

Stripped Property Rights in Georgia

Third Report



This report is prepared within the framework of the project “Protection of Property Rights in New Touristic Zones of Georgia” by four non-governmental organizations: Association Green Alternative, Georgian Young Lawyers’ Association, Transparency International Georgia and the Georgian Regional Media Association. The present work is the third report drafted within the project framework.



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ABOUT THE PROJECT AND THE REPORT

At the initiative of the Open Society - Georgia Foundation, and with its financial support, the "Promoting Property Rights Protection in New Touristic Zones" project was launched in 2011. The project is implemented by four non-governmental organizations: Transparency International Georgia, Georgian Young Lawyers' Association, Georgian Regional Media Association, and the Association Green Alternative.

The project aims to promote property rights protection in newly developed touristic regions (namely Samegrelo-Zemo Svaneti and Adjara). Property rights protection guarantees are recognized under the law, the Constitution, and international norms. The project endeavors to minimize the threats of property violation and to render free legal assistance to the injured population. Within the project framework, the first report¹ was drafted in March 2011 concerning deprivation of property by the state from 271 residents of village Gonio (Adjara). The second report² was published in July 2011, and describes cases of infringement of private property in Mestia (Svaneti) and the difficulties the local population encountered when registering their titles to land plots.

Because property infringement cases are reported throughout the country we have decided not to limit ourselves with the problems faced only in the touristic zones. The present report concerns issues of property infringement in various forms and covers several regions. It consists of two main parts: (1) the facts of abandonment - when citizens give property to the state as a gift; and (2) arbitrary registration of the state's title to the real property already registered by the owners. These two chapters are followed by conclusions and recommendations.

1. CASES OF MASS ABANDONMENT AND CITIZENS GIVING PROPERTY TO THE STATE AS A GIFT (IN CASES OF SAIRME AND BAKHMARO)

In various regions of Georgia, property owners were forced to officially abandon their property (and thus automatically transfer it to the state) or were forced to directly enter into contract and give their property to the state as a gift. It is impossible to prove circumstances of duress because the persons who had either abandoned the property or given it to the state as a gift did not typically notify the media or the police. Yet, it is easy to obtain documentary evidence of mass abandonment or relinquishment as a gift through the Public Registry. As a rule, the facts of property abandonment and giving as a gift were not only concentrated geographically, but at specific points of time as well; i.e. several dozen citizens in the same territory simultaneously abandoned their property or relinquished it to the state as a gift. The majority of these people do not have any real property apart from the abandoned property or the property relinquished to the state (for instance: twenty cases of giving property to the state as a gift and two cases of abandonment of property were reported between December 13-23, 2010, in Sairme. 79 facts of abandonment of real property by private persons were reported between January 13-25, 2011, in the territory of Bakhmaro resort).

2. ARBITRARY REGISTRATION OF THE STATE'S TITLE TO REAL PROPERTY ALREADY REGISTERED BY THE OWNERS (IN CASES OF ANAKLIA AND GRIGOLETI)

During the registration of a person's title to real property, legislation authorizes the submission of a paper (hard) version, as well as an electronic version of cadastre drawings. However, the Public Registry is unable to compare these two drawings. The state often registers its title to the property via electronic versions, which are already officially registered under a citizen's ownership based on the paper version of drawings. What happens is that landowners suddenly discover that their land has become someone else's property. Often it is the state that is the new owner (for example: a 47,92 ha. land plot in Anaklia which was owned by a citizen since 2007 and legally registered in the Public Registry, ended up in state ownership in 2009 along with other land plots. Furthermore, on December 21, 2009, this land plot, together with other land plots, was transferred to the company, "Anaklia-Port," by direct sale).

1 The project "Promoting Property Rights Protection in New Touristic Zones" (2011). Problem of Protection of Property Rights in the case of Village Gonio. The report is available at: http://www.osgf.ge/files/publications/2011/Gonio_GEO_WEB.pdf

2 The project "Promoting Property Rights Protection in New Touristic Zones" (2011). Problem of Protection of Property Rights in the case of Mestia. The report is available at: [http://www.osgf.ge/files/publications/2011/Report_Mestia\(Final-1\).pdf](http://www.osgf.ge/files/publications/2011/Report_Mestia(Final-1).pdf)

1. ABANDONMENT AND CITIZENS GIVING PROPERTY TO THE STATE AS A GIFT

BRIEF OVERVIEW OF THE TRENDS OF THE INFRINGEMENT OF PROPERTY RIGHTS FROM 2003 TIL PRESENT.

Following the Rose Revolution in 2003, the infringement of property rights can be divided into several waves. The first wave occurred at the end of 2003 and beginning of 2004. Subsequent waves were more geographically concentrated and related to the municipal organization of individual towns or regions, like in the cases of Sighnaghi (2007) and Rike in Tbilisi (2007), when private owners gave up their property as a gift to the state. In these specific cases it was peculiar that such valuable property (and a significant source of income) was given to the state as a gift, especially when the state's intention to develop the land where this property was located had already been announced. Equally murky was how these gift contracts were executed en mass, under time constraints, and were usually certified by one notary. In the case of Rike, however, the previous owners reported the duress exercised against them and declared their intention to challenge the process in courts.³ Nevertheless, the property they had given as a gift was demolished as scheduled and several years later, a park was opened up on Rike territory in 2011.

Throughout this period, the Public Defender of Georgia continuously discussed the problems of the infringement of property rights in reports and public appearances. By 2007, the issue of property rights had begun to fall between the cracks, despite existing problems, but the problem again surfaced in 2009, when the President declared development priorities in new touristic zones on the Black Sea coast and in Svaneti.

Unfortunately, new touristic infrastructure often develops at the expense of local citizen's property rights, like in the village of Gonio and town of Mestia. In these cases, the infringement of property rights occurred mainly through revocation of previously recognized and legalized ownership rights or in the refusal to register the property despite the full rights to traditional possession and legal registration.

This report examines the cases, when shortly before or immediately upon the launch of touristic and infrastructure projects, citizens gave up their own property en mass, by giving it as a gift to the state or by abandoning it; or legally registered property owned by the population of certain territories one day discovered their land was no longer theirs.

OFFICIAL STATISTICS ON GIVING PROPERTY AS A GIFT / ABANDONMENT⁴

To help us with our research, we requested the Ministry of Economy and Sustainable Development of Georgia to provide the statistics on giving property as a gift to the state. According to the Ministry, it is impossible to separate statistic of real estate gifted property from movable property. Ministry has one database and all gifted property. The Ministry of Economy believes that this is personal information. Therefore, it is impossible to identify the frequency of cases of when property is given as a gift to the state by citizens.

As for the statistics on abandonment of property in favor of the state, this information is maintained in the Public Registry. According to the Public Registry, 1,563 cases of abandonment of property were reported throughout Georgia as of January 12, 2011.⁵

Technically, the cases of abandonment/giving property as a gift by citizens to the state are of voluntary nature and can hardly be viewed as a restriction of property rights when viewed at a glance. Moreover, persons who have given property as a gift to the state or abandoned it usually do not make any comments in this respect. Nevertheless, it is easy to obtain documentary evidence of mass abandonment or giving as a gift through the Public Registry.

³ Civil Georgia, 16 April 2007 Subaru: Facts of Infringement of Property Rights cannot be Left without Response. The article is available at: <http://civil.ge/geo/article.php?id=15177>

⁴ The statistics on giving by gift of property to the state are run in the Ministry of Economy and Sustainable Development, while the statistics on abandonment of property fall within the authority of the National Agency of Public Registry.

⁵ The letter #4192 of the National Agency of Public Registry (13.01.2011) to Studio Monitor.

Typically, several dozens of citizens have simultaneously given property as a gift or abandoned it in favor of the state in the same geographic area. The contracts of gift were executed with the same notary, on the same day, and at an interval of just a few minutes. The property abandoned or given as a gift in favor of the state was often quite valuable and at the time, the citizens had spent considerable financial resources for its registration. After giving the property as a gift or abandoning it, many citizens were left without a significant source of income. These cases support suspicions that these citizens have abandoned and given their property as a gift to the state under duress.

LEGAL ASPECTS OF GIVING AS A GIFT AND ABANDONMENT OF PROPERTY

Under the Civil Code of Georgia (hereinafter the "Code"), giving a gift is a bilateral transaction, conclusion of which depends on the agreement and consent of the donor and donee (Article 524). In addition, it is further stipulated under the Code (Article 8.2) that based on the gift contract, the state can receive undisputed property.

A contract must be executed based on the free and real intent of the parties. In cases of duress, a person has the right to request annulment of a transaction regardless of whether duress was exercised against the party to the contract directly or against his/her close relative (Articles 85 and 87 of the Code). Furthermore, Article 526 of the Code stipulates that concluding a contract of a gift is prohibited, if the gift would deprive the donor or his dependents of their basic means of support. It is possible that a person or his dependents could end up in distress after concluding the contract of a gift. The Code covers this instance as well, and grants the donor the right to demand the gift to be returned (Article 530.1 of the Code).

The legislation of Georgia recognizes the possibility of voluntary **abandonment** of property. Pursuant to Article 14.3 of the Law of Georgia on Public Registry, "title to a real property shall be considered abandoned from the moment of registration of abandonment of title in the registry of rights on immovable objects," while under Section 4 of the same Article, the state becomes the owner of abandoned property.

Registration of abandonment of title to a registered real property is free of charge within four business days.⁶ For this, the owner or his/her legal representative must only submit the application for abandonment of property and his/her identification document (as well as power of attorney if needed). However, in practice it is necessary to pay a certain fee to abandon property. The Law on Public Registry established a 5 GEL fee for the certification of a signature to any type of transaction. This also applies to cases of property abandonment. In addition, this requires a banking service fee also in the amount of 0.5 GEL, making the total cost 5.5 GEL (US\$3.3). Incidentally, the decision on abandonment of property is final and not subject to appeal. Unlike the cases of giving the property as a gift, a person abandoning the property does not enjoy the right to claim the abandoned property back, even in the case of losing the source of income. The original owner can repossess this property only through sale or similar operations.

In these regards, the multitude of cases of abandonment and giving property as a gift is of particular interest.

GIVING PROPERTY AS A GIFT TO THE STATE BY CITIZENS IN THE CASE OF SAIRME

Twenty cases of giving property as a gift to the state and two cases of abandonment of real property were reported between December 13-23 2010 in Sairme. In addition to the land plots received as a gift, the state registered its title to numerous land plots located in the Sairme resort by addressing the Public Registry. The majority of lands were transferred to the "Sairme Development Company" LLC, whose 100% shareholder is Temur Kokhodze - Member of the Parliament of Georgia for the "United National Movement" party.

From May 10, 2010, to January 21, 2011, the state registered its title to numerous land plots located in the Sairme resort by addressing the Public Registry. The plots were then transferred to the ownership of "Resort Sairme" LLC (376,477 sq.m.; LLC's identification code: 225058576). In addition to these land plots between December 13-23, 2010, the state received 25,137 sq.m. of land plots as a gift from private owners, which the state later registered under the ownership of "Resort Sairme" LLC. Available data reveals that the majority of persons who had given the land as a gift were entrepreneurs.

⁶ National Agency of Public Registry (2011); Registration Service Fee Rates and the Registration Terms. The document is available at: <http://www.napr.gov.ge/uploads/llaws/vada.pdf>

“Private Owners Were Massively Robbed In Sairme” – was an article printed in Rezonansi⁷ newspaper. It reported cases where Sairme resort residents had their property rights breached. According to the article, the local population addressed “Business Rezonansi” with a written application that stated “from December 17, 2010, the residents of Sairme who owned land and property were summoned to the Racha-Svaneti-Imereti Prosecutor’s Office and were forced to enter into contracts to relinquish their land gratuitously, at the request of a specialist from the Ministry of Economy.”

Before February 18, 2011, the state owned the 100% of “Resort Sairme” LLC shares. In accordance with the sale and purchase agreement dated February 18, 2011, ownership of “Resort Sairme” LLC was transferred to the “Sairme Development Company” LLC. Pursuant to an extract from the Registry of Entrepreneurial and Non-Entrepreneurial (Non-Commercial) Legal Entities, Temur Kokhodze holds 100% of the shares of the “Sairme Development Company” LLC. Mr. Kokhodze is a member of the Parliament of Georgia for the ruling “United National Movement” party. He is also part of the Legal Affairs Committee, and the Committee for Field Economy and Economic Policy. Mr. Kokhodze denies any wrongdoing against property owners, while the injured population has refrained from discussing the topic of how they lost their property. Yet just like in Bakhmaro, several dozens of people in Sairme also relinquished their valuable property as a gift to the state simultaneously in the same geographic area. Upon examination of the above-mentioned examples, there is reason to believe the gratuitous transfer by physical persons and legal entities of their own property to the state may have been involuntary. Although the donors have not spoken out on cases of duress or threats, there are circumstances that raise suspicions.

- ▶ The majority of donors are physical persons who do not have any other registered property other than the property given to the state as a gift. The property given as a gift is located in touristic regions where their owners could have sold it for high prices if they had wanted to.
- ▶ The incidents of giving property as a gift were concentrated in one specific geographic area, virtually simultaneously (within a time frame of 1-2 weeks).
- ▶ The title to the property given as a gift was fully registered in the Public Registry where registration always requires certain costs (as a minimum: registration fee, preparation of cadastre drawing, drawing up documents confirming the title to land, etc.). In several cases, the property was given as a gift within an unusually short period between the registration of the title and the payment of respective expenses.

FACTS OF ABANDONMENT OF PROPERTY BY CITIZENS IN THE CASE OF BAKHMARO

79 facts of abandonment of real property by private persons were reported in the territory of Bakhmaro resort. The Public Registry registered the state’s title to this property between January 13 and 25, 2011. The majority of these persons took extensive bureaucratic steps to register this property: they addressed the commission for recognition of the right to ownership, collected and submitted various documents confirming their possession of these land plots, commissioned cadastre drawings, certified witness depositions at a notary, paid fees, obtained ownership certificates, addressed the Public Registry and again paid service fees for registering the property. After all of this, they abandoned their property, which raises significant suspicions.

According to our information, 79 cases of real property abandonment by private persons were reported in the territory of Bakhmaro resort. Following the abandonment, the property was legally registered under state ownership based on the written address and letters from the Ministry of Economy and Sustainable Development to the Public Registry. The Public Registry registered the state’s title to this property on 13, 14, 20, 24, and 25 of January, 2011.

⁷ Newspaper Rezonansi, 29.03.2011, journalist Elza Tsiklauri.

Public Registry extracts reveal that 78 out of 79 above-mentioned cases, the property was in lawful possession⁸ of its previous owners (physical persons). In September-December 2008, the commission for recognition of the right to ownership of the Chokhatauri Municipality Sakrebulo issued ownership certificates of these land plots to its owners. . They in turn registered the property with these certificates at the Public Registry.⁹ When the commission for recognition of the right to ownership issued these ownership certificates, Shota Siradze was the chairman of the commission and a member of the United National Movement. There is a pending investigation against him on bribe-taking charges.¹⁰

There is evidence which suggests that despite requirements of the law, the ownership certificates to land plots would have been issued anyway, without examination and inquiry into the case circumstances. According to one of the commission members, Zhora Simonia, the commission has not examined a single ownership certificate out of the 388 issued at the time of Shota Siradze's chairmanship.¹¹ Curiously, the majority of those people who were issued ownership certificates were employees of various administrative agencies (the Guria Regional Police, the Chokhatauri and Lanchkhuti Police, the Chokhatauri Municipality Gamgeoba and Sakrebulo) or their family members. Furthermore, the majority of legalized land plots was issued in the forest zone, which was prohibited by law.¹²

The people who abandoned their property in Bakhmaro do not talk about the reasons for doing so. At this point it is difficult to establish whether they had legally obtained the ownership certificates and then registered the title in the Public Registry. However, even if the commission had illegally issued the ownership certificates in favor of some persons, the legislation foresees legal ways to revoke such certificates. In certain exceptions, the commission has the right to reexamine case circumstances and revoke the certificate it has issued.

The ownership certificate is an empowering (granting the title to property) administrative-legal act. Such acts enjoy maximum protection by law owing to their legal significance. Revocation of empowering acts, even if issued in violation of the law, is possible only in exceptional cases.

Although ownership certificates enjoy a high degree of protection as empowering acts, the commission may still revoke them. However, this is only possible if it has been confirmed an owner has violated the law (based on reexamination of the case circumstances); for example, if the owner submitted false information or forged documents for recognition of the right to ownership, etc.

In cases where significant violations of the law are established (forged documents, bribe-taking, abuse of power, etc.), law-enforcement agencies are obligated to begin an investigation. This is another possibility of how illegally alienated land plots are returned to the state.

Notwithstanding the multitude of legal options for revoking the above decisions, in these cases their applications were not necessary, as the owners abandoned property based on their own applications. Yet before abandonment, some 80 people went through extensive steps to legalize that property. They addressed the commission for recognition of the right to ownership and collected and submitted various documents confirming their possession of these land plots, paid money to prepare the cadastre drawings of these plots, notarized witness depositions, paid the registration fee and finally obtained the ownership certificates. After all of this, they abandoned their property .

8 Land in lawful possession (use) – the state agricultural or non-agricultural land plot with or without buildings and constructions (built, in the process of being built, or demolished), the right of physical person or legal entity of private law or other lawful organizational entity of lawful possession to which (land plot or building/construction) occurred prior to the enactment of this Law, as well as the land registered in the technical inventory archive, which was arbitrarily occupied before 1994; (5.12.2008 n 614)

9 Nato Gogelia, Presa.Ge (03.12.2010) The Bakhmaro Scandal Continues. The article is available at: <http://www.presa.ge/new/?m=bp&aid=2224>

10 Ibid.

11 Nato Gogelia, Presa.Ge (03.12.2010) The Bakhmaro Scandal Continues. The article is available at: <http://www.presa.ge/new/?m=bp&AID=2224>

12 The Law of Georgia on Recognition of Ownership Right to Land Plots in the Possession (Use) of Physical Persons and Legal Entities of Private Law, Article 3.2(c).

SUMMARY OF THE CASES OF GIVING AS A GIFT / ABANDONMENT

Giving property as a gift, including to the state, is allowed under Georgian law. The moral and cultural value of transferring one's own property for the public benefit cannot be questioned. Such philanthropy is not uncommon around the world. In Georgia too, many parks, reservations and museum collections have been donated to the state. It is not a prohibited act, it is a welcomed one. But in the cases discussed here, the voluntary nature of gift property is dubious. Presumably, the property owners were intimidated and were compelled to give their property to the state as a gift. This suspicion is enhanced further by the fact that typically, giving property as a gift occurs after a person's death (by will) and in these instances this was not the case. Additionally, there were people who had no other property than that given as a gift.

Similar problems are identified in relation to the abandonment of property. Although the law regulates the procedures of abandonment of property very efficiently, the actual practice raises numerous questions. Of particular concern are cases of abandonment that are concentrated in one specific geographic area and time. These geographic areas usually happen to be in new priority regions for economic development.

2. ARBITRARY REGISTRATION OF STATE'S TITLE TO REAL PROPERTY ALREADY REGISTERED BY THE OWNERS

Current legislation provides for numerous mechanisms for the protection of property rights. Nevertheless, cases where the land plots registered in the Public Registry are based on the hard copies of cadaster drawings have become more frequent. In most of these cases the state is the new owner and the property is located in zones the government has slated for tourist development.

REAL PROPERTY ORIGINALLY REGISTERED IN THE PUBLIC REGISTRY “VANISHES”

Private owners often lose their property due to shortcomings within the National Agency of Public Registry. Under Georgian law it is allowed to submit both the paper (hard) and electronic versions of cadaster drawings when registering the title to real property. However, the Public Registry is unable to compare these two drawings. The Public Registry has stated,¹³ that the hard copy of the cadaster drawing only establishes the form and area of a specific land plot. But it is impossible to identify the exact location of a concrete land plot from the hard copy. The electronic drawing, on the other hand, is based on satellite data which precisely determines the area of a specific land plot. Its location is also identified in the UTM (Universal Transverse Mercator Coordinate System) coordinate system, which is different from the traditional longitude and latitude method. A representative from the Public Registry explained that the Public Registry has no means to integrate the hard data into the UTM system, which would enable the Registry to compare the old and new drawings.

If real property data was available as electronic cadaster drawings in the UTM projection, then the Public Registry would be able to prevent land plots from overlapping. This type of information is definitely more trustworthy. But the problem is that the Public Registry only started forming its UTM projection base in 2010. Prior to that, most data available in the Public Registry was in the form of hard copies of cadaster drawings. Theoretically and practically this means that any registered land plot based on a hard copy could end up owned by another person.

Meanwhile, the Law on Public Registry¹⁴ requires employees of the Public Registry to ensure the mutual compliance and safety of the registered data or other documents available to them. In addition, the legality and protection of registered data is secured by Article 312.1 of the Civil Code of Georgia, pursuant to which the presumption of veracity and completeness shall operate with respect to the Public Registry data. This means that the entries in the Public Registry shall be deemed to be accurate until the contrary is proven.

Additionally, pursuant to Article 96 of the General Administrative Code of Georgia, an administrative body (Public Registry in this case) shall be obligated during the administrative proceedings to examine all important circumstances for the case and to make the decision based on the assessment and mutual comparison of these circumstances. Pursuant to Section 2 of the same Article, it shall be prohibited to issue an individual administrative-legal act based on such circumstance or fact, which is not examined by an administrative body pursuant to the procedure established under the law.

The next chapter provides examples related to this problem.

THE ANAKLIA CASE

Based on the request of the Ministry of Economy, in 2009, the Zugdidi Registration Service of the Public Registry registered the state's title to 150 land plots located in Anaklia. Apparently, the Public Registry failed to authenticate who owned titles to these plots. These land plots registered by the Public Registry in the state's name happened to include Soso Akubardia's 47.92 ha. land plot, which he had legally owned since 2007 – confirmed by its registration in the Public Registry.

¹³ Interview of the study's authors with the Head of Legal Department of the National Agency of Public Registry Iago Khvichia, 5.12.11.

¹⁴ Article 3.6 of the Law on Public Registry.

On September 8, 2009, the President of Georgia declared Anaklia a new touristic zone and contracted Spanish architects to draw up its development plan.¹⁵ Although locals initially praised the President's idea, they could not have imagined that the plan would be implemented at the expense of their property.

Implementation of the idea started with the October 20, 2009, Order #732 of the President of Georgia¹⁶, pursuant to which the President approved the proposal of the company "Anaklia-Port," which concerned the construction of a joint transport hub in the Zugdidi and Khobi Municipalities. This document states that the transport hub must include: a sea port, cargo airport, the construction of a transportation infrastructure, for railways, motor roads, a power and engineering service infrastructure, for the new settlement. Finally, a conditional agreement was executed with "Anaklia Port", to invest USD \$5 billion in the construction of above-listed facilities before 2013.

The owner and 100% shareholder of "Anaklia Port" at the time was Temur Karchava, a Georgian millionaire working in Russia.¹⁷ It seems that after serving a two year sentence in Moscow,¹⁸ Karchava decided to return to his homeland and make property investments in Anaklia.

Less than two months later, on December 21, 2009, the President of Georgia issued Order #922,¹⁹ which stated the request of "Anaklia-Port" was satisfied and approximately 2,113 ha. - a total of 298 individual land plots - were transferred to "Anaklia-Port" through a direct sale of 6,340,445 GEL (USD 3,830,656). One of the terms of the agreement obligates "Anaklia-Port" LLC to make USD \$5 billion worth of investments within 5 years of signing the agreement.

Notably, the execution of the agreement was preceded by the December 4, 2009, letter #2-16/202 of the Samegrelo-Zemo Svaneti Regional Department of Registration of State Property and Privatization of the Ministry of Economy and Sustainable Development of Georgia²⁰ to the Zugdidi Registration Office of the Public Registry, which requested the transfer of the Ministry's title to 150 land plots located in Anaklia. On December 6, 2009, the Zugdidi Registration Office of the Public Registry satisfied the request of the Ministry of Economy. Most likely, the Public Registry did not verify the information on requested land plots in regards to the existence of other titles to these land plots.

The land plots registered by the Public Registry in the state's name included Soso Akubardia's plot with the area of 47.92 ha., which he had legally owned since 2007 – according to the Public Registry.

Soso Akubardia's father Omar Akubardia discovered the amendments in the extract issued by the Public Registry on 3 December 2009. In the column of the extract, the word "specified" was replaced by the word "unspecified", while the cadaster number of the land plot was changed from #43.31.01.011 into #43.28.02.209. When he confronted the Public Registry about these changes, they replied that the problem would be remedied in the near future. Nevertheless, on December 6, 2009, the Public Registry registered 150 land plots to the Ministry of Economy, including Soso Akubardia's plot, which was granted a new cadaster code #43.28.43.012.

On March 2, 2010, Omar Akubardia tried to register the changes in the Public Registry by submitting electronic cadaster drawings, despite the fact that this was not necessary under by law. On March 10, 2010 the Public Registry rejected Omar Akubardia's application to register amendments due to an overlap with state land #43.28.43.012. The Public Registry requested Akubardia to submit a corrected cadaster drawing, the specifications of which would have granted Akubardia only 1,5 ha. of land. The area of land registered by the state in the Public Registry was 46,3 ha., while the area of Akubardia's real property was 47,9 ha. The state overlapped nearly all of Akubardia's original property.

15 Administration of the President of Georgia (08.09.2009); Today the President of Georgia Visited Anaklia. The article is available at: <http://president.gov.ge/ge/PressOffice/News?2903>

16 The Order #732 of 2009 of the President of Georgia.

17 The official web page of Temur Karchava: <http://teimurazkarchava.com/>

18 Kommersant (04.04.2006) Fourteen Volumes of State Secret. The article is available at: http://www.kommersant.com/p671169/r_500/Fourteen_Volumes_of_State_Secret/

19 The Order #922 of 2009 of the President of Georgia.

20 The 4 December 2009 letter #2-16/202 of the Samegrelo-Zemo Svaneti Regional Department of Registration of State Property and Privatization of the Ministry of Economy and Sustainable Development of Georgia.

On April 16, 2010, Soso Akubardia addressed the court, demanding the restoration of his title under the original conditions. He also requested to attach the real property as there was danger of alienation of disputed land. Owing to a number of flaws established by the court, the ruling on the attachment of the land was adopted on May 14, 2010, almost a month after filing the claim. The ruling should have been enforced immediately. The Zugdidi District Court delivered the ruling to Soso Akubardia's representative, Omar Akubardia, 14 days later after he insisted, on May 28, 2010, in the court building. Omar Akubardia brought the ruling to the Zugdidi Registration Office of the Public Registry and made a request to attach the property, but his request was rejected. They explained that the land in question had been registered to "Anaklia-Port" on May 15, 2010. They also explained that the Zugdidi District Court did not send its ruling on the attachment to the Public Registry for enforcement purposes.

The courts have rejected Soso Akubardia's claims on the restoration of his property rights. Based on the contents of their decisions, it is impossible to establish that the land plot registered in Soso Akubardia's name in the Public Registry in 2008 and the land plot in the state ownership are the same. To prove the identity of the land plots, Soso Akubardia's representatives have raised numerous motions. In particular, they requested an expert examination to be completed, that neighbors be questioned and the land plot be inspected on the spot. The judge has rejected every single motion.

At the court hearings, the representative of the Zugdidi Registration Office of the Public Registry explained that although Soso Akubardia's title was registered to the land plot, he had submitted hard copies of cadastre drawings of the plot. Meanwhile, the Samegrelo-Zemo Svaneti Regional Department of Registration of State Property and Privatization of the Ministry of Economy and Sustainable Development of Georgia had submitted the electronic drawings of the plot. The representative added that as long as the Public Registry does not have the mechanism to compare hard copy data to electronic cadastre drawings, the Public Registry will be unable to see if it has alienated a land plot in someone else's ownership.

The Zugdidi District Court of the first instance noted in its October 4, 2010, decision (which was also upheld by the second instance court) that "the disputed registration procedure of the state's title is based on the Law of Georgia on Public Registry and the instruction approved under the December 13 2006 Order #800 of the Ministry of Justice of Georgia. Following the amendments made to the instruction, it became mandatory to submit an electronic cadastre drawing of a land plot."

It should be noted that Soso Akubardia addressed the Zugdidi Registration Office with a request to register changes to an immovable thing on March 2, 2010, while the December 13, 2006 Order #800 of the Minister of Justice of Georgia on the Approval of Instruction for Registering Title to Immovable Things was invalidated based on the 15 January 2010 Order #4 of the Minister of Justice of Georgia. In making its legal assessment, the court applied the invalidated normative act. In addition, under the law, Soso Akubardia was not obligated to submit an electronic cadastre drawing of the land plot either before 2010 or after that. The court's competence to establish the non-identity of disputed land plots independently, without listening to an expert or relevant specialist, also raises doubts.

Representatives of Transparency International Georgia have visited Soso Akubardia's dispossessed land plot. Although the land is the property of "Anaklia Port" LLC, it is possible to enter the plot and inspect it without any obstacles, as the construction planned by "Anaklia Port" LLC has not yet been launched and movement on the territory is not yet restricted. For this reason, Akubardia still grows corn on a certain portion of his former property, which prior to the dispute, had been the Akubardia family business. Soso Akubardia's tax-payer status is as an entrepreneur physical person. He used to pay various (including land) taxes on an annual basis. Moreover, Soso Akubardia receives land tax notifications until this day.

Currently the Akubardia case is transferred to the European Court of Human Rights.

On June 10, 2010, Teimuraz Karchava sold "Anaklia Port" LLC together with its multi-million dollar property to Olimp Management (BVI) Limited for only 2,000 GEL. On September 27 2011, the sole director of Olimp Management (BVI) Limited, a person named Ria Klein appointed the same Temuraz Karchava the Director and the Chairman of the Board of Directors of "Anaklia Port" LLC. The sale and purchase contract value together with Karchava's appointment as Director of the company raises substantial speculations that this was a sham transaction, which will enable the real owner of "Anaklia

Port” to avoid responsibilities for non-fulfillment of obligations taken under the conditional agreement. Notably, the real property of “Anaklia Port” LLC is currently attached by the Ministry of Economy and Sustainable Development of Georgia.

THE GRIGOLETI CASE

In 2011 Marina Mekvabishvili requested the Lanchkhuti Registration Office of the Public Registry to register changes to the land plot registered in her ownership. In particular, she submitted the electronic version of cadastre drawings of the land plot and requested a specification of the plot’s boundaries. The Lanchkhuti Registration Office of the Public Registry suspended the registration proceedings on Marina Mekvabishvili’s application on the grounds that boundaries of the land were overlapping with a land plot in the state ownership.

As noted, cases of real property infringement are reported mainly in areas where investments or infrastructure projects are planned. Grigoleti’s case is no exception²¹. The six-harbor Supsa Port is planned to be built here. Construction of the new port was announced to commence along the Lanchkhuti coast, and will be carried out by the company, “Black Sea Product.” The harbor territory is 46 ha,, while the entire port and all its infrastructure will span over 180 ha.

According to the National Agency of Public Registry website, “Black Sea Product” has already registered its title to most of the land plots, which were mainly purchased from the Ministry of Economy and Sustainable Development of Georgia. We don;t know who owned these land plots before they were registered to the state and sold to “Black Sea Product,” however, it cannot be excluded that these land plots ended up in state ownership as a result of infringement of the rights of local private owners.

On August 8, 2011, Marina Mekvabishvili requested the Lanchkhuti Registration Office of the Public Registry to register changes to the land plot registered in her ownership. IShe submitted the electronic version of cadastre drawings of the plot and requested to specify its boundaries . Ms. Mekvabishvili was not obligated to do so under the law, but according to the information disseminated in village of Grigoleti, the state had registered the population’s land to its title and there was a high probability that Mekvabishvili’s plot was included .

Marina Mekvabishvili registered her title to a 1,500 sq.m. land plot located in the village of Grigoleti on March 12, 2004. According to data from the Public Registry , the basis of her registration was the tax list, which under law is considered a legal document confirming lawful possession to land. Like others, Ms. Mekvabishvili registered her title to the land plot with hard copies of cadastre . She had no problems regarding possession or use of the land until she discovered that the registered real property was no longer hers.

On August 12, 2011 the Lanchkhuti Registration Office of the Public Registry suspended registration proceedings on Marina Mekvabishvili’s application on the grounds that the boundaries of the land she had requested to specify, were overlapping with land in the state ownership.

Ms. Mekvabishvili’s case has been filed in courts. She wants to restore her title to the land before the state alienates it. Ms.Mekvabishvili’s neighbor, Zurab Mikadze also registered a land plot with hard copies of cadastre drawings, only to discover that one day the state had misappropriated his property.

In a case similar to “Anaklia Port”, the owners of “Black Sea Product” sold the company for the symbolic price of 100 GEL in 2010 to the Cyprus-registered (offshore zone) company “M.T. Black Sea Holding Limited.” The owners of the previous company were then registered as the new owner’s representatives in Georgia. Details of construction of the port and the fate of this project remain totally vague.

21 Shorena Ghlonti, Guria News (30.11.2011); Unknown Activities of Known Company. The article is available at: http://www.gurianews.com/index.php?option=com_content&view=article&id=2562:2011-11-30-16-16-15&catid=74:2010-11-26-08-07-22&Itemid=125

THE PROBLEM OF PROTECTING PROPERTY RIGHTS IN COURT

The above-described cases clearly illustrate that authorized administrative agencies have failed to develop effective mechanisms to solve these problems, despite the urgency. To protect breached rights, the only option left to owners is to petition the court. Yet, the current judiciary process continually fails to protect owners' rights.

In court disputes owners whose rights have been violated, usually request revocation of the Public Registry's decision, based on which some other person's title was registered to the land of the original owner.

But the courts do not bother to evaluate submitted evidence which makes it possible to define the location of the land. Instead, it renders decisions by rejecting such claims and by ignoring available evidence. In its decisions, the courts claim that during the decision-making process, the Public Registry did not violate requirements of the law, therefore, there are no grounds to revoke its decisions.²²

When rendering decisions, the courts note that the Public Registry is obliged only to control the inter-compliance of electronic drawings, whereas this is not upheld by any law.²³ By doing this, the courts, in fact, fully share the Public Registry's position.²⁴

We can state that neither the legislation, the Public Registry, other administrative agencies, or the courts ensures the effective protection of property rights in similar occasions.

SUMMARY - ARBITRARY REGISTRATION OF PROPERTY BY THE STATE

The Public Registry is unable to compare drawings developed through the application of two different systems (hard and electronic versions of cadastre drawings) allowed under Georgian law. Consequently, it can register anybody title to property already registered in somebody else's ownership without identifying a conflict or overlap between the submitted applications. Unfortunately, the courts often fail to protect the victims.

22 See: the 10 June 2010 decision of the Supreme Court of Georgia on the case #3/97-2011, as well as the 31 October 2011 decision of the Tbilisi City Court on the case #3/4581-11, the 3 August 2011 decision of the Tbilisi City Court on the case #3/1873-11, the 11 October 2011 decision of the Tbilisi Appellate Court on the case #3b/1671-11, and the 30 September 2011 decision of the Zugdidi District Court on the case #3/97-2011.

23 See: the 31 October 2011 decision of the Tbilisi City Court on the case #3/4581-11, the 3 August 2011 decision of the Tbilisi City Court on the case #3/1873-11, and the 11 October 2011 decision of the Tbilisi Appellate Court on the case #3b/1671-11.

24 See: the 31 October 2011 decision of the Tbilisi City Court on the case #3/4581-11, the 3 August 2011 decision of the Tbilisi City Court on the case #3/1873-11, the 11 October 2011 decision of the Tbilisi Appellate Court on the case #3b/1671-11, and the 30 September 2011 decision of the Zugdidi District Court on the case #3/97-2011.

3. CONCLUSIONS AND RECOMMENDATIONS

Notwithstanding the different nature of the facts of abandonment/giving as a gift and arbitrary registration of the state's title to private property, both represent significant problems in terms of protection of property rights in Georgia. In the first case, however, one can only express substantial doubts that a citizen's rights were infringed, whereas in the second example, where the rights were stripped, it is obvious. In both cases the citizens suffer losses, while the state either directly benefits from the property received as a gift, or it eludes the responsibility.

ENSURING PRACTICAL APPLICATION OF LEGISLATIVE NORMS ON GIVING AS A GIFT / ABANDONMENT

Georgian legislation fairly well regulates abandonment/giving property as a gift. We believe the problem lies in the enforcement of legislative norms. In numerous cases of giving property as a gift and abandoning it in favor of the state, the free will of the owners is suspicious. Although intimidation and threat are the basis for revoking the gift and abandonment under the law, such duress is not being reported, as often the very agencies that should be protecting citizens from such incidents are suspected of being the cause of their duress. We recommend that the state change its practical approach in relation to the significance of property rights specifically, as well as in relation to the comparable importance of the rights and interests of individuals and the state in general.

In the case of arbitrary registration of the state's title to private property, we can draw more concrete recommendations which will improve the prevailing legislative gaps.

LEGISLATIVE SAFEGUARDS OF PROTECTION AND RESTORATION OF CITIZENS' PROPERTY RIGHTS BY THE STATE IN CASES OF DATA OVERLAP

Legislation should reflect the existing problematic situation and provide for concrete mechanisms that would rule out the possibility of data overlap. It is crucial for the state to ensure that cases of property rights infringement no longer occur in the future. Furthermore, it is equally important to ensure that previously violated rights are restored. This can be achieved by adequately compensating lost property (monetary compensation or alternative property), as well as by returning to the specific piece of property arbitrarily registered by the state to the private owners, where possible.

LEGISLATION MUST DESIGNATE A SPECIFIC AGENCY RESPONSIBLE FOR THE SOLUTION OF EXISTING PROBLEMS AND RESTORATION OF BREACHED RIGHTS

It is currently unclear under the legislation who is responsible for avoiding overlaps and ensuring that legitimately registered ownership does not end up possessed by others – chiefly, the state. Consequently it is vague as to who is responsible for remedying the present problems. As a result, all the agencies involved in the property registration process (Public Registry, local authorities, commissions for recognition of right to ownership, Ministry of Economy) successfully manage to avoid responsibility, leaving citizens exposed to rights violations.

EACH DISPUTED CASE MUST BE EXAMINED ON THE SPOT

Before registering the state's title to real property, it is necessary that each case is examined on the spot. It is important that representatives of the Public Registry, local authorities, Ministry of Economy or other related state structures and the registered owners participate in this process. It is unacceptable that the rights safeguarded by the Constitution are infringed due to legislative gaps or inefficient mechanisms for enforcing the legislation.

THE COURTS MUST RECOGNIZE THE SUPREMACY OF CONSTITUTIONALLY SAFEGUARDED PROPERTY RIGHTS OVER THE TECHNICAL ARGUMENTS OF ADMINISTRATIVE AGENCIES

The constitutional function of the judiciary is to secure control and balance the executive and legislative branches of power. The courts are supposed to ensure that the laws adopted in the country and their interpretation by the state do

not infringe or restrict fundamental human rights and freedoms. For this very reason, the judiciary play a special role in the protection of property rights. Unfortunately, the Georgian court system still fails to protect citizens' rights. It is crucial that the courts use the rights conferred to them by law and examine/investigate cases fully, objectively, and impartially. It is equally crucial that the courts be committed to the protection of property rights safeguarded by the Constitution and not submissive to the technical arguments of administrative agencies.

The extensive efforts we contribute requires an enormous amount of time, labor and funds. Yet, we believe that the systemic regulation of property rights by the law and in practice is crucial for the protection of human rights and the country's economic development.