
CASE LAW REVIEW

Review of the Supreme Court Practice

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This review gives an account of certain circumstances of some cases considered by Georgian courts as assessed by the Supreme Court's Civil, Entrepreneurial and Bankruptcy Chamber. It also provides the Supreme Court's qualification of decided cases by specific legal norms. The style of the court decisions and applied terminology is maintained.

1. The Semi-Basement as an Essential Part of a Dwelling Apartment

According to the plaintiff, he possessed an apartment and a disputed semi-basement located under the defendant's dwelling. The plaintiff claimed that it was under the possession of his family for years. In December 1996 he sold the dwelling apartment and locked the basement. On 20 June 1997 the defendant forced the basement door and took possession. The defendant officially registered the basement as his real property through Statement No. 2 on the Acceptance of the Dwelling House, which was made on the grounds of Report No. 4 of 28 May 1998 of Batumi Municipality Technical Commission. The plaintiff reclaimed the right of ownership to the semi-basement transferred into the possession of the defendant. Consequently, the plaintiff demanded the invalidation of the part of the Report of Batumi Municipality Technical Commission and the Statement on the Acceptance concerning the disputed basement.

Batumi City Court did not satisfy the claim of the plaintiff in its Decision of 30 June 2000. Later, the Appeals Chamber for Administrative Law and Taxation Cases of Adjara Autonomous Republic's Highest Court in its Ruling of 21 August 2000 also turned down the plaintiff's appeal. The Appeals Chamber ruled that the disputed semi-basement was not a property of either resident. The court reasoned that despite the fact that the dwelling apartment adjoining the disputed semi-basement had been sold several times, no legally enforceable procedure was established regarding the use and control of the semi-basement.

Under its Ruling No. 3k/46-01 the Cassation Chamber of the Supreme Court affirmed the qualification made by the Appeals Chamber about the semi-basement, pursuant to Article 150 of the Civil Code, as of an essential part of a thing and not a separate thing. Based on Article 150 the Court explained that "the legal outcome of an essential part is entirely linked with a thing, and as a general rule, it can not be an entity of a separate right. According to this rule an essential part of a thing is one that can not be separated without the demolition of the thing itself, its part, or the destruction of the purpose thereof; in the present case the semi-basement is interrelated with the dwelling apartment of the defendant, since the ceiling of the

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basement serves as the floor of the dwelling room". Consequently, in the court's opinion, given that the plaintiff had alienated his real property – an apartment – he "no longer enjoyed the right to raise an issue of ownership of the essential part of an object in the dwelling house or to raise an issue of its transfer to somebody else's possession". Thus the court refused to satisfy the plaintiff's claim.

Comment: The reasoning of the Supreme Court is entirely reasonable in the part where it refers to the interrelation between the legal status of a thing's essential part and the thing itself. However, the argumentation of the court concerning the conclusion that the basement was an essential part of the dwelling apartment seems disputable. Both an apartment and a basement are essential parts of a thing (a parcel of the land), and it is plain that the title on them cannot be transferred without the alienation of the relevant land plot. The court's assertion that the basement is an essential part of the apartment only because its ceiling serves as the floor of the latter is less convincing. It would be preferable for the Supreme Court to view the basement as an essential part of a land plot and not that of a dwelling apartment and hold it subsequently as an object of a separable title.

2. Privatisation Contract is an Administrative Transaction

The Civil, Entrepreneurial and Bankruptcy Chamber of the Supreme Court invalidated the Decision of 2 December 2000 and Ruling of 16 March 2001 of Tbilisi Regional Court Civil, Entrepreneurial and Bankruptcy Panel with its Rulings No. 3k/332-01 No. 3k/554-01, respectively. The Supreme Court returned cases for repeated review to Tbilisi Regional Court's Civil, Entrepreneurial and Bankruptcy Panel.

The Supreme Court based its decision on Section 1 (g) of Article 2 of the General Administrative Code, which provides that "administrative transaction constitutes a civil law transaction effected between an administrative body and a natural or a legal person as well as another administrative body".

Consequently, the Supreme Court considered the privatisation contract as an administrative transaction. Based on Section 2 (b) of Article 2 of the Administrative Procedure Code it concluded that a dispute regarding the making and fulfilment of such an "administrative transaction" (privatisation contract) is the matter of an administrative dispute.

Comment: In the above cases the reasoning of the Supreme Court is based on the disputable definition of "administrative transaction" provided by Section 1 (g) of Article 2 of the General Administrative Code. It should be mentioned that in private legal relations that are based on the principle of equality of parties, the state and legal persons under public law should participate as ordinary persons and should be treated as equals with any other subjects of private law. An administrative body cannot constitute an independent subject of private law. During any transaction with a "natural or legal person" it should act only in a capacity of the state representative. Consequently, a transaction undertaken by one representative of the state with another representative of the state ("with the other administrative body") implies that state makes a transaction with itself (self-dealing).

Thus it would be preferable that disputes related to “administrative transactions”, which are considered as “civil transactions” under the administrative code, should be decided under the principles of private, as opposed to, public law.

3. The Right to Demand the Compensation of Moral Damages Arises Only on the Grounds of a Wrongful Act of a Violator

With the Ruling No. 3k/670-01 of 5 October 2001 the Civil, Entrepreneurial and Bankruptcy Chamber of the Supreme Court approved the opinion of Tbilisi Regional Court that in accordance with Section 6 of Article 16 of the Civil Code in case of dissemination, disclosure or publication of data violating the plaintiff’s honour, dignity and business reputation, the plaintiff acquires the right to demand moral damages only if the wrongful act of the defendant is present.

The Supreme Court explained that the honour, dignity and business reputation of an individual can be protected under the following circumstances:

- If the honour, dignity and business reputation of an individual is violated;
- If the data violating the honour, dignity and business reputation is disseminated;
- If the disseminated data does not correspond to the real state of affairs.

Upon the examination of the claim on the violation of honour, dignity and business reputation the defendant is an individual who disseminated such data. The burden of proof is to be placed on the plaintiff.

4. The Violation of Copyright Itself Makes Grounds for Compensation of Moral Damages

With its Ruling No. 3k/471-01 of 12 October 2001 the Civil, Entrepreneurial and Bankruptcy Chamber of the Supreme Court partially overturned the Decision of Tbilisi Regional Court Civil and Entrepreneurial Panel; specifically, its part referring to the rejection of the compensation of non-material damages.

The plaintiff, the compiler-author of the work, based his claim on Paragraph 2 of Article 59 of the Law on Copyright and Related Rights, and demanded an imposition of GEL 50,000 penalty on the defendant, for damages incurred as a result of the defendant’s actions. Allegedly, the defendant reproduced and distributed the plaintiff’s work, but failed to obtain the latter’s consent, neither paid any compensation, nor mentioned the author’s name, and thus, violated the plaintiff’s exclusive property and non-property rights.

Tbilisi Regional Court held that pursuant to the provisions of Paragraph 1 of Article 6 of the Copyright and Related Rights the plaintiff enjoyed copyright protection with regard to the choice and arrangement of the material and that the defendants were prohibited from the reproduction or publication of plaintiff’s book. However, the court considered groundless the demand on the imposition of penalty of GEL 50,000 jointly on the defendants, since “although upon demanding the damages the plaintiff is free from the burden of proving the

exact damage caused to him, it does not follow, that the holder of a copyright is free from the burden of proving an occurrence of the fact of damage itself”.

The court rejected the plaintiff’s demand for damages. The court based its decision on the assumption that upon demanding compensation the holder of a copyright must prove that the damage actually occurred, because the specific amount of compensation is to be established according to the approximate amount of damage. However, if there is no damage shown, no compensation could be imposed. The court considered that the defendant failed to prove that he was damaged in any way.

The Cassation Chamber of the Supreme Court held that the above deliberation could be accepted only in the part that refers to the occurrence of property damage. The court was correct in holding that the plaintiff had to prove what would have been his income, had he had normal legal relations with the defendant. However, in the Supreme Court’s opinion the same reasoning was not proper regarding the part dealing with compensation of non-material damages to the plaintiff; “the fact itself, that the defendants violated the non-material copyright of the plaintiff (that was established by the court) already creates grounds for moral damages”. The Supreme Court referred to Paragraph 3 of Article 59 of the Law on Copyright and Related Rights, pursuant to which “upon the assessment of damages the Court is to take account of the essence of the violation, the damage caused to the holder of a copyright or a related right and the non-material damage”.

5. Division of Common Land Plot in Kind

By its ruling No. 3k/592-01 of 12 October 2001, the Civil, Entrepreneurial and Bankruptcy Chamber of the Supreme Court invalidated the decision of Tbilisi Regional Court Civil and Entrepreneurial Panel.

Tbilisi Regional Court Appellate Chamber considered it established that the parties enjoyed the right of joint possession over a yard land plot. It explained that the disputed land plot could not have been legally divided in equal parts, when divided in kind, since it was impossible to divide it without its devaluation in terms of purposeful usage.

The Supreme Court referred to Article 963 of the Civil Code, according to which the right of joint possession is invalidated in the case of a division in kind, if the item under joint possession could be divided into equal parts without losing its value. The court explained that in the case of a division of a yard into equal parts it was not necessary to divide the yard among the owners of the house according to the exact shares possessed by them. Upon the division of a land plot into equal parts the court needs to take into account the purpose of each part of the land plot and its importance for household purposes as well as the interests of the parties towards each part of it, the location of the land plot and its layout with regard to the access road. It could not be concluded that the land could not be divided into equal parts, if it was possible to equally divide the household interests. It is possible to assign a relatively larger parcel to one party and the other party still could have a parcel that would have an equal value in terms of its purpose and location.

As regards the reduction of the value the Supreme Court considers that the value of a thing implies its household purpose. The yard of a house should be divided in a manner that would not necessitate for the newly originated yards to lose their purpose.

The Supreme Court considered it erroneous that with its decision the Appeals Court gave essential importance to the possibility of the division of the land plot between the owners according to the exact shares belonging to them. It explained that although pursuant to Article 212 of the Civil Code a share of an owner of an apartment in joint possession must be established by the correlation of the area under individual ownership with the total area under private ownership, an economic and household purpose of each parcel should play the decisive role in the process of the division of land into equal parts, instead of giving priority to the division of the total area into exactly equal sub-areas.