information on the person responsible for enforcing the ordinance;
- details of the authorized official.<sup>27</sup>

The explanatory note must include the following<sup>28</sup>:

- General information about the legal act (including the rationale and purpose of the draft);
- financial and economic impact assessment (including the quantity of financial resources required for implementation, impact on the revenue and expenditures of the budget, and any new financial obligations for the state, if applicable);
- information on relevant EU legal acts (an overarching reference to the EU legal framework targeted for alignment under the provisions of the Association Agreement);
- anticipated outcomes of the draft (information on the legal relations and persons likely to be affected);
- timelines;
- The author and the submitting body of the draft.<sup>29</sup>

The Ordinance of the Government of Georgia is considered an individual administrative-legal act.<sup>30</sup>

### **3.3. Lease-Purchase as a State Program for “Ensuring Access to Agricultural Land Resources”**

In 2020, the Government of Georgia adopted the State Program on Access to Agricultural Land Resources (hereinafter, the *State Program*).<sup>31</sup> The objective of the State Program is to facilitate the

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<sup>27</sup> The Prime Minister signs the decree of the Government of Georgia.

<sup>28</sup> See Resolution No. 77 of the Government of Georgia of February 14, 2018, “On Approval of the Regulations of the Government of Georgia” (in Georgian).

<sup>29</sup> The LEPL National Agency of State Property prepares a draft resolution of the Government of Georgia, which is submitted to the Ministry of Economy and Sustainable Development. The latter then presents it to the Government of Georgia for consideration.

<sup>30</sup> Law of Georgia *On the Structure, Authority, and Rules of Procedure of the Government of Georgia*, 11 February 2004 (in Georgian).

transfer of ownership of state-owned arable and haymaking land, leased to natural and legal persons, through a direct sale to the current lessees. To achieve this goal, the program sets forth specific requirements that must be met by lessees interested in the privatization of such land. It also outlines the administrative procedures for competent authorities to make decisions on the privatization of arable or haymaking land held in state ownership.

Under the State Program, a person interested in the privatization of agricultural land must apply to the National Agency of State Property (Legal Entity of Public Law – LEPL). The application must cumulatively meet the following criteria:

- a) The land must not be subject to any pending litigation or legal proceedings.
- b) As of the date of application, the leased land must be registered in the National Agency of State Property with accurate cadastral data; c) There must be no pending procedures regarding inheritance or substitution of the lessee; d) In the case of arable land, a confirmation letter from the relevant municipality or the LEPL National Agency for Sustainable Land Management and Land Use Monitoring verifying the actual use of the land for agricultural purposes shall be required; e) In the case of haymaking land, a letter from the respective municipality confirming the actual agricultural use of the land.<sup>32</sup>

Based on the submitted application, the National Agency of State Property conducts a simplified administrative procedure and, if a favorable decision<sup>33</sup> is made, ensures the valuation of the immovable property at its own expense.

The privatization price shall be set at 75% of the market value of the land (excluding the value of any plantings and infrastructure established by the lessee), plus the market value of any buildings and structures existing on the land at the time of making the lease agreement. The lessee shall pay the privatization amount within two years from the date of execution of the sale and purchase agreement.

Once the value is determined, the Agency provides the interested person with information regarding the privatization amount and allows 15 calendar days for their consent. The State Program does not allow the interested individual to challenge the determined amount or to submit an alternative valuation. If the interested party does not submit their consent within the specified period, it is considered a rejection of participation in the program. However, such refusal does not prevent the person from submitting a new application for the privatization of the same land at any point during the validity period of the program.

If the lessee consents to the price proposed by the property administrator, the administrator prepares a draft resolution of the Government of Georgia and submits it for consideration. The Government then makes an individual decision, taking into account the relevant circumstances.

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<sup>31</sup> The state program was adopted by Resolution N464 of the Government of Georgia of July 23, 2020.

<sup>32</sup> Regardless of the consents submitted by the tenant, the National Agency for State Property may, on its own initiative, request relevant state agencies to express their position regarding the privatization of the land.

<sup>33</sup> In the case specified in Article 5, Paragraph 8 of the State Program, the property manager may decide to refuse to initiate the privatization issue before the Government of Georgia.



#### **4. Ownership Rights of Foreign Nationals to Agricultural Land**

At the outset of the land reform, agricultural lands were transferred only to the citizens of the Republic of Georgia into private ownership, possession, and use. Foreign nationals or non-citizens were given the land only for temporary use. The same provision was designed by the Law of Georgia on the Ownership of Agricultural Land, adopted by the Parliament of Georgia in 1996.<sup>34</sup> (further – the law of land ownership).

With the amendments made to the Law of Georgia in 2000, the right to purchase agricultural land was given to a legal entity registered in Georgia that carried out agricultural activities. Thus, foreigners who would establish a legal entity in Georgia also had the right to buy agricultural land.

Under the amendments enacted in 2007, foreign nationals and legal entities registered abroad were permitted to acquire ownership of agricultural land only through inheritance. Following the law, within six months from the date of acquisition of ownership, such individuals or entities were required to alienate the land in favor of a Georgian citizen, a household, or a legal entity registered in Georgia. These restrictions did not apply to foreign nationals acquiring land through a legal entity settled in Georgia.

If a foreign national or a legal entity registered abroad failed to alienate the land plot within the six months, the land was subject to expropriation, based on a court decision, following the provisions of the Law of Georgia on the rules for the expropriation of property for urgent public necessity, and with appropriate compensation.”

In order to determine the compliance of the land ownership law with the Constitution of Georgia, in 2011, the Danish citizen Heike Kronquist filed a constitutional claim to the Constitutional Court. The plaintiff believed that by the disputed norms, the abolition of the universal right to purchase and inherit his property was abolished, since he was prohibited from purchasing agricultural land, and in the case of inheritance, he was obliged to alienate it.

According to the respondent, the constitutional claim should not have been upheld, as agricultural land holds particular significance for small-scale agrarian countries. The primary purpose of prohibiting its alienation to foreign nationals is to prevent the large-scale acquisition of inexpensive land by citizens of wealthier states, which may negatively affect the country’s economic resilience, environmental protection, and national security. The restriction of the right to property in this context pursues the public interest of the state to ensure the rational use of land, support the development of organized agricultural practices, and improve the agrarian structure. The strategic importance of agricultural land must be taken into account, particularly concerning national security, environmental protection, economic stability, and public health.”<sup>35</sup>

The Constitutional Court did not uphold the respondent’s position and explained that, while improving the agrarian structure falls within the discretion of the legislative authority, however, if legislative action restricts a fundamental right, the legislature is obliged to demonstrate a rational

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<sup>34</sup> Law of Georgia “On Ownership of Agricultural Land” 22/03/1996 (Invalid 25/06/2019, No 4848) (in Georgian).

<sup>35</sup> Decision N3/1/512 of 26 June 2012 of the Plenum of the Constitutional Court of Georgia on the case “Danish citizen Heike Chronicle v. the Parliament of Georgia”, I, 12.

connection between the restrictive regulation and the legitimate public aim it seeks to achieve. In the present case, the respondent failed to provide any argument establishing a connection between the prohibition on foreign nationals owning agricultural land and the improvement of the agrarian structure. The Court noted that the state has the same opportunity to support the improvement of the agrarian structure regardless of whether agricultural land is owned by a foreign farmer residing in Georgia or by a Georgian citizen. The economic nature and quality of the agricultural products produced within the framework of agrarian activity do not depend on the citizenship status of the landowner. Furthermore, the Court emphasized that the entry of new actors into the market may not only fail to undermine economic growth and technological or scientific advancement in agriculture, but could in fact contribute positively to such development.

Accordingly, the court concluded that there is no rational connection between the prohibition on foreign nationals owning agricultural land and the public interest of improving the agrarian structure. Therefore, the disputed norm cannot be considered a suitable means for achieving the aim.”<sup>36</sup> The court further explained that the acquisition, possession, and disposal of property by an individual constitutes an expression of personal autonomy and bears no relation to state sovereignty. A specific land, due to its strategic significance, may fall within the scope of national security concerns, but agricultural land cannot be considered as such.”<sup>37</sup> The Plenum of the Constitutional Court declared the norm that prohibited foreigners from becoming owners of agricultural land.

As a result of amendments made to the Law on the Ownership of Agricultural Land in 2013, a so-called moratorium was introduced, effective until 31 December 2014. The moratorium suspended the acquisition of ownership rights to agricultural land by foreign nationals and the legal entities registered abroad.

The constitutionality of the moratorium was challenged by Austrian citizen Mathias Hutter. Based on his constitutional complaint, the Constitutional Court, by its Ruling No. 1/2/563 of 24 June 2014, declared the moratorium unconstitutional and repealed the disputed provision. The Court noted that the substance of the moratorium replicated a provision that had already been annulled in 2012 and pursued the same legislative objective. A second moratorium followed in 2017; however, this was declared unconstitutional by the Constitutional Court in its ruling of 7 December 2018.<sup>38</sup>

a) Agricultural land may be owned by a foreign national if acquired through inheritance.

b) It may also be owned by a private legal entity registered in Georgia if its dominant partner is a foreigner or a legal entity registered abroad, or if the dominant partner cannot be identified based on an investment plan<sup>39</sup> following the decision of the government of Georgia. In case of non-fulfilment of

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<sup>36</sup> Decision #3/1/512 of 26 June 2012 of the Plenum of the Constitutional Court of Georgia on the case “Danish citizen Heike Chronicle v. the Parliament of Georgia”, II, 65.

<sup>37</sup> Ibid., 69.

<sup>38</sup> N3/10/1267,1268 Ruling on the case “Citizens of the Republic of Greece – Prokopi Savvid and Diana Shamanidi v. the Parliament of Georgia”.

<sup>39</sup> Investment Plan, documentation reflecting the intended use of an agricultural land plot, which provides for the implementation of an investment aimed at the production of agricultural and/or other products, the introduction of innovative activities, the development of tourism infrastructure, or the execution of projects of international, national, and/or local significance. The purpose of such investment is to contribute to the socio-economic development of the state. The protection of national security and the creation of new jobs.

the obligations ensured by the investment plan, within one year after the authorised body makes a decision, the owner shall provide the land plot alienation. Restrictions on foreign ownership of land are characteristic of many developing countries.<sup>40</sup> In discussing the development of ownership rights to agricultural land, the experience of European countries is instructive.

In France, since August 5, 1960, the privatization of agricultural land plots has been regulated by the Society for Land Development and Rural Settlements (*Société d'aménagement foncier et d'établissement rural*)<sup>41</sup>. The Society's primary functions include regulating land prices and participating in negotiations between buyers and sellers. It also establishes privatization plans for agricultural land intended for citizens of EU member states. These plans are submitted to governmental commissions for implementation, which ensures consistency of SAFER's decisions with the regional planning policies established by the national authorities.<sup>42</sup>

The privatization process in Eastern Germany is particularly distinctive and unique.<sup>43</sup> Following German reunification, the Treuhandanstalt, an agency subordinated to the Federal Ministry of Finance (BMF), was established to oversee privatization. Its mandate was to integrate the economy of East Germany into that of West Germany, to create a corresponding legal framework, and to conduct the privatization process efficiently.<sup>44</sup> In 1992, the BVVG (*Bodenverwertungs- und -Verwaltungs GmbH*), a federal state agency, was established<sup>45</sup> to manage and privatize agricultural and forest lands. The agency remains responsible for this function to date.<sup>46,47</sup> In contrast to Georgia, Germany pursued an accelerated privatization strategy, aimed at market-oriented privatization<sup>48</sup> with a sense of social responsibility. As a result, the state identified which property would remain in private ownership and which assets could be mobilized into economic circulation.<sup>49</sup>

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(See Subparagraph "e", Article 3 of the Law of Georgia on the Designated Use and Sustainable Management of Agricultural Land).

<sup>40</sup> World Bank, *Innovations in Land Rights Recognition, Administration and Governance*, 2013, 195.

<sup>41</sup> <<https://www.safer.fr/les-safer/quest-ce-quune-safer/>> [08.03.2025].

<sup>42</sup> *Ciaian P., Kancs D'A., Swinnen J., Van Herck K., Vranken L.*, Sales Market Regulations for Agricultural Land in EU Member States and Candidate Countries, Factor Markets, Working Paper, No. 14, February 2012, 15.

<sup>43</sup> *Kloepfer M.*, Verträge als Instrumente der Privatisierung, Liberalisierung und Regulierung in der Wasserwirtschaft, 2009, 31.

<sup>44</sup> *Kornai J.*, Making the Transition to Private Ownership, F&D, 2000, 12-13.

<sup>45</sup> <[https://www.bvvg.de/wp-content/uploads/2024/06/Zahlen\\_und\\_Fakten\\_2023.pdf](https://www.bvvg.de/wp-content/uploads/2024/06/Zahlen_und_Fakten_2023.pdf)> [08.03.2025].

<sup>46</sup> *Christoph Rieger H.*, Die Privatisierung der Staatsunternehmen: Das Disinvestment-Desaster, 2001, 19.

<sup>47</sup> *Dells, K.*, Management and Privatization of State-Owned Agricultural Land – Case Studies from Eastern Germany and Ukraine. Conference paper for FIG/FAO/CNG Seminar in Verona, Italy, September 2008. 1-7.

<sup>48</sup> This entailed the balanced development of rural areas through close cooperation with federal and local institutions, resulting in a reform process that lasted a very short period, from 1990 to 1994. As a result of the reform, state-owned property was rapidly transferred into private ownership by its holders. See, *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>49</sup> *Merkel W.*, Verstaatlichung, Privatisierung und Sozialdemokratie: ein westeuropäischer Vergleich, 1992, 252.

BVVG has chosen a cautious approach to the issue of privatization of agricultural lands by a citizen or a non-citizen. A person interested in the acquisition of agricultural land shall submit a specific land processing plan, which shall be relevant to the political and social interests of Germany. However, such a permit cannot be obtained without the consent of a special commission.<sup>50</sup>

On October 18, 2017, the European Commission published an official reference document 2017/C 350, following which the Commission recognizes the specific nature of agricultural land, believing that land is a rare and exhaustible resource that requires special protection. The European Commission notes that “the need to regulate the agricultural land market is especially relevant in countries where universal land reform has been implemented in recent years and the privatization of state land is presently being conducted. In addition, it leaves member states with the right to impose restrictions based on clearly defined goals that should serve to maintain the viability of farms in a particular country, prevent speculation at excessive prices, and promote and develop sustainable and efficient agriculture.”<sup>51</sup>

As we can see, the sale of agricultural land to a foreign citizen/foreign-based legal entity is limited by the EU directive and the legislation of different countries. However, the EU directive provides an opportunity to privatize agricultural land for foreigners, considering appropriate justification and legal basis.

## **5. Conclusion**

This paper discusses the issues of the privatization of agricultural land. As a result of the study, after the first attempt at land reform in Georgia, the fundamentals and standards of reform were constantly changing. Despite the success or failure of the reform, these efforts have always been of great importance for Georgia, since the privatization of agricultural land plots is the basis of agricultural development.

Agricultural land is a special asset for the state and is most heavily burdened with social functions, which justifies the imposition of certain restrictions upon it. Following Article 19 of the Constitution, under the Law on the Ownership of Agricultural Land, foreigners may acquire agricultural land only through inheritance, while foreign legal entities may obtain land pursuant to an investment plan.

However, in light of the Constitutional Court’s decisions, questions remain as to whether the new regulations comply with the proportionality test, as well as the principles of equality and legal certainty.

In order to address these issues, it is important to continue the discourse aimed at refining the existing legislation, so as to foster the development of the agricultural sector, an outcome that would have a positive impact on the country’s overall economic condition.

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<sup>50</sup> Bromley J. and Bromley D., *Looking East: Reclaiming land and legacy in the former GDR*, 2012, 63.

<sup>51</sup> <[https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AC%3A2017%3A350%3AFULL#ntr5-C\\_2017350EN.01000501-E0005](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ%3AC%3A2017%3A350%3AFULL#ntr5-C_2017350EN.01000501-E0005)> [08.03.2025].

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