

Property registration of the ownership right to the agricultural land

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Abstract. The paper highlights the existing legal, doctrinal, and practical state in Georgia and other countries abroad in the context of registration of ownership rights to agricultural plots by legitimate owners. Hence, the paper is a synthesis of theory and practice dealing with the social and state significance of agricultural land and voices several problems that arise in the process of recognizing the right to ownership of agricultural land plots legally owned by individuals or legal entities. In addition, it also emphasizes the reasons that lead to these problems both at the legislative and doctrinal levels. This article reviews the approach of Georgian law in terms of obtaining rights to agricultural land, especially the mechanisms of registration of property rights by legitimate owners. Historical, and comparative legal research methods used in the paper, cover the past, present, and future situation in terms of legal development of the agricultural field.

Keywords: Surveyor, Agricultural Land, Bona fide, Land consolidation, two-step registration system

Introduction

Land is the foundation of social and commercial relationships; it is the start and the end of life (Rembar, 2019). Land is the origin of all social and commercial interactions; thus, it is an essential base. Humans fail to realize that their existence is sustained from the historical memory of the universe and is formed by the natural world surrounding us. Therefore, the significance of land in human activities is immense, however, people start thinking about the issues like this when they face the signs of the environmental threat. Only after this, they realize how fragile and irreplaceable the land's rich resource is. The world where we live is tightly connected to land (Dixon, 2021). Hence, there is an eternal link between humans and land which stems from the natural state of man. It should be noted that the importance of land as an object is enormous in the economic, ecological, cultural, social and other issues which unite the entire world. The earth's rich resources, which people closely depend on need good management. It is a well-known fact that in Georgia most of the land is agricultural (Merebashvili, 2021), therefore, according to the current situation in Georgia it is relevant to correctly distribute and manage farmland. It is also worth noting that this process to some extent is managed in unreliable way, namely, while registering the ownership rights to a piece of land. It is significant to cover certain aspects of obtaining rights to this highly rated object.

The structure of the thesis develops by analyzing the most general property rights to show how important land is as an object of property rights; in addition, it highlights the social importance of land and what is more, the registration which determines the connection between two heterogeneous worlds, in default human and land, even though both of them represent the worlds connected by their continuous nature which makes this topic more relevant. Thus, the most important issue of the land law is the rational use and management of land.

Interdependence between the property rights and the nature of land

The topic which deals with the interdependence of humans and the property object is always relevant. Hypothetically, the question arises: can a person claim to own a watch? Such a question in itself comprises two topics: primarily, the property owner's application which refers to the disclosure of the existence of property rights, and accordingly, the assertion, which implies the person's attitude to the moveable object, and on the other hand, immovable objects, which require special presentation to be considered as an individual's property (Dixon, 2021). Although the paper deals with land law, it is vital to cover the legal aspects of property rights to emphasize the relevance of the topic.

The property rights have a complex content to the extent that it comprises the integrity of various rights (Constitution of Georgia, 1995) or to say more precisely, as some English scholars have defined, it is a relationship expressing dependence on the thing in possession between the owner and other persons (Honore, 2020, p. 107), therefore, it expresses the connection between two heterogeneous worlds, which is known to have existed before the fundamentals to the law (Rembar, 2019), and which makes the acquisition of rights to property objects more interesting. property rights are one of the oldest rights in the history of mankind which is also referred to as "natural" rights by some scholars (Dzamukashvili, 2017, p. 17). The discussion of the notion property and its concept has a long history. As one of the Doctor of Juridical Science Davit Dzamukashvili working in Georgia would state – "The notion of property originated when Eva and Adam covered themselves with the fig leaves". During the English Revolution, the property right was considered a fundamental right and was established in the same way in the legislation of that time as well. In view of the fact that the property right, as it was already stated, is an absolute right pursuant to the private law, for some reason science and legislation do not outline the depths that concern to the state interests, consequently, the protection of public interests, environmental values and natural resources is not regulated. In Slovakia, decisive measures to protect land were taken in the 19th century which was related to the development of certain sciences and the creating unprecedented means for the soil harvest. Boosting the profit from cultivating land, which required taking regulation actions, put the need for legislation regulations on the agenda in this regard. In Slovakia and in leading developed countries the evolution of the correlation between people and land began at that time which contributed to the creation of a protected and harmonious environment at the legislative level. The European Commission considers that the efficient management of land in Europe is entirely dependent on legal regulation; this is worth paying attention since land is a resource that will degrade and lose its properties faster than it can retrieve them, therefore, it needs effective management. Thus, a more effective agricultural land management policy should be determined. It is noteworthy that by the decision of the European Parliament, an environmental action program has been established, which indicates human impact on land and its scope, which causes significant pressure on nature (The National Council of the Slovak Republic: 7th term of the National Council of the Slovak Republic, parliamentary press no. 658). Land in Georgia falls into categories (Law of Georgia on determination of the designated purpose of land and on sustainable management of agricultural land, 2019. Art. 3) and agricultural land has a special significance which is due to the international approach and natural conditions of Georgia, since the economy and main development vector of Georgia are addressed towards agriculture (Functions and Goals of Ministry of Environmental Protection and Agriculture of Georgia).

In Georgia, it is necessary to regulate such a significant issue in more depth at the level of the constitution, because according to the latest European practice, in the example of Slovakia, it is clear that the declared provision of the constitution states that the land of the Slovak Republic is the heritage of the state, citizens and future generations, and land is a non-renewable natural resource in the earth's ecosystem, in Slovakia When adopting the aforementioned constitutional act, each member of the parliament relied on the legal acts adopted so far and defined land as a non-renewable natural resource (Constitution of The Slovak Republic, 1992).

In Georgia it is imperative to regulate such an important issue more deeply at the level of the constitution, as pursuant to the latest European practice, on the example of Slovakia, it is clear that the declared provision of the constitution states that the land of the Slovak Republic is the heritage of the state, citizens and future generations, and land is a non-renewable natural resource in the earth's ecosystem; in Slovakia when adopting the aforementioned constitutional act, each member of the parliament relied on the legal acts adopted so far and defined land as a non-renewable natural resource (Constitution of The Slovak Republic, 1992). Management of agricultural land resources in Georgia "nobody knows" whether it is effectively regulated at the constitutional level, however, it undoubtedly needs more depth in order to be a correct policy determinant as a basis for further acts. Apart from that, the foundation of the agricultural development of Georgia is in the promotion of farms; the effective operation of the farm, on the other hand, is a significant means of the development of the agricultural sector. Since 2016, a significant legal step has been taken, which was supposed to facilitate bringing agricultural plots into compliance with the goals of the Constitution. The law, which was adopted on the procedure for systematic and sporadic registration of rights to land plots and perfection of cadastral data, serves the following purposes:

1. To develop a unified standard of surveying drawing,
2. The state (registration body) should help the interested person in finding documents establishing the right,
3. The state should be actively involved in the resolution of disputed issues,
4. To help the state citizen in finding all other documents.

This serves the purpose of developing agriculture, which was the idea during the privatization period itself, when plots of land were shared out and this process was related to the state development (Law of Georgia On Privatization of State-Owned Agricultural Land, 2005). However, with the same law, the ways of registration of property rights by the owners were greatly simplified, which, on the other hand, also made it easier the ways of meeting the unscrupulous goals of the unjust owners.

Agricultural land is indeed special in terms of its significance both in Georgia and in the world. While registering rights to agricultural land a lot of issues are to be considered. Georgian scientific doctrine is also familiar with the opinion that for agrarian countries with a small amount of land such as Georgia the above said issue is extremely relevant, since agricultural land is the most loaded with social function (Gabunia, 2018). In the present article the very idea that the nature and legal guarantees of the property right on the one hand, should be considered for this object of high social and state significance, and on the other hand, the legal aspects of the restriction of the property right by the state are based on the social nature of agricultural plots. It is undisputed that the owner of the agricultural plot is obliged to dispose of the object in his possession by preserving the properties that

the object has. The land owner is obliged to use the land according to its intended purpose, which is defined in the Law of Georgia on Agricultural Land Ownership (Organic Law of Georgian Agricultural Land Ownership, 2019, Art. 3). Thus, the land should be used for the production of crops and livestock products.

The social function of ownership in land ownership registration

The property object is wealth and the property has its value to many extents. A person may simply enjoy the possession of the object, for instance, a glass, or pliers, or they may use it in a way that can be followed by living usage consequence which has a value and the ability to produce income (Mandoki, 2016). In the case of land it is possible to use its physical aspects, for instance through farming, building a residential house on it, or its commercial use; they can be considered as a source of rental income with the desire to reasonably receive income from one's own property. The latter has become especially relevant since the 21st century when the number of houses and buildings around the world increased due to interest in rent and the interest in using it, which is known by the legal spectrum as the "BUY TO LET" phenomenon (Lawrenson, 2015).

The Georgian "Land Legislation" was not developed consistently, this was caused by the changing political situation in the recent history of the state. Thus, the establishment of the land regime was not an easy and quick way to register rights to immovable property and, in general, to legally establish the agrarian sphere. In international law, there are many models of land systematization, which determine the rights and disposition of land and its owner. The land registration model operating in Georgia started to form mainly in the 90s, which is related to the legislation of registration of rights to immovable objects and the drafting of documents establishing the right, most of which still participate in registration processes (Law of Georgia On the Improvement of Cadastral Data and the Procedure for Systematic and Sporadic Registration of Rights to Plots of Land within the Framework of the State Project, 2016, Art. 17).

The social significance of land is immense. Over a century ago an American environmentalist John Murray wrote in a scientific journal that one day he went out to just take a walk and eventually he decided to stay out in his own garden until the sun set, as he said he did not want to go inside due to the impression his own house made on him (Engberg, 1980). Land law is an important part of private law because it regulates the objects for humans as subjects to living and relaxation.

The majority of land is evaluated how urbanized it is, this is not accidental, the reason for this is the correlation between man and land. Accordingly, human aspiration and "lust" for land leads to choices and hopes for something better. Thus, land is valuable, land law is a new field from the point of view of "relevance", but it has been forgotten for thousands of years, which is worth paying attention to along with human development.

It is worth noting that land law combines social and capital, environmental, recreational, resource management and all those relations of both state and private legal and mixed relations, which can be formed in a legal state between an immovable object and a subject. A well-developed land market condition, especially of agricultural land, has a great state significance. Land is a vital object for the development of agricultural plants and animal husbandry, and it is also an effective and convenient way for the state to seek investments. In addition, land may also be a source of political power. It is a

storehouse of wealth and financial assets that is used both for agricultural purposes and also to prevent inflation and economic crisis. Land is not only attractive to investors for its intended agricultural purpose, but also for those investors who are not interested in the above-mentioned activities, it is a favorable condition for collateral or other legal relationship they want, or as a means of security, which also contributes to the development of the credit market, which in turn can encourage investments. and increase the production of agricultural products.

Registration of agricultural land

The primary meaning of modern land registration systems is to prevent a third party from pursuing unauthorized interests on other people's land and to observe an owner's legal interests; in addition, the land owner should be able to utilize the piece of land to the extent that the object itself has, to take advantage of its economic value (Organic Law of Georgian Agricultural Land Ownership, 1996). For instance, the above said system has historically been in action in England in such a way that the land plot registration record includes not only the ownership data but other people's interests as well, such as easement and other limited Property rights or guarantees like mortgage which is and was supported by a relevant legal act (Law of Property, Act 1989, ss, 1,2). Thus, the purpose of the registration system and registration itself is to enable the land buyer to find out as easily as possible whether the seller actually owns this piece of land before purchasing it or in the event of registering the property.

There is no doubt that these systems contribute to the process of transferring the rights and its legal guarantees (Shotadze, 2014). Any person has the right to learn about the rightful status of someone else's land if they are interested in purchasing it which facilitates the implementation of relationship to the extent that the buyer is conscious beforehand of the legal status of the object. Hence, in this regard, the direct way to strengthen management (i.e. management of the rights) is to correctly register the rights. It should be noted that if there are no rights registered to the object, there is a great likelihood that these rights do not exist at all. However, in addition to private legal understanding, there is a legal understanding and approach to land law, which is no less significant since a large part of agricultural land and forest land is state property, besides, the state must take care of the proper management of land, both in current relations and in the future the state must provide benchmarking issues, be it road expansion, natural resources management, investments or others. In the constitution of Georgia, there is no clear entry in connection to protecting agricultural land and forest resources, which causes problems. Article 7 in the Georgian constitution refers to territorial arrangement basis which covers the country's foreign policy, criminal law, penitentiary, state finances and other issues which belong to special governance of the highest state bodies (Constitution of Georgia, 1995, Art. 7). It is appropriate if the policy of agricultural land is also defined in the same article, because it is clear from the information presented in this article, how big an object we are talking about, both for the state and for separate individuals. It should be noted that Article 19 also briefly depicts the state significance of the object which later will have a negative impact on the registration legislation. It is written in the constitution that "agricultural land can only be owned by the state, self-governing unit, a citizen of Georgia or an association of citizens of Georgia (Constitution of Georgia, 1995, Art. 9). Exceptional cases can be established by the organic law which shall be adopted by a majority of no less than two-thirds of the composition of the Parliament." Yes,

there is a deficiency in the entry, namely, the fact that agricultural land makes up non-renewable resources which is not only of special significance but also the main object of the existence of the state importance and agrarian policy and which requires special protection. considering the European legislation, quite a few constitutions deal with this basic issue (Constitution of the Slovak Republic, 1992). The constitution of Slovakia covers not only the provision of agricultural land but the provision of the environment as well, which comprises the protection of wild plants and wild animals. Hence, the balance between private legislative interests and state interests is difficult to maintain, especially in today's situation, when in Georgia there is a simplified rule for the registration of legitimate landowners (Law of Georgia On Recognition of Ownership Right to Land Plots Owned (Used) by Individuals and Legal Entities of Private Law, 2007), which does not reflect the ideas covered in this article and the high standard of land value protection which becomes the basis for undermining the interests of the real owner, or violation of state interests when the presence of an irrelevant registration system makes it easier to meet the registration requirements of dishonest and unfair interested parties. More efficient protection of agricultural land and natural resources at the legislative level should be implemented by specifying that it is a non-renewable natural resource although this is due to the nature of the land itself and therefore it cannot be mandatory that the individual(s) who created the norm come to this conclusion.

In the constitution, it would probably be good to emphasize these qualities and establish an appropriate norm on its protection along with nature and the environment, which will lead to the consequence that the legislation will be regulated and accordingly, it will become difficult to transfer state resources and land to private owners. This will be a kind of filter to prevent the unscrupulous and unjust owners from taking over agricultural lands in simplified and irrelevant ways. A balance between state and private legal interests is necessary, which can be achieved by the effective protection of state resources.

The registration basis of equitable ownership should be emphasized. Equitable ownership means certain prerequisites, which are explained in the Law of Georgia on recognition of ownership rights to land plots owned (used) by natural and private legal entities, where it is listed that in order to confirm the request for recognition of ownership rights to land inequitable ownership, the interested person must submit a physical and private law certificate. The following documentation in accordance with the Law of Georgia on recognition of ownership rights to land plots owned by legal entities:

- a) a document confirming the legal ownership (usage) of the land;
- b) cadastral planning/measurement drawing of the land plot;
- c) a document confirming the payment of the fee for recognition of the right of ownership;
- d) identification documents of the interested person;
- e) Other documentation stipulated by the legislation of Georgia (Law of Georgia On Recognition of Ownership Right to Land Plots Owned (Used) by Individuals and Legal Entities of Private Law, 2007, Art. 5).

It should be noted that there is a list of dependable sources in the legislative organization which is the basis to evaluate the relevant ownership of an object honestly and fairly as the possession should meet these two criteria (Dzamukashvili, 2017). Thus, pursuant to the existing Georgian legislation,

namely, considering the law about the rules of systematic and sporadic registration of the rights to a land plot and perfecting cadastral data, if any act is not present, for instance the rights to ownership of the and the law of Georgia on the perfection of cadastral data, if there is no act, for example, the ownership right to land plots in the legitimate possession of a household member was registered on the basis of an extract from the household book, which should contain the information about the members of the household and the property situation, if the said record is not on the face, or at least another document establishing the right, which is acceptable to the registering authority to register the property, the registering authority will transfer for review to the municipality, which, based on the factual circumstances, on the basis of an individual administrative legal act, confirms such ownership, which is sufficient for registration. In addition, the public registry also has such authority when systematic registrations of land plots in a specific area within the framework of the project are underway.

Judging from the reported information, it is appropriate for the government to form an authorized body based on a multidisciplinary idea, which on the basis of actual information will clearly and objectively establish the integrity and regularity of the fact of ownership, and not “outdated” documents establishing the right, which is very far from the technological, or even social needs of the 21st century. This process will greatly protect the object itself from the illegal owner because the property will be registered by reliable means in the ownership of those subjects who really want to use this property for the purpose that is its nature. The state will properly fulfill the goal defined by the Constitution.

Land law, as noted, has been shaped by history. Modern land law is a legislative arrangement (Smith, 2010, pp. 3-10), because the owner needs protection. In Georgia, as in other civilized states, land registration is considered a guarantee that the rights of owners are protected (Zarandia, 2019, p. 422). However, some of the English scientists in their works express the opinion that the support of the land, i.e. the rights of the owners, are natural rights, therefore, the question is, should the protection of these rights be subject to registration only?

In their view, all landowners have the right to use their land in its natural state, and accordingly, they have the right to have their land recognized as their own property, and for this reason, scientists name the responsibility and support of neighbors (Mandoki, 2016, pp. 25-35). The approach of scientists has long been known but is still relevant, and is very similar to the implementation of intellectual rights, the rights of the subject of copyright law when the author does not need to deposit the right to be recognized as the author (Mira, 2013). Thus, according to this opinion, equitable ownership may become the basis for the origination of property rights much more easily, if the connection between the land and the subject is of the same nature as the property right of the Property law itself. This idea is also reflected in the modern Georgian registration legislation when in the process of recognition of rights, the right of ownership is registered in the relevant authorized body with the confirmation of the neighbor (Public Service Hall. Property Registration). The information used in this process cannot be reliable, correspondingly it needs to be insured and regulated by such norms which will reduce the influence of dishonest and unscrupulous interested parties on the object. This ensures the interests. This ensures the interests of both private owners and the state. At such times, the case is complicated by the rights and duties of the self-governing bodies themselves and the documents establishing the right based on unreliable information. One of the court decisions is related to a case considered incompetently by the authorized body, where it was necessary for the

court to declare invalid the order of the mayor's office of one of the municipalities, which was related to the refusal to consider the confirmation of the extract from the minutes #1 of the meeting of trustees of the cooperative farm dated July 8, 1994 (Decision of Batumi City Court, case N3/122-2018). This act should not be the attribution. This act should not determine the registration, but the actual situation should determine it, it comes from the relationship between the land and the person, however, the question arises as to how much such an approach will protect the object from those interested parties who are driven by dishonest goals. In this case, the state should develop a two-stage registration system where at the first stage it will be registered registration without the rights to alienate by fulfilling a certain obligation, which implies the purposeful use of the object whatever category it is for a period of, for instance 10 years, and after the expiration of this period the property belonging to them should be fully legalized as their property. This approach is completely fair when it comes to the process of acknowledging their rights, and the terms are quite reasonable since we are dealing with immoveable property, namely, agricultural land, which indicates the significance of the topic.

Legal essence of land registration and the owner's legal prospects

Based on the present article, land registration has been covered from the point of view of shedding light on the extension of rights to exhaustible land resources. Thus, land, as the most general verbal manifestation of an immovable thing, must be registered in order to protect the owner of the rights to it (Zarandia, 2019). Pursuant to German law, land registration is carried out through the land registry, therefore, any rights related to immovable property are gathered in this registry. Thus, in Germany, only such registration gives rise to the rights of subjects on the land (Chanturia, 2001).

It is known that in Georgia, Article 183 of the Civil Code defines the necessary transaction for the acquisition of immovable property in written form and the registration of the ownership right determined by the transaction to the buyer in the public register. Thus, it is clear that the Civil Code specifies registration as a necessary prerequisite for the transfer of ownership of immovable property (Dzlierishvili, 2010).

In the legal world, there is a lot of talk about how possession differs from ownership. The main reason is that "the ghost of the owner always lurks in the owner" (Soidse, 2003, p. 58). Legally, ownership is a legal category, while ownership is factual. The owner is the person who exercises actual domination, therefore in some cases it is likely that he is also the owner, while the one who exercises ownership is in many cases the owner, but not always (Zarandia, 2019, p. 133). As for the legal consequence, in the case of immovable things, if the ownership is manifested by the signs that are considered by the law in accordance with the principle of good faith and propriety, such ownership may give rise to grounds for registration of ownership. The legal result of ownership, as covered in Georgian legal literature, depends on the nature of the owner himself. Possession of real estate is special depending on the object's significance. It is clear from one of the Georgian-language legal literature that the owner must act as if he is the owner of the thing, and to determine the nature of the ownership, it is sufficient that the possession is for his own benefit only (Kochashvili, 2012). The relationship between the owner's and the proprietor's rights depends on time, because when the possession is for a reasonable time it is more likely to give rise to the owner's right to register the immovable property. The ownership of the immovable object and the owner's

registration as the proprietor must exist continuously for fifteen years (Civil Code Commentary, 2018, Book II, p. 68). The source of realization of this theoretical concept in practice is embedded in the land legislation of Georgia. Chapter 2 of the Law on the Systematic and Sporadic Registration of Rights to Land Plots and Perfection of Cadastral Data and Article 5 of the Law on Recognition of Ownership Rights to Land Plots Owned (Used) by Individuals and Legal Entities of Private Law are highly relevant. Legislation defines the prerequisites and possibilities that must accompany the process of transitional legal registration of ownership and proprietorship.

Conclusion

In conclusion, it can be said that the legislation on the registration of property rights on the land plots legally owned by natural and legal persons cannot ensure agricultural goals. It is necessary to develop a two-step system of registration, where the first step will be the processing of factor data and the identification of the probable owner, and the second step will be complete registration. All of this will reduce the risks expected by recognizing the rights to immovable property, which primarily excludes direct or indirect infringement of the legal interests of the real owner, relieves the court of disputes, promotes the development of the state's agrarian sector, and excludes the misappropriation of agricultural lands. It would be expedient to define the following norm in the Georgian Law on recognition of property rights to land plots owned (utilized) by individuals and legal entities of private law: "The interested person shall be registered the ownership considering the relevant factual and legal situation, however, on the condition that he will use it for agricultural purposes for a period of 10 years, during which he will not have the right to transfer rights". All this will reduce the action of unscrupulous and unfair interested parties to take possession of agricultural land in illegal ways. On the other hand, a two-step registration system should be created for such registrations in which there is no document establishing the right which will more effectively protect the interests of the interested person, the real owner and the state. At the first stage, the factual situation should be described and the potential owner should be identified, meanwhile the relevant authorized persons should take measures that will eliminate the possibility of registration of ownership based on unreliable information and documents. The potential owner should be entrusted with the agricultural activity in the territory within the period required for the final registration.

It is important that the responsibility for land registration be distributed between the state and private entities according to the same principle as it is between the agricultural land itself, the private owner and the state. Thus, it will be appropriate for the state to delegate those powers to private law entities which will not interfere, and on the contrary will contribute to the correct and relevant registration of land rights.

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