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Europeanisation of Georgian Private Law: Legal Reform and Future Development Through the Lens of Property Law Reception

ABSTRACT: *This article examines the historical foundations, conceptual evolution, and contemporary development of Georgian private law through the lens of legal reception, focusing on property law. It begins by tracing the formation of Georgian legal culture, shaped over centuries by Byzantine, Eastern, and later Russian influences, and highlights the creative codification tradition exemplified in the legislative works of Vakhtang VI. The analysis then turns to the Soviet era, in which law functioned as an instrument of ideological control, subordinating private ownership to socialist forms of property. The article explores the divergent post-Soviet reform strategies adopted across the region and emphasises Georgia's unique choice to reject the Soviet legacy and ground its new Civil Code in the German legal tradition. The article analyses the reception of German property law principles – such as numerus clausus, publicity, specificity, superficies solo cedit, the right to follow, and priority – and assesses how these concepts were adapted within Georgian law. A recurring theme is the creative, not mechanical, nature of the reception process, shaped both by historical conditions and practical constraints of the post-Soviet transition. The article evaluates the implications of Georgia's causal model of ownership transfer, contrasting it with the German separation and abstraction principles. In addition, the article discusses the effects of the EU-Georgia Association Agreement on legal approximation, particularly in the field of property law, and examines continued challenges stemming from Soviet-era doctrinal remnants, such as the former classification of property forms. The conclusion emphasises that while Georgian civil law continues to undergo legislative change, the core structural principles of the Civil Code remain stable. The article underscores the crucial role of legal principles and judicial practice in*

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shaping future development, arguing that the dynamic interplay between legislative reform, doctrinal reception, and judicial interpretation remains central to the evolution of Georgian private law.

■ **KEYWORDS:** *legal reception, Georgian Civil Code, property law, German private law, EU legal approximation*

1. Historical Foundations of Georgian Law

■ *1.1. Before the Adoption of the 1997 Civil Code: A Brief Introduction*

Owing to Georgia's geopolitical location, Georgian law has historically been influenced by both Eastern and Western cultures.[1] In the Greco-Roman reception, *jus civile* reached the Caucasus, including Georgia. At the end of the seventeenth century, the second part of King Vakhtang VI's Code, also known as Vakhtang VI's Book of Law, contained certain laws of Leo the Wise, Constantine, and other Byzantine emperors concerning judicial proceedings.[2] Notably, Vakhtang VI brought together, in a single 'codification compendium', the norms of foreign and Georgian law, becoming the first to declare that Georgian law is a synthesised product of the national and the general spirit of law.[3] However, the Georgian translation of Greek law included in Vakhtang VI's Book of Law is creative in character and adapted to Georgian reality.[4] Translational activity indeed played a special role in the law-making process and, more generally, Georgian law was distinguished by an unusually broad scale of borrowings.[5] In addition to the aforesaid laws of the Byzantine emperors, King Vakhtang's Code contained norms from the Mosaic Pentateuch and Armenian legislation.

Importantly, from the prefaces to the Books of Law of Vakhtang VI and Giorgi, the Brilliant, it appears that in the seventeenth to eighteenth centuries in Kartli and Mtiuleti, the system of justice was often the domain of feudal arbitrariness, for the correction of which collections of laws were created. Not only kings but also specially established legislative commissions – 'commissions of learned men', clerical and secular persons, and local scholars – were actively involved in law-making, so that the laws would correspond to reality.[6]

1 Zoidze, 2005, pp. 5 et seq.
2 Коркунов [Korkunov], 2025, p. 281.
3 Zoidze, 2005, p. 25.
4 Bregvadze, 1964, p. 36.
5 Коркунов [Korkunov], 2025, p. 281.
6 According to the introduction to Vakhtang VI *Law Book* the law was drafted *inter alia* by the King, Catholicos, the Metropolitan/Archbishop, and an *Eristavi* (duke). Thus, law-making was an organised process with the involvement of the monarch and the elite. Zoidze, 2005, pp. 9 et seq.

The Byzantine canon law had a profound influence on the development of Georgian law. In the eleventh century, the *Small Nomocanon* and the *Typicon of the Georgian Monastery of Petritsoni* were translated into Georgian. The most comprehensive monument of canonical law was the *Great Nomocanon*, also known as the *Nomocanon in Fourteen Titles*, dating from the ninth century. This text served as a constitutional framework for ecclesiastical law in Georgia. According to Georgian scholars, the Acts of the Council of Ruis-Urbnisi were compiled on the basis of the *Great Nomocanon*.[7] Georgian law, of course, was also influenced by Eastern law. Valerian Gabashvili, a scholar of Eastern terminology, noted that in the sixteenth to eighteenth centuries, there was no single document in which Eastern terms were not used, something dictated by contemporary political processes[8] and particularly evident in public law.[9] According to Georgian linguists, from the nineteenth century, Georgia became detached from Eastern influences, and the influence of Russian law is attested. In 1729, in Moscow, the 1649 Law Code of Alexei,[10] the son of Mikhail (*Sobornoye Ulozheniye*), was translated at the behest of Erekle II and commissioned by Prince Bakar; it constituted the first translation of a Russian law code.[11] The interest shown by the Georgian kings in Russian law was a form of preparation for the Treaty of Georgievsk, and simultaneously, Russian law during that period was perceived as European. [12] In the initial period following the establishment of Russian rule, the manifesto on Georgia's incorporation into Russia was followed by Alexander I's *Regulations on the Governance of Georgia*. Here, civil disputes were to be resolved according to Georgian customs and the Codes of Vakhtang VI, while criminal cases were to be adjudicated under Russian laws. At that time, neither Georgian customs had been systematised nor had Vakhtang VI's Book of Law been translated into Russian;[13] nevertheless, since Vakhtang VI's Book of Law – despite its antiquity – was the applicable law in Eastern Georgia, it was preferred. From 1813, upon the submission of the Minister of Justice, a special commission was established under the chairmanship of David Bagrationi, which extracted from Vakhtang VI's Book of Law, the legal norms deemed expedient for use, and undertook a degree of systematisation. According to the Commission's conclusion, Russian laws were to be applied only in the event of lacunae in the Vakhtang Code.[14] Thus, it is apparent that Georgia has always shown an interest in progressive cultures: to use the words of Georgia's

7 Gabidzashvili, 1975, pp. 3 et seq.
8 Gabashvili, 2001, p. 785.
9 Such as forms of governance and the sphere of taxation.
10 Орбели [Orbeli], 1956, p. 105.
11 Ibid.
12 Zoidze, 2005, p. 68.
13 Ibid., p. 72.
14 *The Law of Prince David*, p. 217.

first President, Zviad Gamsakhurdia, 'Georgia's mission, in cultural terms, is the synthesis of Western and Eastern cultures and their giving as a single whole'.[15]

During the Soviet period, law was regarded as an instrument of class politics; the primary purpose was to support the construction of a socialist society and implement the party's policy. After coming to power, the Bolsheviks' chief objective was to eliminate private ownership of the means and instruments of production; theoretically, this would prevent individuals from accumulating capital assets and income and using them to exploit others' labour. An individual's right of ownership was confined to items for personal use or consumption acquired with income earned through their own labour. Putting this formula into practice proved more complex when Soviet legislators and judges sought to make this goal a reality.[16] The economic system of the USSR rested precisely on socialist ownership (for the forms of ownership, see below). Moreover, the aim of protecting property rights was to ensure socialist legality in proprietary relations and promote the development and consolidation of property relations.[17] Soviet legal philosophers set Marxist-inspired tasks for their legal system, yet employed familiar terms and formulae from the past,[18] which pointed to the positivist roots of Soviet law. Legal education in the Soviet context was sharply ideologised: its purpose was not only to impart technical legal knowledge but also to entrench Marxist–Leninist theory and the Party line. The training of judges, prosecutors, and lawyers was based not on pluralistic discussion, but on the unconditional acceptance of the doctrine of socialist law, which also determined the practical application of the law. This applied, among others, to Georgia.

■ *1.2. Legal Reforms in the Post-Soviet Countries and the Reception of the Civil Code of Georgia*

An analysis of civil law reforms carried out in post-Soviet countries reveals two main but opposing models of reform. The first model is based on adapting existing civil laws to the demands of the market economy. Within this framework, Soviet civil law norms that lacked ideological content remained valid. Most post-Soviet states adopted this model.[19] In these countries, new civil codes were drafted based on a model civil code; however, many norms from the Soviet era remained in effect.[20] Thus, in states that followed this model, civil law reform and development were grounded in traditions inherited from the Soviet period.[21]

15 Gamsakhurdia, 1991, p. 213.
16 Hazard et al., 1977, p. 361.
17 Simons, 1988, p. 111.
18 Hazard et al., 1977, p. XVI.
19 Kurzynsky-Singer and Zarandia, 2014, pp. 108 et seq.
20 Makovsky, 1998, p. 339.
21 Kurzynsky-Singer and Zarandia, 2014, pp. 108 et seq.

Georgia chose a significantly different path in developing its civil law. In drafting Georgia's Civil Code, the German Civil Code (*Bürgerliches Gesetzbuch*, or BGB) served as the primary model. The choice of the German model was motivated by its strong academic authority and the belief of the code's drafters that European-style codification corresponded to Georgia's historical legal traditions.[22]

Notably, neither of the reform models described above exists in its 'pure form'. Cross-influences between them are inevitable. Countries that opted to develop civil law based on Soviet-era traditions often borrow individual legal institutions from other legal systems. This borrowing is essential for ensuring the legal regulation of civil commerce.[23] Conversely, countries that chose to adopt foreign legal models often preserve certain existing legal traditions, as was the case in Georgia – a matter that will be discussed in more detail in this article.

Evidently, no legal culture exists in absolute isolation. Every national legal system evolves and enriches itself through its interactions with other cultures.[24] The formation of national legal orders is a result of intercultural contact and mutual influence. Global legal culture continues to develop in parallel with these processes.[25] Just as human life is not an isolated phenomenon, so too is the life of peoples and nations a matter of coexistence, constant interaction, mutual influence and exchange. Life consists of borrowing from the outside and assimilating from within. To distract from external borrowing and criticise internal adaptation is to doom an organism to stagnation; internal development begins only in a lifeless body.

The supranational nature of law is rooted in its national character, and vice versa; the national essence of law is shaped by its supranational dimension.[26] The inheritance of legal thought from humanity's common intellectual achievements is a great asset.[27] In fact, there is likely no law – whether a particular legal act or an entire legal system in the positive sense – that has not, at some point, been transplanted or received from another legal tradition. All law is transplanted.[28] The drafters of Georgia's Civil Code deliberately studied ancient Georgian law and incorporated what was compatible with it.[29] Consequently, the Civil Code bears the imprint of both cultural heritage and interlegal influence.[30] These interlegal influences are particularly prominent in private law. Even within German law, many institutions were received from Roman and French laws. French law, in turn, retained close ties with Roman law for historical reasons. Accordingly,

22 Zoidze, 2005, pp. 92 et seq.
23 Zarandia, 2018, p. 7.
24 Khubua, 2004, pp. 83–84, 233.
25 Bregvadze, 2006, pp. 34–35.
26 Zoidze, 2013, p. 105.
27 Jorbenadze, 1994, p. 141.
28 Bregvadze, 2006, p. 23.
29 Zoidze, 2001, p. 1097.
30 Zarandia and Mchedlidze, 2024, p. 54.

Georgia's reception of German law represents an adoption of what had already been received since the fundamental institutions of private law, such as ownership, inheritance, sale, donation, and others, form the deep historical-legal foundation of any civilised society. Undoubtedly, each state has its own subjective basis for regulating legal relationships differently, but even these variations do not alter the universal principles of private law, which are grounded in the common nature of humanity itself.

The idea of drafting a new Civil Code in Georgia emerged shortly after the dissolution of the Soviet Union during the administration of Zviad Gamsakhurdia. Its implementation began in the first half of 1992. The commission tasked with drafting the Civil Code was chaired by the distinguished and respected Professor Sergo Jorbenadze. This effort brought together the leading figures in Georgian civil law scholarship, including Professors Lado Chanturia, Besarion Zoidze, Zurab Akhvlediani, Roman Shengelia and others.[31] During the same period, cooperation with German colleagues also began, led by Professor Rolf Knieper from Bremen.[32] In recognition of his significant contributions to Georgian statehood, he was later awarded the title of Honorary Citizen of Georgia and Honorary Doctor (Honoris Causa Doctor) of Tbilisi State University.

■ *1.3. The Civil Code of Georgia – A Result of the Creative Reception of German Private Law*

Owing to its geopolitical location, Georgia has always been influenced by both Eastern and Western cultures. For centuries, our country maintained a tradition of legal codification,[33] yet, due to historical misfortunes, Georgia remained outside the processes of the 'Great Codifications' era.[34] Nonetheless, aspirations towards European ideals have never ceased. After the collapse of the Soviet Union on 26 June 1997, the Parliament of Georgia unanimously adopted the Civil Code of Georgia,[35] the first civil code in the country's history, based on the achievements of Western civil law scholars.[36]

The reception of European private law in Georgia is grounded in its strong historical foundation.[37] It is noteworthy that Soviet law, including Georgian Soviet

31 Zoidze, 2005, pp. 1 et seq.

32 For his outstanding contribution to Georgian law, Professor Rolf Knieper was later awarded the title of *honoris causa doctor* of Ivane Javakhishvili Tbilisi State University and named an Honorary Citizen of Georgia.

33 Zoidze, 2005, pp. 5 et seq.

34 The 19th century is, with minor reservations, justly considered the period of comprehensive and systematic codifications of private law on the European continent, Knieper, 2005, p. 28.

35 The Civil Code of Georgia, 1997 [Online]. Available at: https://matsne.gov.ge/ka/document/view/31702?impose=translateEn (Accessed: 12 November 2025).

36 On the adoption of the Civil Code of Georgia, Zoidze, 2003a, pp. 86–114; Zoidze, 2005; Chanturia, 2011, pp. 19 et seq.; Zoidze, 2005, pp. 5 et seq.

37 Zoidze, 2005, pp. 5 et seq.

law such as the Civil Codes of 1923 and 1964, followed the model of the Russian SFSR codes, which themselves were based on the legacy of continental European civil law, particularly German civil law traditions.[38] With the adoption of the new Civil Code, Georgia deliberately adopted European–primarily German–law, an adoption rooted in both historical legacy and contemporary realities.

Historically, Georgia belonged to the Romano-Germanic family of continental law. Accordingly, the Civil Code was constructed based on the Pandect system while also incorporating contemporary innovations of the time.[39]

■ *1.4. The European Union Association Agreement and Subsequent Developments*

Property Law and the Europeanisation of Law. Since 1 July 2016, the Association Agreement between Georgia and the European Union has been in force. Under Article 431 of the Agreement, the process of 'legal approximation' and law-making activities affected all fields, including private law. These processes require the recognition and integration of new legal realities. This includes both research on the process of approximating civil law institutions with EU legislation and the support of private law harmonisation based on normative concepts. For Georgia, the Europeanisation of national law began precisely with the reception of German private law.

Although the Europeanisation process in the field of property law has not been as active as in the field of obligation law, it remains an area of growing importance.[40] Article 222 of the Treaty establishing the European Economic Community[41] (now Article 345 of the Treaty on the Functioning of the European Union [TFEU])[42] appears to largely exclude property law from the scope of EU interests. Nonetheless, certain aspects, such as security rights, are still regulated to some extent by union law.

Generally, compared to contractual law, the tendencies toward Europeanisation and legal approximation in property law are more limited. This is primarily due to significant differences in the property law systems of EU Member States. Traditionally, these differences have been attributed to the inherently national character of property law, particularly its relationship with land and its essential role in tax-related matters.[43] Property law systems are considered to differ so substantially from one another that the development of common principles, similar to

38 Jorbenadze, 1994, p. 141.
39 Ibid., p. 142.
40 Van Erp, 2012, p. 1.
41 Treaty of Rome Establishing the European Economic Community (25 March 1957), 294 UNTS 17.
42 Treaty on the Functioning of the European Union (TFEU), consolidated version, OJ 2012 C 326/47.
43 Akkermans, 2008, p. 397.

the Principles of European Contract Law, UNIDROIT Principles, or the Principles of European Law, has not been feasible.

However, there have been attempts to develop common principles in specific areas related to property law, such as insolvency law and the concept of a Common Mortgage for Europe (Eurohypothec). Moreover, in the 21st century, law is no longer limited to a single jurisdiction; it is increasingly being shaped by both legal and technological transformations.

■ *1.5. Abandoning Soviet Legal Relics: Reconsidering the Classification of Property Forms*

The classification of property into distinct forms constituted a relic of Soviet legal doctrine, which was expressly abandoned by Georgian law in the course of legal reforms. In this context, the Constitutional Court of Georgia played a substantive role in shaping its legal approach. The legislative foundation for the classification of property forms was embedded in the provisions of the 1936 and 1977 Constitutions of the Soviet Union. This doctrinal approach was subsequently reflected in the Civil Codes of the Union Republics, where property was categorised according to its form.

Accordingly, under Soviet law, socialist property was categorised into three main forms: state (public) property, collective-cooperative property, and trade union-social property. These three forms of property were granted priority over private property. Private property was considered a derivative of socialist property and was permitted to exist only 'until the arrival of the higher phase of communism'.[44] In the Soviet state, a distinct legal regime was established for socialist property that differed significantly from the legal regime applicable to private property. Crimes against property were classified based on the form of ownership involved and regulated under separate chapters of the criminal code.[45] For instance, socialist property was afforded stricter protection under criminal law than private property.[46] Moreover, while limitation periods were applied to vindicatory claims brought by private individuals, no such limitation was applied to vindicatory claims initiated by state authorities against citizens,

44 Vasilenkov and Dudikov, 1964, p. 237; Liluashvili, 2015, pp. 313 et seq.

45 Lekveishvili et al., 2011, p. 359.

46 For example, theft of socialist property was punishable by imprisonment for up to three years (Criminal Code of the Russian Soviet Federative Socialist Republic, Art. 89; Criminal Code of the Georgian SSR, Part I, Art. 91) [Online]. Available at: https://dspace.nplg.gov.ge/bitstream/1234/321696/1/Saqartvelos_Sabchota_Socialisturi_Respublikis_Sisxlis_Samartlis_Kodeqsi.pdf (Accessed: 12 November 2025). Theft of private property was punishable by imprisonment for up to two years (Criminal Code of the RSFSR, Art. 144; Criminal Code of the Georgian SSR, Part I, Art. 150) [Online]. Available at: https://upload.wikimedia.org/wikipedia/commons/8/8a/Criminal_Code_of_Russian_Soviet_Federative_Socialist_Republic%2C_1961.pdf (Accessed: 12 November 2025).

cooperative–collective farms, or public organisations.[47] The division of property into different forms was based on the existence of differing legal regimes applicable to different legal subjects.[48]

In contrast to the socialist model, a fundamental element of the concept of ownership, as enshrined in the modern Civil Code of Georgia, lies in the principle that the content and scope of the right of ownership are not contingent upon the legal status of the rights-holder.[49] While adopting elements of the German law of property (*Sachenrecht*), Georgia, unlike many other post-Soviet jurisdictions,[50] expressly rejected the doctrinal division of ownership into distinct forms.[51] Pursuant to Article 24(4) of the Civil Code of Georgia, state and municipal entities engage in civil law relations under the same legal regime as private legal persons. In such cases, the rights and obligations of these public entities are exercised and performed through their respective organs (institutions, departments, and similar bodies), while the entities themselves do not constitute legal persons.

Nonetheless, in the jurisprudence of the Constitutional Court of Georgia, the issue of equality of legal standing between the state and private legal persons in civil law relations became a subject of constitutional scrutiny. Specifically, the case concerned the constitutionality of Article 21 of the Law of Georgia on 'Enforcement Proceedings', enacted on 16 April 1999. Under the challenged provision, compulsory enforcement measures, including forced auctions,[52] seizures, and sequestration, were inapplicable to, inter alia, generation facilities, electricity distribution, and regional gas networks that were either state-owned or belonged to enterprises in which the state held no less than 50 percent of the shares or charter capital. In this case, the claimants entered into contractual relationships with enterprises either fully owned by the state or in which the state held a controlling interest (more than 50 percent). Due to their outstanding financial obligations, the claimants pursued legal remedies, obtained favourable court judgments, and were issued writs of execution. However, enforcement of these judgments was rendered impossible because of the statutory exemption established by the impugned provisions.

47 Complied, by, for instance Civil code of RSFSR, Article 90, Civil code of Georgian SSR, Art. 87.

48 Kurzynsky-Singer and Zarandia, 2014, pp. 133 et seq.

49 Zoidze, 2015, p. 19.

50 Art. 8.2 of the Constitution of the Russian Federation [Online]. Available at: https://www.policinglaw.info/assets/downloads/1993_Constitution_of_the_Russian_Federation_(as_amended)_(English_translation).pdf (Accessed: 12 November 2025); Art. 53 of the Constitution of the Republic of Uzbekistan [Online]. Available at: https://www.constituteproject.org/constitution/Uzbekistan_2011 (Accessed: 13 November 2025); Art. 13 of the Constitution of the Republic of Belarus [Online]. Available at: https://constitutionnet.org/sites/default/files/Belarus%20Constitution.pdf (Accessed: 12 November 2025).

51 Chanturia, 2011, p. 29.

52 Regarding forced auction, see: Kavtaradze, 2013, pp. 77 et seq.

In the case in question, by its ruling dated 28 July 2005, the Constitutional Court of Georgia declared the contested norm unconstitutional in relation to the first sentence of Article 21, paragraph 1, and the first sentence of Article 30, paragraph 2 of the Constitution of Georgia. The Constitutional Court emphasised that property, as recognised and safeguarded by the Constitution, entails the establishment of a uniform and equal right to property for all individuals. Georgia was one of the first post-Soviet states to reject the classification of property into the forms and institutions of the privileged proprietor, which under the Soviet regime was represented by the state. The concept of property enshrined in Article 21 of the Constitution of Georgia legally places the state, as an owner, on an equal footing with other proprietors. This foundational principle has influenced the development of Georgian civil law. A crucial provision within Article 24, paragraph 4 of the new Civil Code of Georgia explicitly asserts that the state participates in civil law relations in the same manner as private legal entities, thereby establishing parity between public and private actors in civil law.[53]

2. Reception of German Principles of Property Law in Georgia

The reception of German law into Georgian legal doctrine has been accompanied by the transposition of fundamental legal principles inherent in the German legal tradition. It is important to emphasise that, in general, legal principles have not exerted a significant influence on the development of private law systems in the Caucasus and Central Asian regions.[54] However, principles of property law play a pivotal role in guiding the interpretation and application of legal norms by courts and legal practitioners. Consequently, the adoption of these principles into Georgian law serves as a valuable point of reference for assessing broader trends in the development and localisation of private law.

■ *2.1. The Doctrinal Relationship Between Property Rights and Obligatory Rights*

The authors of the Georgian Civil Code were guided by a fundamental conceptual distinction between property rights (*rights in rem*) and obligatory rights (rights in *personam*). Property rights are characterised by their absolute nature – meaning that they are enforceable *erga omnes* and include the right of pursuit (*ius persequendi*) with respect to the object. This defining feature serves as a key criterion[55] distinguishing them from obligatory rights, which are inherently relative and binding only *inter partes*. The conceptual differentiation between these

53 Constitutional Court of Georgia, judgment No. 1/4/184,228, 28 July 2008.

54 This observation finds support in comparative legal literature. See: Chanturia, 2010, p. 232.

55 Chanturia, 1994, pp. 227 et seq.; Chanturia, 2001, p. 152; Zoidze, 2003b, pp. 5–9; Chechelashvili, 2009, p. 18.

two categories of private rights underlies several core principles of property law. Georgian law, following the German model, reflects a structurally coherent system that facilitates the functional interplay between contract and property laws.[56] A salient example is the development of the law of security rights, which evolved as an auxiliary branch of contract law intended to enhance the enforceability of obligations. In general, property law assumes a passive role until an obligation remains unfulfilled, at which point it becomes a powerful legal enforcement mechanism. Furthermore, while the law of obligations is founded upon the principle of contractual autonomy,[57] permitting parties to regulate their private affairs as long as third-party rights are not infringed, property rights exert legal effects on all persons involved in civil commerce. As such, the creation or modification of property rights is subject to limitations derived from overarching interests in legal certainty, particularly regarding the validity of title transfers and the scope of encumbrances.

The principal doctrines of property law as reflected in the Georgian legal system and largely derived from German law include the following:

The *Numerus Clausus* Principle: This doctrine restricts parties to employing only those proprietary rights explicitly recognised by statute, thereby prohibiting the creation of novel or *sui generis* rights, or the arbitrary alteration of existing legal forms. Consequently, the principle of contractual freedom is more constrained in property law than in the law of obligations.[58] The Principle of Publicity: This principle serves to safeguard the transparency of proprietary relations by enabling third parties to ascertain the existence and legal content of property rights. The Superficies Solo Cedit Principle: This tenet affirms the legal unity between land and its fixtures, stipulating that ownership of the land encompasses any buildings constructed on it.[59] The Principle of Specificity and Individualisation: In accordance with this principle, a property right may be established only with respect to a specifically identified and individualised object, thereby ensuring clarity as to which asset a given proprietary right pertains to.[60] Whereas German law protects the security of civil commerce through the Principle of Abstraction, under which defects in obligatory transactions do not affect the validity of the transfer of ownership, Georgian law does not embrace this principle. Instead, it adheres to the Causal Model of Transfer in which the transfer of ownership is contingent on the legal validity of the underlying obligation (*causa*).[61]

56 Akkermans, 2008, p. 401.
57 Lakerbaia, 2016, pp. 17 et seq.
58 Jorbenadze, 2016, p. 253.
59 Kurzynsky-Singer and Zarandia, 2014, pp. 131 et seq.
60 Chanturia, 1994, pp. 228 et seq.; Chanturia, 2001, p. 154; Zoidze, 2003a, pp. 5 et seq.
61 Kurzynsky-Singer and Zarandia, 2014, pp. 116 et seq.; Begiashvili, 2013, p. 61.

■ *2.2. The Principle of Numerus Clausus of Property Rights*

The notion of quantitative and substantive restrictions on property rights is pervasive in almost all European legal systems.[62] Property rights are considered absolute rights enforceable against all persons; as such, there exists an expectation that the content of these rights is publicly accessible to third parties. The principle of numerus clausus, or an exhaustive (closed) list, constrains the parties' ability to establish property rights that are not expressly foreseen by law.[63] The efficacy of property rights in commerce is enhanced when the acquirer can rely on clearly delineated and legally recognised content. Consequently, property law permits the existence of only a finite set of property rights, including ownership, and specific restrictions on property rights expressly provided by the law.[64] The creation of new property rights by the parties was prohibited. Hence, in property law, the freedom of contract is inherently limited. While parties retain the freedom to enter into contracts, in contrast to the law of obligations, they do not possess the freedom to determine the substantive content of their rights.[65]

The principle of the numerus clausus of property rights eliminates the parties' freedom to structure their rights as they see fit.[66] This principle is supplemented by the legislative codification of property rights, which not only prohibits the creation of novel types of property rights but also restricts the parties' ability to alter the types of property rights recognised by law, except in very limited circumstances. From this perspective, there is no freedom to structure the rights in a manner that deviates from statutory provisions.[67]

■ *2.3. The Principle of Publicity in Property Law*

The principle of publicity ensures that civil commerce participants can determine the existence of their real rights. As noted previously, the requirement for the absolute structuring of real rights warrants a legal definition of the permissible types of such rights. Furthermore, the existence of specific real rights must be apparent to the participants in civil transactions;[68] therefore, the principle of publicity is applicable. The establishment and transfer of real rights must be perceptible, visible, and public to third parties; or, so to speak, to an external observer.[69]

For movable property, the principle of publicity is expressed through possession, whereas for immovable property, it is reflected in the registration

62 Akkermans, 2008, p. 403.
63 Chachanidze, 2012, pp. 249 et seq.; Jorbenadze, 2016, p. 255.
64 Zarandia, 2023, p. 62.
65 Zoidze, 2003b, p. 5; Shotadze, 2014, p. 29; Wolf and Wellenhofer, 2018, Art. 3 para. 2.
66 Jorbenadze, 2014, pp. 262 et seq.
67 Wolf and Wellenhofer, 2018, p. 31.
68 Kurzynsky-Singer and Zarandia, 2014, pp. 134 et seq.
69 Lazareishvili, 2001, p. 44.

procedure of a public registry.[70] For the transfer of ownership over movable property, the Civil Code, alongside the 'real right', generally requires the delivery of the item (i.e., the transfer of possession).[71] This serves as an expression of the principle of publicity, since the transfer of factual control over the item must make the transfer of ownership perceivable to an external observer. The possessor is usually considered to be the owner. This forms the basis of the presumption of ownership, which is affirmed by Article 158(1)[72] of the Civil Code of Georgia, and also underpins the regulation of bona fide acquisition found in Article 187.

Crucially, however, it is debatable whether possession can always fulfil the function of expressing publicity under the conditions of a modern dynamic economic order, since in cases such as conditional ownership, an item may be used by a possessor who is not the actual owner. Thus, a creditor cannot always rely solely on the factual manifestations of possessions.[73] The establishment and transfer of rights over immovable property presuppose registration in a public registry, rendering any change in legal status visible to external observers. Therefore, the circulation of immovable property carries less risk. By contrast, in the case of movable property, participants in civil commerce are unable to ascertain the legal status behind factual possession. They are always at risk of relying on the visible situation (i.e., possession) and being misled about the authenticity of the right because a right, by its nature, is not visible.[74]

Theoretically, to ensure publicity, there should also be a registry of movable items. However, this requirement would render the circulation of movable property impracticable because of the disproportionate costs involved. This is because the circulation of such items is more dynamic, and the items themselves are more susceptible to rapid depreciation or destruction. Therefore, the legislature found a legal compromise by requiring registration in a registry only for particularly important movable items such as ships and aircraft.[75]

In Georgian law,[76] the presumption of correctness applies to the Public Registry; entries in the register are deemed correct until their inaccuracy is proven (Civil Code, Article 312(1)). The essence of the presumptions of completeness and correctness is to determine the legal precondition for the validity of a contract. Accordingly, the alienation of immovable property requires entry into the Public Registry.[77]

70 Wolf and Wellenhofer, 2018, 28; Lapachi, 2013, pp. 62 et seq.
71 For the transfer of ownership of a movable item, it is necessary that the owner delivers the item to the buyer based on a valid real right (Civil Code, Art. 186 I).
72 It is presumed that the possessor of a thing is its owner (Civil Code, Art. 158 I).
73 Bzekalava, 2013, pp. 24 et seq.
74 Sklovsky, 1999, p. 99.
75 Wolf and Wellenhofer, 2018, p. 29.
76 Art. 312.1 of the Civil Code of Georgia, and Art. 5 of the Law of Georgia of 2008 on the Public Registry.
77 Jorbenadze, 2016, p. 259; in German law, Weiling, 1994, pp. 254 et seq.

Similar to movable things, the transfer of ownership requires delivery of the thing for land plots and other immovable items, and a disposition takes effect only after registration in the Public Registry. Simultaneously, whether, under Georgian law, entry into the Public Registry constitutes a rights-creating element for the acquisition or transfer of title by virtue of law is a disputed issue. On one hand, in one judgment of the Supreme Court of Georgia, it was stated that the title to immovable property may not be derived from the Public Registry; however, in such a case, the object may be regarded, without dispute, as a person's property, which leads to the upholding of a vindicatory claim.[78] For example, the Supreme Court refers to inheritance through the operation of the law, as evidenced by a certificate of inheritance.[79] On the other hand, based on rulings delivered by the Supreme Court of Georgia concerning spouses' common property, it may be inferred that Georgian law accords entries into the Public Registry with constitutive significance and extends this to the transfer of ownership arising from the operation of law.[80] Pursuant to Article 1158 of the Civil Code of Georgia, property acquired by spouses during marriage constitutes their joint property (common ownership) unless otherwise provided by a matrimonial agreement.[81]

In one of its judgments, the Supreme Court of Georgia noted that, in the interests of the acquirer, joint ownership of spouses with respect to immovable property arises only after both spouses are registered in the Public Registry. Otherwise, regarding third parties, the entries in the register are deemed correct.

■ *2.4. The Principle of Superficies Solo Cedit and Challenges in Georgian Law*

According to the principle of *superficies solo cedit*, the legal status of a building located on a plot of land is linked to the legal status of the land itself, thereby ensuring the legal unity of the land and the structure. This principle has its roots in Roman law.[82] Under Roman law, immovable property included not only the plot of land and subsoil but also any improvements on the surface created by another or the owner, which were considered to be part of the land's surface, either naturally or artificially, and subject to the rule of inseparability from the land.[83]

According to Article 193 of the Civil Code, if a movable item is so connected to a plot of land that it becomes an essential component of that land, the landowner, under Article 150(2), simultaneously becomes the owner of that item. Article 150(2) defines buildings and other items that are permanently attached to land as essential components.[84] In this way, the principle of *superficies solo*

78 Zarandia, 2016, p. 75.
79 Supreme Court of Georgia, 2007, pp. 57, 59–60.
80 Zarnadze, 2007, pp. 120 et seq.
81 Civil Code, Art. 1172.
82 Staudinger et al., 2004, Art. 94 para. 2.
83 Garishvili and Khoperia, 2013, p. 277.
84 Kurzynsky-Singer and Zarandia, 2014, pp. 131 et seq.

cedit ensures legal clarity, as it allows a potential purchaser of the plot to easily determine which items are covered by the agreement. Moreover, it prevents economic losses that may arise from situations in which the plot and building belong to different persons.[85]

However, the principle of *superficies solo cedit* is not without exceptions. A clear example is apartment ownership in multi-unit buildings, which under current legislation may constitute a separate object of legal title. In such cases, ownership of the land on which the multi-unit building stands is distributed among multiple apartment owners. Therefore, if we reduce the dogmatic content of *superficies solo cedit* to its practical significance and return to the fundamental rules concerning the accession of immovable property, the concept of multidimensional property rights may emerge.[86] Thus, it may be said that strict adherence to this principle is not observed in all circumstances.[87]

The Georgian legislature has largely implemented the principle of *superficies solo cedit* by adopting the concept of the 'essential component' of a thing.[88] However, the adoption of this principle in the post-Soviet space was fraught with numerous challenges, primarily because Soviet law did not permit ownership rights over land plots, but it did recognise ownership rights over buildings.[89] The Law of Georgia on the Privatisation of State Property did not regulate the privatisation of land plots,[90] except for agricultural land,[91] thereby preventing the establishment of a single owner in cases where buildings were alienated by the state.[92]

The currently effective Law of Georgia on the Public Registry[93] largely reiterates the provisions of the earlier Law on the Registration of Rights to Immovable Property.[94] However, in the area of privatisation, the 2010 Law on State Property[95] established rules for the privatisation of immovable property (including land plots not designated for agricultural use). Significantly, the Law on State Property did not establish prerequisites for the registration of a building as a separate object under the legal title. Despite this, there are still instances in Georgia in which buildings are registered separately when the state privatises land. This contradicts

85 Staudinger et al., 2017, Art. 94 Rn. 3, pp. 85–86.
86 Bouly, 2012, p. 43.
87 Van Der Merwe, 2015, p. 23.
88 Kurzynsky-Singer and Zarandia, 2014, pp. 131 et seq.
89 Gerasin, 2010, p. 49.
90 Law of Georgia of 1997 on the Privatisation of State Property.
91 The special law enacted regarding this issue: Law of Georgia of 1996 on the Ownership of Agricultural Land.
92 Lazareishvili, 2003, pp. 21 et seq.
93 Law of Georgia of 2008 on the Public Registry.
94 Specifically, Art. 2.a) of the above law defines immovable property to include a land plot with or without a structure thereon, a structure (under construction, built, or demolished), a unit within a structure, and a linear structure.
95 Law of Georgia of 2010 on State Property.

Article 150(1) of the Civil Code of Georgia, which states that, in civil commerce, a building is regarded as an essential component of the land.[96] This situation is problematic, as it may result in a case where, following the privatisation of a land plot, the new landowner demands recognition of ownership over the building already registered in the name of another person.

It is also notable that, according to subparagraph 'e' of paragraph 2 of the Law of Georgia on the Recognition of Ownership Rights on Land Plots in the Possession (Use) of Natural Persons and Legal Entities of Private Law,[97] an interested person includes '... a person who, in accordance with the procedure established by Georgian legislation, has acquired/obtained ownership rights over a building or structure located on a state-owned non-agricultural land plot'. This once again indicates that in legal practice, the legal status of a land plot and that of the building situated on it often do not coincide.

It is also significant that in other instances of immovable property transactions, judicial practice considers a building (structure) as an essential component of the land. For example, on 11 December 2007[98] the Supreme Court of Georgia partially upheld a cassation appeal, reasoning that the appellate court failed to render a decision on the ownership of the land plot where the residential house was located, despite awarding part of the residential house to one party. In the view of the Supreme Court, this violated the requirements of Article 150 of the Civil Code of Georgia.

■ *2.5. Principle of Specificity and Principle of Speciality*

The principle of specificity implies that an agreement regarding a property right, owing to its absolute effect towards any third party, must be concluded with clearly defined content. This ensures that third parties can determine precisely the nature of the right in question, thus eliminating any ambiguity regarding the scope of property rights.[99] Accordingly, the principle requires a clear identification of the property over which the parties intend to establish the property right.[100] Moreover, based on this principle, the acquisition or establishment of a property right must involve the precise specification of which item belongs to which person. As a rule, specificity must exist at the moment of contract conclusion. Any individual aware of the agreement should be able to determine with certainty which items are to be transferred. This requirement is considered fulfilled, for instance, when a husband donates all household goods in the home to his wife.[101]

96 Kurzynsky-Singer and Zarandia, 2014, pp. 131 et seq.
97 Law of Georgia of 2007.
98 The Supreme Court of Georgia, No. AS 274-604-07, 11.12.2007.
99 Wolf and Wellenhofer, 2018, p. 30.
100 Shotadze, 2014, p. 31.
101 Kropholler, 2014, p. 700.

When dealing with intangible properties, the principle of specificity functions differently; identification is achieved through a description and valuation of the right in the relevant constitutive document.[102]

■ *2.6. The Right to Follow (Droit de Suite) and the Principle of Priority*

A defining feature of property rights is the *right to follow* (Droit de suite): The legal protection of property rights is reinforced by the fact that they remain effective even against new owners in the event of a transfer.[103] Property rights follow the object regardless of whose possession it is transferred to, and changes in parties do not terminate legal relationships.

Traditionally, obligatory rights are characterised by their relative nature, whereas property rights are absolute in the sense of their absolute protection through vindication claims. The distinction lies in the fact that relative rights do not bind third parties, affecting only contractual parties.[104] By contrast, property rights are attached to the object itself, wherever it may be located. For example, a person with ownership rights may follow and reclaim the object from any third party in possession of it.[105]

The principle of priority means that a person holding a property right has a superior claim to the object compared to rights that arise later. As the Roman Emperor Caracalla put it, *Prior tempore, potior iure* – 'first in time, stronger in right'.[106] This means that, in the case of a dispute, temporal precedence establishes priority. For example, in the context of immovable property, the party that first registers its rights is granted stronger legal protection.[107] This Roman principle of 'first in time' has been adopted by many continental European legal systems.[108] While primarily relevant to security rights, it is also considered a general feature of property rights: the party that first acquires the property rights has precedence over any subsequent rights holder.

The *follow-the-thing* principle is primarily associated with property law: Although similar tendencies exist in the law of obligations,[109] this characteristic remains a distinctive feature of property law and should be analysed in comparison with obligatory rights.

102 Shotadze, 2014, p. 31.
103 Wolf and Wellenhofer, 2018, p. 2.
104 These rights are also occasionally referred to as relative rights, Vacheshvili, 2010, p. 186.
105 Van Erp, 2012, p. 42.
106 De Hoog, 2016, p. 41.
107 Lapachi, 2013, p. 71.
108 De Hoog, 2016, p. 42.
109 Zoidze, 2003b, p. 8.

■ *2.7. Principles of Property Transfer and the Choice of Georgian Law*

2.7.1. The Principles of Separation and Abstraction

The abstraction principle is a hallmark of German law, intended to protect legal transactions. It posits that a defect in the obligatory legal agreement does not affect the transfer of ownership. The prerequisite for abstraction is the separation (*Trennungsprinzip*) of obligatory and dispositive agreements. A dispositive agreement refers to the parties' intent to transfer ownership. According to the abstraction principle, the transfer of ownership is not contingent on the validity of the underlying obligatory contract (e.g., a sale), although such a contract provides a legal cause (causa) for the dispositive agreement. Even if the obligatory agreement is invalid, ownership is still transferred, albeit without a lawful basis, and the transferor may claim restitution under unjust enrichment rules.[110]

If the seller transfers ownership to a third party, that third party becomes the rightful owner, even if they knew, or ought to have known, of the contract's defect.[111]

Although the abstraction principle was considered as a possible component of future property laws during the drafting of the Georgian Civil Code,[112] it was ultimately rejected.[113] The prevailing view in the Georgian doctrine argues that the principle artificially fragments an otherwise unified legal transaction into several components of legal significance, thereby complicating its application.[114] It was seen more as a theoretical construct than a practical tool beneficial to legal circulation, and was believed to contribute to confusion rather than clarity.[115]

2.7.2. The Principle of Unity

As an alternative to the separation and abstraction principles, the 'principle of unity' has been considered in Georgian legal scholarship.[116] This principle does not separate legal transactions into obligatory and dispositive components. Here, ownership is transferred directly through obligatory agreement, and under some variations of this model, no further action is required for the transfer (i.e., a consensual system of transfer). Ownership is passed to the buyer when an obligatory

110 Kurzynsky-Singer and Zarandia, 2014, pp. 119 et seq.
111 On the practical differences between these two systems, Wieling, 2001, p. 301.
112 Chanturia, 1994, p. 241.
113 Zoidze, 2003b, p. 10; Dzlierishvili, 2010, p. 34; Jorbenadze, 2016, pp. 254 et seq.
114 It should be noted that assignment of a claim is an abstract transaction and is not dependent on the legal ground (causa), Zoidze, 2003a, p. 193; Chanturia, 2011, pp. 310 et seq.; Chechelashvili, 2006, p. 238.
115 Zoidze, 2003a, p. 147; Zoidze, 2005, p. 222; Kurzynsky-Singer and Zarandia, 2014, pp. 119 et seq.
116 Kurzynsky-Singer and Zarandia, 2014, pp. 123 et seq.

agreement is concluded.[117] However, this principle was not implemented in Georgian property law. The drafters of the Civil Code believed that although the abstraction principle complicates property transfers, the consensual model overly simplifies them, placing excessive risk on the buyer, who becomes the owner from the moment of agreement.[118]

2.7.3. The Causal System of Traditio

The Georgian legislature has adopted a mixed model based on the principles of *titulus* and *modus*. In this model, ownership is transferred on the basis of an obligatory agreement closely linked to actual delivery. Thus, Georgia retained, to some extent, the *traditio* system that had existed during the Soviet era.[119]

According to Article 186(1) of the Georgian Civil Code, for the transfer of ownership over a movable item, the current owner must transfer the item to the acquirer based on a valid right. Accordingly, the procedure for transferring ownership of a movable item requires valid legal grounds indicating the adoption of a causal model.[120] Under this system, if the obligatory agreement is invalid, ownership is not transferred.

3. Conclusion

The process of legal transformation, which continues in Georgia and many other post-Soviet countries, entails a shift from state-oriented principles toward a market economy and private law structures.

It should also be noted that the reception of German property law in Georgia initially addressed fundamental regulatory structures, whereas many of the detailed provisions in German law remained outside the scope of regulation. In some cases, this altered the balance of interests embedded in the German model and gave Georgian law its distinctive characteristics. Examples include a broader understanding of the concept of property in Georgian law and a model of property transfer, which differs from that of the German legal system.

Georgian law rejected Soviet legal institutions, including forms of ownership, through legislative reforms and judicial practices. Similarly, during reception, the commission responsible for drafting the Civil Code declined to adopt the Soviet legal constructs of operational management and economic administration.

117 Chanturia, 2001, p. 155. This model of transfer of ownership appears in French and Scandinavian legal systems, Ibid., p. 192.
118 Zoidze, 2003a, p. 148.
119 Ioffe, 2004, p. 409.
120 Kurzynsky-Singer and Zarandia, 2014, pp. 121 et seq.

The Georgian Civil Code has been amended numerous times since its adoption. For instance, changes in the sale of immovable property have rendered notarisation non-mandatory. Additionally, amendments to the law on the security of claims altered the balance between creditors and debtors, primarily in favour of improving the creditor's (mortgagee's) position. It is difficult to predict the future direction of Georgian law – whether it will further diverge from the German model, which it creatively adopts because of frequent legislative changes. However, Georgian law still needs to seek its own path and develop independent solutions to various legal issues.

It is also noteworthy that 28 years after the adoption of the Civil Code of Georgia, despite the aforementioned legislative amendments, the fundamental principles and essential components of the Civil Code remain structurally unchanged. In general, civil codifications are to be regarded as long-term societal frameworks which simultaneously serve as a foundation for the legal system.[121] It is important to recognise that law does not evolve solely through legislative changes. In this respect, judges play a unique role in developing the law through judicial practice. Legal principles also play a significant role in this process. Their importance lies in the guidance that they provide, which is essential for the interpretation of legal norms. However, in practice, courts often rely on the literal text of the law when interpreting norms and tend to favour a formal approach to interpretation over one based on legal principles.[122]

In contrast, it is crucial that judicial law occasionally rectifies legislative shortcomings through the application of legal principles, thereby developing the law through interpretation grounded in those principles and the system of values embedded in the legal order itself. In the modern context, court decisions gradually and incrementally construct legal doctrines and frameworks that complement, enrich and often refine legislative creations. In this regard, legal principles play a particularly pivotal role.

121 Knieper, 2005, p. 54.
122 Schramm, 2010, pp. 78 et seq.

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