



PROPERTY RIGHTS IN POST-REVOLUTIONARY GEORGIA

Guaranteeing the right to property is essential to defining a market economy-driven liberal state. The right to privately own property (as opposed to collectively where in principle all members of a given society own some portion of something, but in practice cannot claim or use anything for their own) has long been acknowledged as a driving force of economic development. This right is enshrined in the founding texts of almost all contemporary states, true democracies, and other political entities. Georgia is no exception. Property rights are protected by Article 21 of the Constitution¹ - the highest-ranking law. But recently the effectiveness of this article has been called into question. Seizures and demolition of private property that peaked in late 2006 and early 2007 have galvanised public concern about this issue. The media and opposition were the first to reveal the latest round of expropriations in Tbilisi. But these were hardly the first cases to come to light.

Provisions concerning property rights are scarce in the commitments the Georgian state has made since the Rose Revolution. In most cases the only aspect of these rights addressed is the right to ownership of certain kinds of property. Generally this is limited to issues related to privatisation of the enterprises/property of “strategic” importance or location. Georgia’s European Neighbourhood Policy Action Plan is no different in this regard. It includes neither recommendations on, nor commitments to, the protection of property rights, except in regards to the more sensitive issue of ethnic minorities.² Georgian authorities have argued over the years that this issue is a result of the restriction on land (including agricultural) privatisation within a 500-meter radius of national borders. Ethnic Azeri and Armenian minorities constitute a majority of the population in the regions of Georgia bordering Azerbaijan and Armenia respectively and those living within a 500-meter radius of borders have been unable to privatise land nearby. However, according to the government, the reason for this has been the legal restriction explained above and not a deliberate effort to hinder minorities’ rights to proprietorship. In spite of this, ethnic minorities living in border regions have remained concerned over this issue and refuse to accept the Government’s explanation. Due to the sensitivity of the issue, the problem has lingered to date and thus it is addressed in the ENP Action Plan. Aside from this concern, however, the EU has not yet recognised the protection of property rights as problematic. But this may prove to be a costly oversight.

The Three Waves of Post-Revolutionary Expropriation

Property rights were first compromised shortly after the post-revolutionary government took office in early 2004. The confiscations were part of an active anti-corruption drive aimed at high officials and affiliates of the Shevardnadze era, which it initiated. The government publicly accused them of corruption and embezzlement of public funds, and confiscated their lavish properties so as to repair the damages they had inflicted on the state.³ The alternative to confiscation was to deposit large sums of money into the government’s account.

¹ Article 21 of the Constitution: “1. The property and the right to inherit shall be recognised and guaranteed. The abrogation of the universal right to property, of the right to acquire, alienate and inherit property shall be impermissible. 2. The restriction of rights referred to in the first paragraph shall be permissible for the purpose of pressing social need in cases determined by law and in accordance with a procedure established by law. 3. Deprivation of property for the purpose of pressing social need shall be permissible in circumstances expressly determined by law, under a court decision, or in the case of urgent necessity determined by the Organic Law and only with appropriate compensation.” The full text of the Constitution in English is available on the Parliament of Georgia web-site at: www.parliament.ge

² ENP AP section 4.1.1 *Ensuring respect for human rights and fundamental freedoms*



The confiscation procedures were part of the plea bargaining system introduced by the post-revolutionary government to fight corruption. Initially the system was designed to allow the accused to cooperate with authorities as an alternative to pleading guilty to a crime and to settle with the prosecution on the terms of punishment. The accused would be held in a pre-trial detention facility and, after returning the illegally acquired funds to the state, would usually be set free on the basis of the court decision without a guilty conviction. Some experts argued that during these times pre-trial detention was a strategy used to pressure the accused into surrendering a “refund” to the state (here it should be noted that currently the conditions in Georgia’s pre-trial detention facilities, as well as in the penitentiary system as whole, are dramatically bad). Local and international NGOs were critical of this practice. They claimed that, first of all, because of significant legal flaws, the plea bargaining procedures instituted in Georgia endangered the civil liberties of detainees and the secrecy of the process could lead to new forms of corruption. In response to civil society pressure, after about two years the legislation on plea bargaining was altered. Now a defendant has the right to bargain with the state after first accepting the prosecutor’s accusation, however, the lack of transparency remains a problem.

The second wave of confiscations, in late 2005 to early 2006, mainly affected restaurant owners in Tbilisi and Mtskheta, just outside the capital. Without formally pressing charges for possible infractions, the owners were “reminded” that they had received their licenses/permissions for business through corrupt deals with Shevardnadze-era officials. To correct these past errors the owners then “voluntarily” handed over their property to the state. These transfers were officially registered as “gifts” to the state, rather than confiscations or expropriations. Business owners were never reimbursed. The gift agreement was signed between the owner and the Ministry of Economic Development and subsequently notarised.⁴ One peculiarity of this process, as noted by the media, was that all agreements were concluded with one particular official of the Ministry and registered at the office of one particular notary.

The only concession made to the previous owner was to allow them to continue to operate their facilities for a grace period. After the grace period the state is free to make use of the property and its land for its own purposes. It is believed that most of the buildings confiscated will be demolished and lucrative central locations developed to promote the new, revitalised image of the city.

According to Georgia’s Public Defender, Sozar Subari, various forms of intimidation were used by authorities in their interactions with proprietors. In many cases threats of possible criminal proceedings were made solely for the reason of intimidation, rather than for any real investigative purposes. He claims that in extreme cases the authorities threatened to plant narcotics and falsely accuse families of illegal drug handling. Cooperation with the authorities and voluntarily surrender of property were presented to victims as the least distressing option.

The third and most recent wave of confiscations spanning late-2006 to early-2007 acquired a new twist – the demolition of private property. The confiscations targeted primarily small shops, booths and stalls mushroomed around metro stations, and less so at other locations. The Tbilisi Mayor’s office’s Supervision Agency tore down these structures with only a few days’ verbal notice. According to the owners of these buildings, the Tbilisi municipality presented no court order or written notice. Thus victims hardly had the opportunity to appeal the decision to court. The city justified its actions by claiming that the buildings were illegal – i.e., did not have proper permits and/or were not registered with the Public Registry; that demolition was needed to free up space for “public use;” or that the structures “did not correspond with the city’s image,” i.e., marred its appearance. Supervision Agency staff maintain that the demolitions in no way

⁴ TI Georgia sent a FOIA request to the Ministry of Economic Development requesting to provide copies of all gift agreements the Ministry had settled in the period 2004-2007. The Ministry has failed to react to our request.



constituted a breach of law and suggested that if anyone believed his/her rights had been violated, he/she could file a complaint in court. Currently the staff claims that no action of this sort has taken place.

The Ombudsman and opposition MPs argue that in most cases these are bogus excuses. They maintain that many of the structures in question were legal: ownership of the lands and structures was certified and architectural plans and designs were agreed with the relevant city agencies. According to Subari, there may have been infractions pertaining to the implementation of architectural projects or lease conditions, but these in no way constitute grounds for blitz demolitions.

The Legislative Base

Georgian legislation firmly safeguards property rights, mentioning only very specific conditions under which confiscation is permissible. Two Georgian laws regulate this field: the Organic Law of Georgia on Rules for Expropriation of Property in the Public Interest under Exigent Circumstances (1997) and the Law of Georgia on Rules for Expropriation of Property for *Sine Qua Non* Public Necessity (1999). Both laws specify a list of circumstances in which they may be applied. The organic law is applicable in cases of ecological or natural disaster, epidemic, or other circumstances that endanger human health and safety or state and public security. In such instances the state may expropriate private property provided it reimburses the owner prior to forfeiture.

The 1999 law lists more conventional public needs, such as the building of roads and highways, railways and pipelines, sewage systems and communication networks as well as structures required for purposes of national defence. In these cases expropriation requires a presidential order (the first legal step in the process) as well as a court ruling on whether or not the order is acceptable. The court decision must include provisions for the reimbursement of damages. Prior to taking matters to court, however, the first step is to agree with the owner whether the property in question should be sold or exchanged for another property. Failure to reach an agreement does not constitute grounds for immediate expropriation. Rather, this is when the court becomes involved. Prior to the actual expropriation, the expropriator must provide the owner with a set of documents including: justification of public need for the given property (citing the presidential order and court ruling); a detailed description of the property; and the amount of compensation or detailed description of the property to be acquired by exchange and specification of its market value.

As this brief overview of the Georgian legislation shows, the legal process for expropriation is quite lengthy and complicated. Further, it in no way authorises the seizure or demolition of private property by any state body, let alone the Tbilisi municipality, on account of “failure to correspond to the city’s image.” Furthermore, confiscating property without offering adequate reimbursement is an explicit breach not only of the spirit of Georgian legislation, but of the very foundations of a liberal and democratic state.

Current Situation and Future Prospects

Concerns over the confiscations have been documented since 2004 in biannual reports published by the Ombudsman’s office and submitted to Parliament. Along with the Ombudsman, opposition MP Kakha Kukava indicates that there have been numerous cases of citizens directly contacting him for assistance. However, both maintain that their data is by no means exhaustive. They state that those who succumb to the pressure are reluctant to publicise their experiences.

Thus far the national authorities have pressed no charges against any of the former officials involved in the illegal deals that allowed the owners of the private properties recently subjected to demolitions to obtain



these properties illegally. The Georgian media have drawn public attention to the issue and the opposition parties, both parliamentary and non-parliamentary, have demanded investigations and assurances that the law will be strictly adhered to in the future. The parliamentary opposition has pressed for the establishment of an investigative council within the Parliament, but its proposals have been thwarted by the ruling National Movement Party. However, the opposition has been invited to participate in an inter-factional group which would operate behind closed doors and lack investigative powers. This group is to collaborate with the government on legislative amendments/initiatives aimed at protecting property rights and securing compensation to those whose rights were violated in the recent wave of demolitions.

Many ruling party representatives claim that all of the demolitions were conducted legally and that no additional investigations are necessary. They assert that the opposition and the media made too much of a plain and simple issue – that illegal actions will no longer be tolerated. The only exception to this opinion was a statement made by the Chair of Parliament, who at the Parliamentary Bureau session on February 12 openly regretted that some of the buildings that had been razed were legitimate and asserted that the practice of demolition should be monitored more closely.

To date the president has made no public statements concerning the demolitions. According to representatives of the opposition, however, the president spoke about this issue during the 6 February meeting with three leaders of the parliamentary opposition. One opposition leader, Davit Gamkrelidze, reported that the President seemed determined to put an end to fears and correct the wrongs already done. Mr. Saakashvili was expected to submit to Parliament a new piece of legislation providing further safeguards for property rights. But on 15 March he delivered his state-of-the-nation address in Parliament and mentioned nothing about property rights issues, much less about submitting a draft law to better safeguard them.

Some opposition MPs decided not to wait for the president's annual speech and assumed a leading role in resolving this issue. On 14 February they held a press conference and presented their version of a draft law on the protection of private property. Among other issues, the draft law called for "complete financial and asset/property amnesty" and "introduction of commercial arbitration." The draft failed to gain support from the majority and most of the opposition. The New Rights party claimed that, since the President was still expected to present his version of the draft, the concurrent opposition initiative was unnecessary and could even prove counter-productive. As mentioned above, despite the expectations, the Presidential speech of 15 March did not address property rights issues, and to date it remains unclear whether or not the President actually plans to submit an initiative and, if yes, when this might take place.

The much anticipated presidential initiative, if realised, and the labours of the inter-factional group are to answer the questions fascinating the public and civil society: Will the government restore the rights of the owners whose property has already been demolished? Will the former owners be compensated? Will officials and agencies responsible for the demolitions be held accountable and prosecuted? At this point, according to a number of lawyers and experts, it remains uncertain whether additional legislation would better secure property rights in practice. As they maintain, respect for existing laws would be sufficient for ensuring security.

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