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## PURCHASE OF IMMOVABLE PROPERTY IN GOOD FAITH FROM UNAUTHORIZED SELLER PER GEORGIAN CASE LAW

*Tamar ZARANDIA*

*Iv. Javakhishvili Tbilisi State University (Georgia)*

The principle of good faith is recognized as a vital component of modern private law. Therefore, Georgian civil law guarantees the principle as universal assessment category. Pursuant to presumption of authenticity of public registry in case of purchase of immovable property in good faith from unauthorized seller the rights of acquire are protected by Georgian Civil Code.

Therefore, two circumstances exclude purchase of ownership title over immovable property in good faith per Georgian legislation: purchaser's knowledge of the fact that the seller was unauthorized to sell the property (185,312) and complaint brought against the record (312). The crucial in the relations between two parties is the subjective attitude to identity of the actual owner-only positive knowledge of inaccuracy of the public registry records results in bad faith, while unawareness will not cause the same consequence even in case of gross negligence.

**Keywords:** *purchase/acquire, transferring ownership, good faith authenticity of public registry, unauthorized seller, unawareness/awareness of the inaccuracy of the registry records.*

### ACHIZIȚIONAREA DE BUNĂ-CREDINȚĂ A BUNURILOR IMOBILIARE DE LA UN VÂNZĂTOR NEAUTORIZAT CONFORM LEGISLAȚIEI CIVILE GEORGIENE

Principiul de bună-credință este recunoscut ca fiind o componentă vitală a dreptului privat contemporan. Prin urmare, legislația civilă georgiană garantează principiul evaluării universale. În conformitate cu prezumția de autenticitate din registrul public, în cazul cumpărării, cu bună-credință, de bunuri imobiliare de la un vânzător neautorizat drepturile de a dobândi sunt protejate de Codul civil georgian.

Prin urmare, două circumstanțe exclud achiziționarea de proprietate imobiliară cu bună-credință în legislația georgiană: cumpărătorul este în cunoștință de fapt că vânzătorul a fost neautorizat să vândă proprietatea (185.312) și plângerea introdusă împotriva (312). Decisivă în relațiile dintre două părți este atitudinea subiectivă a identității reale: doar proprietarul cunoaște despre inexactitatea înregistrărilor, cu rea-credință, a rezultatelor în registrul public, în timp ce necunoașterea nu va cauza aceeași consecință chiar și în caz de neglijență.

**Cuvinte-cheie:** *cumpărare/dobândire, transferul dreptului de proprietate, vânzător neautorizat, autenticitatea datelor din registrul public, necunoașterea/conștientizarea inexactității înregistrărilor din registru.*

#### 1. General Overview of the Principle of Good Faith

As Ihering noted, life of a human being is not intended for isolated existence. Introduction of the principle of good faith into Georgian law is the result of reception of German private law [1]; however the same principle is well recognized in other legal systems as a vital component of modern private law [2]. Therefore, Georgian civil law guarantees the principle of good faith [3] as universal assessment category of private law [4]. It is general principle, which covers the entire law [5]. It is guaranteed under general clauses of the first book of the Civil Code – "Parties to the legal relationship are obligated to realize their rights and obligations in good faith" (Article 8 III). The fact that the above principle from systemic point of view is guaranteed in general clauses, underlines its universality and application to the entire private law [6]. Observance of the principle of good faith protects the party to the civil relationship from the potential negative effects of this relationship, which in total supports stability of the civil turnover [7]. In addition, parties shall observe to act in good faith [8]. The principle of good faith mostly applies to the law of obligations however it is important for property law as well. In relation to the essence of the principle of good faith an opinion exists that it shall be used in the following manner: principle of good faith from the perspective of *treu und glauben* shall be separated from the principle of good faith from the outlook of *gutter glaube* [9]. Thus, general principle of good faith shall be demarcated from so called subjective understanding of the principle of good faith, which is related to knowledge of certain circumstances by a person, which is reflected in property law in connection to purchase in good faith – when a person is not aware of the fact that it obtains ownership right from an unauthorized person. Presumably, we should discuss the idea that such differentiation has no consequence, since a person's good

faith presumption that he/she obtains ownership title from an authorized person should not be materially differed from general nature of "acting in good faith" [10].

This Article refers to so called "subjective" good faith, the cases where person, who obtained ownership title over immovable property from an unauthorized seller, can acquire ownership title in case he/she is bone fide acquirer. I will try my best to analyse and present the "life" of the norms in connection to "Bone fide acquirer of immovable property" per Georgian case law.

## **2. General Rule of Transferring Ownership Title Over Immovable Properties**

Prior to considering the issue of purchase in good faith, I will briefly elaborate the matters related to obtaining ownership over immovable properties under Georgian law. According to Article 83 of the Civil Code of Georgia, for the purpose of purchase of immovable property, conclusion of written agreement and registration of the ownership title stipulated under the agreement at the public registry are required. Thus, Article 183 guarantees the obligatory precondition for transferring ownership title over the immovable property – registration at the public registry [11]. Furthermore, Article 185 of the Civil Code of Georgia envisages the rule whereby per the interests of the purchaser the seller shall be considered owner, in case it is registered at the Public Registry as the owner unless the purchaser was aware of the fact that the seller was not the owner of the property. Thus, Article 183 sets general rule for acquiring ownership title over the immovable property and Article 185 stipulates exceptions whereunder ownership title over the immovable property is obtained from unauthorized seller through purchase in good faith in which case the first circumstance that protects the bone fide acquirer is public reliance for the public registry data [12].

### **2.1. Form of an Agreement**

Existing regulation regarding obtaining ownership title over immovable properties in the Civil Code of Georgia were formed under the legislative amendments to the Civil Code dated 8 December 2006 [13]. Pursuant to effective version of Article 183, conclusion of an agreement in written form and registration of the ownership title prescribed under this agreement are sufficient for obtaining ownership title over the immovable property. Prior to introduction amendments to the Civil Code in relation to purchasing immovable property, the law required notarial certification of the agreement and registration of the purchaser at the public registry, which regulation reflected German law approach [14]. For the time being, the agreements are concluded under support of registration service, where authorized person identifies the identity of the parties and the parties sign the agreement in the presence of the authorized representative of this service. The function of the representative of the above registration service includes only inspection of the fact whether owner sells the property and certification of the fact of signing the agreement. The parties bear full responsibility for the content and validity of the agreement [15]. It is worth mentioning that recovery of the rule of obligatory notarial certification of the immovable property related agreements into Georgian law is still under consideration, since it is arguable whether the existing regulation secures stability of the civil turnover. Mandatory notarial form at some point secured the civil turnover participants from acceleration, it played warning function and provided the parties to the agreement with legal consultation, which shall be the obligatory component within the society lacking sufficient legal education. Nevertheless, existing regulation ensures publicity of the transfer of ownership title via mandatory registration of the immovable property related agreement at the public registry [16].

### **2.2. Public Registry**

In Georgian law [17], similar to German approach [18], presumption of authenticity works in connection to public registry, i. e. public registry data shall be considered authentic until their inaccuracy is proven (Article 312 I). In Georgia, presumption of authenticity of public registry guarantees the purchaser that in case of inaccuracy of the record when a dispute exists the above records and purchaser's good faith reliance upon the public registry shall prevail [19]. Record of the public registry shall be considered accurate in benefit of a person that obtains any right from a third party on the basis of an agreement, unless complaint is brought against this record or the purchaser was aware of the fact that the record was inaccurate (Article 312 II). Thus, public registry originates public reliance, which means that in case property right was registered in inaccurate manner, such registration shall be considered accurate for the third parties. Therefore, a bone fide person that acquires the right on the basis of the data of public registry is secured by good faith reliance towards the mentioned fact of registration, by the same token incorrectly unregistered property rights are deemed non-existent and accordingly bone fide person is authorized to purchase the property without mistakenly unregistered

or subsequently removed title burden. Therefore, two circumstances **exclude purchase** of ownership title over immovable properties **in good faith** per Georgian law: **purchaser's knowledge of the fact that the seller was not authorized to sell the property** (185; 312 II) and **complaint brought against the record** (312 II).

### 3. Case Law

#### 3.1. Preconditions for "Purchase in Good Faith

In connection to one of the cases, the Supreme Court of Georgia specified the mandatory preconditions for recognizing a person as bone fide acquirer. More specifically, combination of subjective and objective criteria is required for considering the person as bone fide acquirer. According to the court's interpretation, objective factors include the accumulation of following circumstances:

1. Seller of the title shall be registered as the owner of the immovable property at the public registry;
2. Complaint shall not be brought against the public registry records.

As for the subjective component, it means purchaser's subjective attitude in relation to identity of the actual owner, therefore by the time of conclusion of the agreement, the purchaser shall be unaware of the inaccuracy of the registry records [20]. The last provision may seem arguable, since purchaser's subjective good faith attitude shall exist not only by the time of concluding the agreement, but as noted in one of the ruling of the Supreme Court of Georgia, until the purchaser's ownership title is registered at the public registry [21] (more specifically please see below regarding "decisive moment of time").

#### 3.2. Next Door Neighbour Case

In one of the cases, the Court of Cassation expressed doubt in relation to a person's good faith action due to the fact that the cassation complainant (flat purchaser) was next door neighbour of the former owner. In this case scenario, the fact that the purchaser was unaware of existence or non-existence of defectiveness of the neighbouring apartment was hardly believable to the court; at least the purchase had to try to figure out all the circumstances from its neighbour in relation to the defects of the property. The Supreme Court of Georgia reversed the above case to the Appellate Court for examination of all the factual circumstances [22].

#### 3.3. Relative Connection and Subjective Good Faith

In different case, the Supreme Court construed that even if the property acquirer is a relative of a seller, this fact fails to unconditionally prove that the purchaser is not bone fide acquirer. In this event, it shall be proven that the purchaser was aware of the identity of actual owner [23]. Actually, according to the Georgian law, only positive knowledge of inaccuracy of the public registry records results in bad faith, while unawareness will not cause the same consequence even in case of gross negligence.

It is worth mentioning that the regulation related to movable properties differs from the above approach. In case of movable property, "purchaser shall not be considered acting in good faith, should he/she was aware of or ought to be aware of the fact that the seller was not the owner". Regulation different from those rules set under Article 187 II in relation to the immovable properties can be explained by the stronger legal position of public registry compared to the fact of possession (in which the principle of publicity is reflected in connection to the movable properties [24]).

#### 3.4. Doubtfulness of Purchasing in Good Faith, When the Purchaser Expresses no Interest in Factual Condition of the Property

According to one case per Georgian case practice, when an apartment was sold in absence of the consent of the owner due to the inaccuracy of public registry record, the Supreme Court of Georgia deemed significant the fact that the owners lived in the disputed apartment since 2004. The Cassation chamber agreed with the Appellate Court in relation to the interpretation that possession of the immovable property causes no presumption of ownership thereof, however it interpreted that for the purposes of determination of good faith action of the purchaser the above fact shall be taken into account since per established rule immovable property purchaser is interested in the legal condition of the property prior to purchase thereof [25].

#### 3.5. Visual Examination as an Action Performed within the Limits of Due Diligence

In different case, the Supreme Court of Georgia rather outlined the frame of purchaser's due diligence and in some events, the court considered such due diligence as the mandatory precondition for recognizing the purchaser as bone fide acquirer [26]. Case facts were as follows: A [27] has constantly lived in disputed apartment since 1981. In 2006, Isani-Samgori District government gratuitously transferred the above apartment to A's

ex daughter in law B on the basis of the privatization agreement, which was declared null and void under the effective judgment of the Administrative Cases Collegium of Tbilisi City Court dated 17 May 2010. Meanwhile, on 28 June 2007 B and C concluded a sale and purchase agreement regarding the disputed apartment. It was important circumstance that the purchaser failed to visually investigate the disputed apartment prior to buying thereof. According to his explanation, he knew that tenants lived in the apartment, so due to interest in low purchase price, he viewed only the yard. Within a week following conclusion of an agreement regarding the apartment, on 5 July 2007 C applied 5<sup>th</sup> Division of Isani-Samgori District Police regarding eviction of A from the disputed apartment and termination of hindering use of owned property. Firstly, the court found it difficult to build its own position regarding good faith action of the purchaser and at the first stage of the dispute hearing the court considered the purchaser as bone fide acquirer, and the Appellate Court found the purchaser as bad faith acquirer. The Supreme Court upheld the ruling of the Court of Appeal. The conclusion of the court relied upon the following circumstances: first of all, the purchaser could not obtain ownership title on the basis of Article 183 (under general rule), since it was established that the seller was not authorized to sell the property, thus purchase had to be practicable under Article 185 (through acquire in good faith). In addition, the Court noted that Article 185 fails to always protect the purchaser, especially when the purchaser is aware of the defect of the right, even though the seller is registered at the public registry as the owner of the property. Therefore, when the fact of purchase of immovable property is under dispute and actual owner argues regarding bad faith action of the purchaser, then purchaser's subjective attitude in connection to certain facts shall be assessed. Furthermore, the purchaser shall not be demanded to be aware of the facts, which are out of its abilities [28]. In the case at hand, in the process of assessing the good faith action of the purchaser the Cassation court considered the circumstances outlined by the Court of Appeal in relation to the rental agreement. The purchaser failed to visually investigate the disputed property prior to conclusion of the sale and purchase agreement. Purchaser C failed to prove conclusion of the agreement with seller B regarding stay of tenant in the apartment, continuance of the term of rental agreement or eviction of the tenants from the apartment, as well as the agreement concerning rental fee and the rule of payment thereof. In case, purchase of immovable property was a profitable deal for the purchaser, the purpose of which was receipt of additional income and not use of the property, then the purchaser had to be interested in extension of the rental relationship with tenant and gaining additional earnings therefrom or understanding of the circumstance from the seller when the purchaser would be able to use or dispose the property in its sole discretion. Instead of requesting payment of rental fee from A (tenant) to his benefit, within a week following conclusion of the agreement regarding the apartment, on 5 July 2007 the purchaser applied 5<sup>th</sup> Division of Isani-Samgori District Police regarding eviction of A from the disputed apartment and termination of hindering the use of property. According to the Supreme Court, in the case at hand, purchaser could visually investigate the disputed property under objective and due diligence perspective. In addition, actually the law failed to rest obligation upon property purchaser to perform such an action, but purchaser was to be interested to obtain ownership title over immovable property free of property and title defects, due to which the purchaser ought to expose minimal due diligence in the form of e. g. visual investigation of the property [29]. Therefore, having taken into account the above factual circumstances, cassation court accurately uphold the assessment of the Court of Appeal and agreed with its conclusion regarding bad faith action of the purchaser. Actually, the court applied the universal principle of good faith and at the same time in the process of discussing subjective good faith the court determined certain standard for good faith action of a purchaser, the action that would be performed in good faith by the evaluation of objective observer/unbiased person. Under the given circumstances, the court considered that the purchaser knew that the seller was not owner, despite the fact of existence of registration the action of the seller was not bone fide [30]. In case, a person is aware of the fact that a seller, which transferred ownership title to it, is not entitled to sell the property, then purchaser becomes a party to an "unfair" agreement in relation to the actual owner and infringer of the rights of the actual owner. Therefore, purchaser's action will be regulated under general principle of "good faith" [31]. In the above case, the court established a new rule of conduct [32], which derives no directly from the Civil Code. Someone may conclude that in the above specific case the court revealed bad faith action of the purchaser in virtue of given factual circumstances, however failure to visually investigate the property may fail to become a ground for qualifying the purchaser as bad faith acquirer in different cases. We believe that under this ruling the Supreme Court of Georgia developed doctrine of purchasing immovable property in good faith under application of the principle of good faith.

### 3.6. Legal Position in Relation to Purchase in Good Faith

In different case, the Supreme Court of Georgia ruled purchase of immovable property in good faith from unauthorized seller and developed the following legal positions. Public registry is a guaranty for observance of the rights of good faith partner. Under this principle, when we discuss the presumption of accuracy and completeness of the registry data within the limits of bone fide acquirer's institute, the term "seller" prescribed under Articles 312.2 and 185 of the Civil Code of Georgia always means a person that is not entitled to sell the title registered on its name at the public registry. Thus, such person is not authorized to enter the agreement. Exactly, in cases where unauthorized person sells an immovable property, which is registered at the public registry as the owner, greater importance is addressed to the right of purchaser secured under Article 185 of the Civil Code of Georgia [33].

In respect of Article 185, the court noted that the intention of the clause is to secure the civil turnover and accordingly to ensure high-level reliance with respect to registration of a title at the public registry [34]. Reliance with regard to the fact registered at the public registry means that the right, which is registered at the public registry truly belongs to a seller i. e. a person that express the will to sell a title registered in its name. Thus, stability of civil turnover means reliance and acting in good faith in respect of the participants of civil turnover that is ensured under presumption of accuracy and completeness of public registry records. Therefore, in virtue of the clause under consideration ownership right of a bone fide acquirer is hatched, not due to the fact that an unauthorized seller obtained ownership on the immovable property registered at the public registry via mere fact of registration, but because of the purpose of securing civil turnover stability the law grants especial significance to the outwardly perceivable facts in connection to which justified reliance exists. In specific case, these facts include registration of a right at the public registry. In the given case, none of the existing evidence, including witness testimonies, confirmed existence of inaccuracy of the disputed record or other defect, thus the court deemed the person as bone fide acquirer [35].

### 3.7. Sale of disputed property

In respect of one of the cases, the Supreme Court of Georgia considered the presumption of good faith action of a purchaser of disputed properties [36]. Pursuant to the court's position, during litigation proceedings, in case of sale of a property purchaser may have no information regarding the dispute on purchased property. In this event, purchaser is deemed bone fide and its rights are secured under the law (Article 185 and 312 of the Civil Code). Should the purchaser is informed regarding the dispute on the property to be purchased; he/she bears the risk, which may arise under the court judgment in relation to this property. If the claim is satisfied, the purchaser shall be requested to return the property to the claimant recognized as lawful owner. Otherwise, only the reference to the fact that purchaser bought the property in the process of litigation and he was informed regarding this fact, it will be impossible to consider the person as bad faith purchaser and confiscate the property. Thus, under court interpretation, in the process of litigation on property selling, bad faith action occurs when the purchaser is aware of the fact that owner, registered at the public registry, unlawfully obtained ownership title and property is sold for the purposes of avoidance of relevant legal consequences. In case the purchaser relies upon accuracy of the public registry records and he/she is unaware of the fact of improper registration, he/she shall be considered bone fide and the property will not be confiscated.

In each case of property purchase, it will be impossible to check whether dispute is pending in any court in connection to this property. Moreover, such check is not required under the law. Purchaser's due diligence is limited to checking public registry data. In this regard, public registry data are equipped with legal significance. All data regarding property title conditions are reflected at the public registry. In case application of claim injunctive relief, relevant information shall be reflected at the registry regarding even pending litigation proceedings. To conclude, purchaser is bone fide even if it deems the seller as owner of the property he/she purchased and if the latter is registered as the owner at the registry. He has no opposing information even in respect of a complaint submitted in relation to registry record.

Therefore, under the above reasoning the court once more underlined the fact that not even unawareness through gross negligence, but **knowledge of inaccuracy of registry record is mandatory** for recognizing action as bad faith. In addition, with respect to the disputed properties reference to the circumstance that purchaser was aware of the certain facts, wherefrom assumption of inaccuracy of registry data may derive, shall not be sufficient.

### 3.8. Burden of Proof

In relation to burden of proof, Georgian case law is essentially homogenous. For the sake of visualization, I will draw attention to two judgments. In one of the cases, the Supreme Court of Georgia construed that Articles 185 and 312 of the Civil Code distribute the burden of proof between the parties. Presumption of accuracy and completeness of registry data supports purchaser to prove lawfulness of a title. Disputing party shall prove inaccuracy of registry data and knowledge of this fact by the purchaser. Furthermore, the Supreme Court interpreted that if a party argues whether purchaser is bone fide, the court shall not rely its judgment regarding lawfulness of property purchase only upon public registry record. In this case, the court shall inspect accuracy of the record and explore what the purchaser knew concerning the record defect. In the process of clarification of the latter issue, the court shall take into account purchaser's ability to know about inaccurate record of registry, i.e. it shall be determined whether the purchaser, within the limits of due diligence, was able and ought to know regarding disputed facts. Conclusion regarding validity of purchase and reasonableness of observance thereof shall rely upon exploration of the mentioned circumstances [37].

In different case, court noted that when a person purchases property from a seller registered as owner at the public registry, he/she shall be deemed as bad faith acquirer only if the opposing party proves existence of the circumstances excluding purchaser's good faith. Therefore, opposing party and not purchaser bears the burden of proof of purchaser's bad faith action [38]. Under the mentioned ruling, the Supreme Court of Georgia criticized the Appellate Court, which improperly rested burden of proof upon the purchaser, which shall be rested upon the party that argues the fact of purchaser's good faith [39].

In one of the cases, the Cassation Court of Georgia construed that in connection to purchase of immovable property, good faith causes the result prescribed under Article 185 of the Civil Code only if it observed until the purchaser's ownership title is registered at the public registry (and not until the property is transferred to the purchaser) [40]. This position shall be supported since ownership title over immovable property shall be originated upon registration at the public registry. By virtue of the court's interpretation, it is significant good faith be existing until completion of purchase of a title, so transfer of the property has no effect in this regard (in contrast to movable properties, where ownership title emerges by means of *traditio*). Under the same argumentation, conclusion of the Supreme Court of Georgia given in different ruling shall not be uphold whereunder "decisive moment of time" is the period of conclusion of the agreement and by the time of conclusion of the agreement purchaser shall be unaware of inaccuracy of public registry data [41].

### 3.9. "Narrow Down of the Sphere" of Purchase in Good Faith

Ruling, which narrowed down possibility to purchase in good faith in case of sale of property by unauthorized person, included the following factual circumstances. In February 2004, A entered in agreement in the name of owner B, on the basis of which A transferred ownership title over immovable property to a purchaser. Then, it was determined that he was acting based on forged power of attorney. In relation to this case the court construed that purchaser's good faith was of minor importance and it will not be checked, since the agreement is invalid under Article 54 and 61 of the Civil Code. Purchaser's good faith standard envisaged under Articles 183 and 185 of the Civil Code would be important had the owner of the property, registered at the public registry, expressed the will of selling the property. Therefore, under this ruling, the Supreme Court logically narrowed down possibility to purchase in good faith. However, court's reasoning regarding Article 477 that property seller shall be owner [42] for the validity of the sale and purchase agreement can be disputed, but we believe that court's position regarding Article 185 shall be taken into account to uphold. Article 185 of the civil Code applies to the cases where "seller is deemed owner" if "it is registered at the public registry as the owner". In the given case, there was no "seller registered as owner" but forged power of attorney was available in the case, therefore preconditions for application of this article did not exist. Registry record changes only owner's ownership title, but not the transaction. Transaction concluded under forged power of attorney would be void in any case (Article 54). Therefore, Article 185 fails to apply to all cases of selling immovable property by an unauthorized person and even more, it will fail to protect the purchaser if sale took place on the basis of forged power of attorney.

The same approach will apply to the case when transaction is made through use of forged identification card of the dead person and forged notarial act [43], it shall be once more emphasized that public registry record modifies ownership title and not transaction.

### 3.10. "Purchase in Good Faith" and Co-Ownership of Spouses

On the basis of the rulings of the Supreme Court of Georgia regarding co-ownership of spouses, we may suppose that Georgian law grants title originator function to the public registry, which applies to transfer of the ownership title under the law. Under Article 1158 of the Civil Code of Georgia, property, which is bought by spouses during marriage, represents their co-ownership (common property), unless otherwise prescribed by their marriage agreement [44]. In one of the cases, the Supreme Court of Georgia noted that under the purchaser's interests, co-ownership of the spouses will be originated over their immovable property only following registration of both spouses at the public registry. Otherwise, registry data shall be considered accurate for the third parties [45]. Formulation of the court: "co-ownership emerges", gives us ground to suppose that the court deems indication of relevant record at the registry as integral component for origination of ownership title for the other spouse despite the fact that in the given case ownership fails to emerge on the basis of sale of immovable property [46]. We may also suppose that the above wording was inaccurate and the Supreme Court of Georgia meant only position of bone fide acquirer in benefit of which the above record is deemed accurate. It is matter of theory whether registration of another spouse at the registry constitutes precondition of origination of ownership title, since in this case (when registration of another spouse constitutes precondition of origination of his/her ownership title) purchaser's good faith action will play no any importance and it will be considered that title is obtained from the owner. Consequently, purchaser will be able to become an owner of immovable property even if he is aware of the fact that co-ownership regime applies to the purchased property.

#### Conclusion

To sum up, the principle of good faith constitutes the universal principle of Georgian private law, which is guaranteed under paragraph 3 of Article 8 of general provisions of the Civil Code. The issue of purchasing immovable property in good faith is the matter of so called subjective good faith, which is connected to knowledge by the purchaser of the factual circumstances that the seller was not the owner of the property despite the fact that he/she was registered as the owner thereof. It is noteworthy that psychological investigation has no success in law and determination of the fact that whether the purchaser was aware of the above circumstances is quite difficult even when the opposing party shall prove both inaccuracy of registry data and knowledge of these facts by the purchaser. By the same time, in one of the cases the Supreme Court of Georgia recognized a person as purchaser in bad faith and actually established the new rule of conduct, which failed to derive directly from the Civil Code (see above). Under the above ruling, the Supreme Court of Georgia developed new doctrine of purchasing immovable property in good faith through application of the principle of good faith according to its own requirements. To conclude, principle of good faith allows the judiciary to discuss regarding certain evaluative categories and develop the law in this direction.

#### References:

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2. Compare Zimmermann/Whittaker, Good Faith in European Contract Law, 2000, p.8, etc.
3. In Georgian law, Vashakidze, Good faith per Georgian Civil Code – Abstraction or Applicable Law, "Review of Georgian Law", 10/2007-1, p.14-58.
4. Compare, in Georgian law, Kereselidze, General Systemic Terms of Private Law, Tbilisi, 2009, p.83.
5. Compare, Mariamidze, Law of Obligations (Contract Law), II part, 2013, p.19.
6. Compare, Zoidze, Reception of European Private Law in Georgia, 2005, Kereselidze, General Systemic Terms of Private Law, Tbilisi, 2009, p.92.
7. Supreme Court of Georgia, Nas-567-535-2012, 01.08.2012.
8. Compare, Chanturia, General Part of Civil Law, Tbilisi, 2011, p.86.
9. Compare, Zimmermann/Whittaker, Good Faith in European Contract Law, 2000, p.30-31.
10. Kereselidze, General Systemic Terms of Private Law, Tbilisi, 2009, p.83.
11. Compare, Dzlierishvili, Nature of the Agreements regarding Transfer of the Ownership Title over the Property, 2010, p.22.
12. Compare, Zoidze, Property Law, 2003, p. 363; Kochashvili, Possession and Ownership – Fact and Right in Civil Law, 2013, p.198-203.

13. Law of Georgia dated 8 December 2006 №3879 - GCC I, N48, 22.12.2006, Art.321
14. BGB, § 925 I
15. Critique of the above rule, see Zarandia, The Problem of the Form of an Agreement Under Georgian Law, Journal Education, N1, p.105-114, 2009; also, Zarandia, Das Problem der Vertragsform im georgischen Recht Materialien einer Internationalen Konferenz an der Universittht Bremen vom 10. und 11, 137-147, April 2008; also, Курзинский/Зарандия, Рецепция немецкого вещного права в Грузии, Вестник Гражданского права, N 1/2012, p.253-254.
16. See Курзинский/Зарандия, Рецепция немецкого вещного права в Грузии, Вестник Гражданского права, N1/2012, p.253.
17. Paragraph 1 of Article 312 of the Civil Code of Georgia, also Article 5 of the Law of Georgia on Public Registry dated 19 December 2008.
18. BGB, §891, 892.
19. Supreme Court of Georgia, Nas-203-622-06, 24.01.2006.
20. Supreme Court of Georgia, Nas-543-511-2010, 12.12.2010.
21. Supreme Court of Georgia, Nas-691-1021-07, 12.02. 2008.
22. Supreme Court of Georgia, Nas-1026-1219-08, 3.07.2009.
23. Supreme Court of Georgia, Nas-543-511-2010, 12.12.2010.
24. Compare Kochashvili, Possession and Ownership – Fact and Right in Civil Law, 2013, p.230-231.
25. Supreme Court of Georgia, Nas-524-869-07, 25.12.2007.
26. Supreme Court of Georgia, Nas-567-535-2012, 01.08.2012.
27. For the sake of visualization, case initials changed with conditional "A", "B" and "C" letters.
28. Supreme Court of Georgia, Nas-567-535-2012, 01.08.2012.
29. Supreme Court of Georgia, Nas-567-535-2012, 01.08.2012.
30. Firstly, the purchaser explained that he failed to view the property since under his information tenants lived there, then he made no efforts to figure out the information regarding rental agreement from the seller or the tenants and within a week following conclusion of the sale and purchase agreement he applied the police regarding eviction of the people living in the property.
31. Compare Kereselidze, General Systemic Terms of Private Law, Tbilisi, 2009, p.86.
32. Legislation fails to obligate a purchaser to visually investigate the disputed immovable property.
33. Supreme Court of Georgia, case Nas-1179-1108-2012, 07.03.2013.
34. Supreme Court of Georgia, case Nas-1179-1108-2012, 07.03.2013.
35. Supreme Court of Georgia, case Nas-1179-1108-2012, 07.03.2013.
36. Supreme Court of Georgia, case Nas-888-836-2010, 17.02.2011.
37. Supreme Court of Georgia, Nas-691-1021-07, 12.02.2008.
38. Compare Article 102 I of the Civil Procedure Code of Georgia.
39. Supreme Court of Georgia, Nas-888-836-2010, 17.02.2011.
40. Supreme Court of Georgia, Nas-691-1021-07, 12.02. 2008.
41. Supreme Court of Georgia, Nas-543-511-2010, 12.12.2010.
42. Supreme Court of Georgia, Nas-464-434 -2010, 4.10.2010.
43. Compare different position of the Supreme Court of Georgia, Nas-465-435-2010, 31.01.2011.
44. Article 1172 of the Civil Code of Georgia.
45. See interpretation of the provision, which was reflected in the ruling of the Great Chamber of the Supreme Court of Georgia dated 9 December 2002, Case №33/932-02.
46. In respect of the above issue see also: Zarnadze, Several Peculiarities of Court Proceedings related to Management and Sale of Property Purchased during Cohabitation of Spouses, Journal Georgian Law Review, 10/2007-1, p.120-138.

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