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State as an Heir: Balancing Public and Private Interests in Georgia and Europe. Part I: Comparative Overview

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Abstract: The Civil Code of Georgia establishes the state's right to inherit heirless estates. According to the Georgian law, the state is referred to as the legal successor. Should we always consider the state as the legitimate successor, or is this only a necessity to maintain public order? Does the state have a legitimate public interest of heirless estate and how can this be balanced against the private interests? The following subjects will be discussed in this article from the perspectives of Georgia and European countries. The question of whether the state should assume ownership of the private property in the absence of heirs is a subject that has given rise to significant discourse on topics of justice, property rights, and the role of the state in private affairs. Numerous scholars have presented a range of arguments both in favour of and in opposition to the notion of the state becoming the recipient of property that lacks heirs. Given the legal nature of the problems, it is necessary to explicitly define the state's status as a special legal heir in Article 1343 of the Civil Code of Georgia to prevent the confusion of rights and duties from leading to excessive state intervention in inheritance matters. European countries' experience is very important for creating a new legal status of the state. Because of the problem of transferring an estate when there is no heir, balancing public and private interests is a most popular issue.

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The purpose of this paper is to examine the rights and obligations of the state as a legal heir under the different regulations and how these principles affect inheritance relations in socio-legal perspectives. It compares how this issue is addressed in other European countries' legal systems and draws conclusions about the dual role of the state based on the different practice. This article aims to explore the theoretical possibilities about the state's right on the heirless estate, offering valuable recommentations for the Constitutional Court of Georgia in justifying and making decisions on this issue.

1. Introduction

Article 1343 of the Civil Code of Georgia regulates the transfer of heirless estate to the state under inheritance law, designating the state as a "sixth-degree" legal heir. However, it remains unclear: what is the purpose of considering the state as an heir? Should it truly be regarded as a legal heir, or is this necessity to maintain public order? As a testamentary heir, the state has the same rights and duties as a person would in similar circumstances. This is because the state is named as a testamentary heir based on the will of the deceased (within the bounds of testamentary freedom). Also, the state's right to inherit is not always provided from the will but from legal presumptions of inheritance.

It is essential to define the rights and duties, which are transferred to the state during heirless estate inheritance relations. For example, in testamentary succession, the state fully acquires the rights and same duties as a person. In legal succession, the states' rights are less comprehensive because of the legal status. The matter of whether the state is a "sixth-degree" legal heir or a guarantor of public order is vital to the two independent constitutional lawsuits filed by Giorgi Khorguashvili and Giorgi Arsenidze against the Parliament of Georgia. Now, the Constitutional Court of Georgia faces the challenge of determining the right status of the state for balancing public and private interests.

In the Part I the first chapter of the paper reviews theoretical perspectives of the issue. The second chapter discusses rules for the declaration of the estate as heirless in Georgia and European Countries. The third chapter analyses the state's struggle for rights in Georgia and in the Part II

the last chapter reviews the state's dilemma with the "sixth degree" heir or defender of public order. The conclusion summarises the key provisions of the research.

2. Theoretical Perspectives

The issue of whether the state should inherit property when there are no heirs touches on important discussions.[1] Philosophers and legal theorists have offered various arguments for and against the idea of the state becoming an heir to heirless property. Philosophers such as John Locke have posited that property is a natural right, and the state should intervene solely to protect property rights, not to claim them. Conversely, contemporary theorists, including Marxist scholars, posit that the state should redistribute property in a manner that benefits society. This debate frequently centres on the balance between individual rights and collective welfare, with the question of state inheritance serving as a main point for broader discussions on justice, fairness, and the role of the state. The question of state inheritance thus becomes a point of divergence, giving rise to a range of opinions and positions. While the state's legal authority to manage estates without heirs is well-defined, the broader philosophical and moral implications of this practice remain a subject of considerable debate. The determination of whether the state should inherit property is contingent upon one's philosophical and moral perspective on property rights and the appropriate scope of state intervention in private relations.[2]

The notion of being an heir can be met with disapproval due to the status of the state. Different European countries' court practices have demonstrated numerous instances that illustrates that the state is not an ordinary heir and the true substance of inheritance rights must be possessed by individuals exclusively.[3] A significant development that has streamlined

1 Gregory S. Alexander and Peñalver M. Eduardo, *An Introduction to Property Theory* (Cambridge: Cambridge University Press, 2012), 204–8.

2 See: Douglas Maxwell, *The Human Right to Property – A Practical Approach to Article 1 of Protocol No. 1 to the ECHR* (Oxford: Bloomsbury Publishing, 2022), 200–2; Ting Xu and Jean Allain, eds., *Property and Human Rights in a Global Context* (Oxford: Hart Publishing, 2015), 64–5; Frankie Mccarthy, *Succession Law* (Dundee: Dundee University Press, 2013), 30–2.

3 Galyna Lutska et al., "The Analysis of the Implementation of Inheritance Law in Selected EU Countries," *Revista Amazonia Investiga* 11, no. 49 (2022): 151–5.

cross-border successions was the implementation of Union regulations which were designed to facilitate the legal aspects of international successions for individuals. The Regulation ensures that cross-border successions are governed by a coherent legal framework, administered by a unified authority. In principle, the courts of the Member State in which citizens had their last habitual residence will have jurisdiction to deal with the succession, and the law of this Member State will apply. However, citizens retain the prerogative to opt for the application of the law of their country of nationality in determining the legal framework governing their cross-border succession. The application of a uniform legal framework by a singular authority to a cross-border succession effectively prevents the initiation of parallel proceedings that could result in potentially conflicting judicial decisions. This approach also ensures the recognition of decisions made within a Member State across the Union without the necessity for additional procedures.[4] However, the issue persists in the event that at least two member states are heirs of the heirless estate or one of the states attempts to declare the estate as heirless.

Article 33 of the Regulation is called "Estate Without a Claimant" which states

> to the extent that, under the law applicable to the succession pursuant to this Regulation, there is no heir or legatee for any assets under a disposition of property upon death and no natural person is an heir by operation of law, the application of the law so determined shall not preclude the right of a Member State or of an entity appointed for that purpose by that Member State to appropriate under its own law the assets of the estate located on its territory, provided that the creditors are entitled to seek satisfaction of their claims out of the assets of the estate as a whole.[5]

4 Regulation (EU) no. 650/2012 of the European Parliament and of the Council of 4 July 2012 on Jurisdiction, Applicable Law, Recognition and Enforcement of Decisions and Acceptance and Enforcement of Authentic Instruments in matters of Succession and on the Creation of a European Certificate of Succession (OJ L201, 27 July 2012), 107–34.

5 Ibid., Article 33; cf. Laura Vagni, "Article 33 – Estate without a Claimant," in *The EU Succession Regulation*, eds. Alfonso-Luis Calvo Caravaca, Angelo Davì, and Heinz-Peter Mansel (Cambridge: Cambridge University Press, 2016), 458.

Georgia is not a member of the European Union yet. Because of that this regulation does not apply to inheritance relations in Georgia.[6] On the other hand, the concept of heirless estate being transferred to the state was not unknown to ancient Georgian law. The idea of transferring heirless estate to the state was developed in state law from ancient times and influenced Georgian legal traditions. The Law of Giorgi V Brtskhinvale, the Law Book of Vakhtang VI, and other legal collections addressed the issue of transferring heirless estate to the state (or, in some cases, to the church).[7] Professor Zoidze notes that in ancient Georgian inheritance law, statutory inheritance emerged first, followed by testamentary. Accordingly, the basis of state inheritance stems from statutory inheritance.[8] Professor Metreveli, however, emphasizes the primacy of testamentary inheritance, arguing that inheritance by will is a result of individual will, while inheritance by law arises from collective will.[9] For this reason, the state's role as an heir should be considered after the will of the testator has been revealed.[10] Professor Shengelia justifies the state's status as a "sixth-degree" legal heir, explaining that the state's involvement as an heir is a common occurrence in testamentary inheritance. However, in the framework of statutory inheritance, heirless estate is transferred to the state under the rule of universal succession.[11]

The foundational norm for transferring heirless estate to the state is Article 1343 of the Civil Code of Georgia, which is supported by Articles 1444 and 1492. On the one hand, the state cannot refuse to accept the inheritance that has passed to it; on the other hand, when heirless estate is transferred to the state, the state is liable for the testator's debts with the corresponding part of the heirless estate, in the same manner as an heir. For this situation

6 See: Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Georgia, of the other part, June 27, 2014.

7 Shalva Chikvashvili, *Inheritance Law* (Tbilisi: "Meridiani", 2000), 105.

8 Besarion Zoidze, *Inheritance Law of Feudal Georgia* (Batumi: 1992), 10.

9 Valerian Metreveli, *History of the State and Law of Georgia* (Tbilisi: "Meridiani", 2003), 380.

10 Sigrid Weigel, "Inheritance Law, Heritage, Heredity: European Perspectives What Should Inheritance Law Be," *Law and Literature*, no. 20 (2008): 280–2, https://doi.org/10.1525/lal.2008.20.2.279.

11 Roman Shengelia and Ekaterine Shengelia, *Family and Inheritance Law (Theory and Practice)* (Tbilisi: "Meridiani", 2019), 406–7.

the phrase – *Qui providet sibi, providet heredibus* (Person who acquires wealth for himself acquires it for his heirs) – has been changed.

Article 562 of the Civil Code of the Soviet Socialist Republic of Georgia regulated the transfer of property to the state by inheritance by law and by will. Inherited property was transferred to the state: (a) if it was transferred to the state by will; (b) if the testator left no heirs by law or by will; (c) when the testator has deprived all the legatees of the right to inherit; (d) if no heir has accepted the property. In addition to the above, the State had the right to receive: the heir's share if the heir refused to accept the property in favour of the State; part of the testator's property for which no will had been made and there were no legal heirs.[12]

Also, the original text of part one of article 1343 of the Civil Code of Georgia is interesting:

> Article 1343. Transfer of Inherited Property to the Treasury
>
> If there are no heirs by law or by will, or if none of the heirs have accepted the inheritance, or if all heirs have been deprived of the right to inherit, the inherited property shall be transferred to the Treasury. If the testator was in the care of elderly, disabled, medical, educational, or other social protection institutions, the property shall be transferred to their ownership.[13]

Part one of article 1343 of the Civil Code of Georgia after the reform of 2005:

> Article 1343. Transfer of Inherited Property to the State
>
> If there are no heirs by law or by will, or if none of the heirs have accepted the inheritance, or if all heirs have been deprived of the right to inherit, the inherited property shall be transferred to the State. If the testator was in the care of elderly, disabled, medical, educational, or other social care institutions, the property shall be transferred to their ownership.[14]

The question of whether the state should inherit property in the absence of heirs is a subject of significant debate, touching on issues of justice, property

12 Cf. Mikheil Bichia, "Some Features of the Development of Georgian Private Law from the 90s to the Present Day," *Law and World* 8, no. 24 (2022): 75–104, https://doi.org/10.36475/8.4.6.

13 Article 1343, Civil Code of Georgia, pre 2005 issue.

14 Article 1343, Civil Code of Georgia, current issue.

rights, and the role of the state in private relations.[15] There are strong arguments both in favour of and against the idea of state inheritance.

> Ownership has never been absolute. Even in the most individualistic ages of Rome and the United States, it has had a social aspect. This has usually been expressed in such incidents of ownership as the prohibition of harmful use, liability to execution for debt, to taxation, and to expropriation by the public authority.[16]

Public interest and social justice scholars argue that when no heirs are available, the property should be repurposed for the common good. These funds could be allocated to social programs, infrastructure development, or community services, ensuring that wealth is utilized for the benefit of society as a whole. Another compelling argument is the prevention of property abandonment. When property remains unclaimed, it is susceptible to abandonment, deterioration, or even exploitation. The state, acting as a neutral party, can intervene to ensure the property's maintenance and utilization for the benefit of the community. This could entail converting the property for public use or redistributing it to those in need. State involvement is crucial for safeguarding the orderly and fair progression of the inheritance process. In instances where heirs are absent, the state can prevent legal ambiguities or conflicts, thereby establishing a framework for estate management that ensures the continuity of property rights and the safeguarding of public interests.

Opponents argue that inheritance is a deeply personal issue. Property, in this view, is a right that should be passed down within families or to chosen individuals. The state's assumption of property ownership could be construed as a infringement on individual liberty and the right to exercise personal autonomy over one's possessions. Critics contend that the state

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15 Cf. Lucia Ruggeri, Ivana Kunda, and Sandra Winkler, eds., *Family Property and Succession in EU Member States National Reports on the Collected Data* (Rijeka: University of Rijeka Faculty of Law Research Collection of Reports, 2019), II; European Union Agency for Fundamental Rights and Council of Europe, *Handbook on European Law relating to Access to Justice*, 124–5; also: Jean-Pierre Marguénaud, Corine Namont Dauchez, and Benjamin Dauchez, *The Legitimation of Civil Law Notaries by the Law of the European Convention on Human Rights*, 2017.

16 Cited Antony Honoré in Maxwell, *The Human Right to Property*, 47.

should exercise restraint in its intervention into private property matters, except in circumstances deemed absolutely necessary. The concept of the state assuming the role of an heir is frequently perceived as an infringement on individual autonomy, representing an overreach of governmental authority. Because of that

> there is still an assumption that the right to property should guarantee a degree of stability and predictability in respect of a citizen's relationships with others and especially with their Government in matters relating to the control of resources, even where that stability means that an unjust distribution of wealth cannot be altered by judicial action. Indeed, the right to property required any attempt to redress an unjust distribution to be justified.[17]

This potential expansion of state power could be construed as a diminution of personal autonomy, resulting in an increased degree of state oversight over private matters. The state, as a bureaucratic entity, is often perceived to lack the emotional or personal connection to property that an individual or family member would possess. Critics contend that the essence of inheritance lies in the transfer of personal legacies to individuals with a tangible connection to the deceased, not to an impersonal institution. The state's involvement in inheritance could, therefore, be construed as diminishing the true essence of passing on property, which is traditionally a means to preserve family ties and personal legacies.

3. Declaration of Estate as Heirless in Georgia and European Countries (Comparative Analysis)

3.1. Georgia

Inherited property passes to the state if there are no heirs by law or by will, if none of the heirs have received the inheritance, or if all heirs have been deprived of the right to inherit. If the testator was in the care of elderly, disabled, medical, educational, or other social protection institutions, the property is transferred to their ownership.[18]

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17 Cited Tom Allen in Maxwell, *The Human Right to Property*, 48.

18 See: Roman Shengelia, Zurab Akhvlediani, and Lado Chanturia, *Commentary on the Civil Code of Georgia, Book V (Family and Inheritance Law)* (Tbilisi: "Samartali", 2000), 399–400.

The estate of inherited property includes both rights of the testator (inherited assets such as real estate, movable and immovable property, rights of claim) and the obligations (inherited liabilities) that the testator had at the time of death. This also includes the share of common property that belonged to the testator, and, if the division of property is impossible, then the value of this property. This constitutes an estate that would normally be received by an inheriting individual.[19] Due to one of the conditions stipulated in Article 1343 of the Civil Code, the state appears as heir.

It is important to distinguish between the state's acceptance of property by inheritance and the acquisition of ownership over the property. The state can inherit property that has a deceased registered owner (right of inheritance) and, on the other hand, the state can acquire ownership of property that has no registered owner or when the owner cannot be found (right of ownership). According to the Law of Georgia "On State Property," property that becomes state property is considered ownerless and heirless estate that has passed into the ownership of the state.[20] This again confirms that the state can apply to the court or notary with a request to transfer ownership of heirless estate and recognize it as ownerless.[21]

Initially, the state's right to inherit property is considered in court, while inheritance is formally recognized at the notary office, as the inheritance certificate is issued by a notary, not a judge. If we differentiate state's inheritance, we find that the state as an heir is one of the foundations for the state as a private owner.[22]

> The function of the right of inheritance is to ensure that with the death of the owner, private property – considered the basis for an individual's independent livelihood – is not lost, but rather preserved through legal succession. Without the right of inheritance, private property would automatically

19 Mariusz Załucki, "Attempts to Harmonize the Inheritance Law in Europe: Past, Present, and Future," *Iowa Law Review* 103, no. 5 (2018): 2337–8, https://ssrn.com/abstract=3232732.

20 Law of Georgia "On State Property", July 21, 2010, Article 2, para. "g".

21 See: the Civil Procedure Code of Georgia, November 14, 1997, Article 310, para. "e". Also, Lado Chanturia, *Commentary on the Civil Code, Book I (General Provisions of the Civil Code)* (Tbilisi: "Meridiani", 2017), 55.

22 Frances H. Foster, "The Family Paradigm of Inheritance Law," *North Carolina Law Review* 80, no. 1 (2001–2002): 203–4.

pass into the hands of the state, which would weaken the institution of private property.[23]

Therefore, it is essential to have a clear and understandable rule for considering property as heirless. The matter of who is authorized to declare estate as heirless – a notary or a judge – nowadays depends on the specific legal case. In instances where the Law of Georgia "On Relations Arising from the Occupancy of Dwellings" does not apply to resolve the issue, the notary holds this authority. However, during the consideration of inheritance cases in court, the fact that property is heirless may be revealed. For instance, the absence of heirs or the intentional or negligent refusal of heirs to accept the estate could be established.[24]

In comparison, certain member states of the Council of the Notariats of the European Union have conferred upon notaries the authority to discuss heirless inheritance proceedings. To alleviate the workload on civil courts, a notary is empowered to adjudicate and issue a certificate of inheritance in inheritance law cases where the case is indisputably non-contentious. In numerous instances, a notary is entrusted with the authority to declare property heirless. In Italy and Malta, notaries are authorized to confirm the receipt of an inheritance in an uncontested manner and issue a certificate of inheritance, provided that they verify that no other heirs have submitted claims to receive the inheritance. In Austria, in the absence of an inheritance dispute, the notary initiates and independently conducts the proceedings for the transfer of the inheritance (to confirm the receipt of the inheritance). However, in the event of a dispute, the notary transfers the case to the court. The regional or district court with jurisdiction over the last place of residence of the deceased is designated to adjudicate contested inheritance proceedings. Contrary to the Austrian model, in the Czech Republic, the regional court appoints a notary to preside over uncontested proceedings.[25]

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[23] Decision of the Constitutional Court of Georgia of 26 June 2012, №3/1/512 in the case "Danish citizen Heike Kronqvist v. Parliament of Georgia".

[24] See: Decision of the Supreme Court of Georgia in case №as-376–2024, June 14, 2024; Decision of the Supreme Court of Georgia in case №as-1017–2023, October 13, 2023; Decision of the Supreme Court of Georgia in case №as-880–2022, October 21, 2022; Decision of the Supreme Court of Georgia in case №as-871–2019, December 21, 2020.

[25] Cf. Eamonn G. Hall, "The Common Law and Civil Law Notary in the European Union: a Shared Heritage and an Influential Future?" (Dublin: Institute of Notarial Studies, Institute

A congruent approach is adopted in Croatia. The municipal court has the authority to confirm the receipt of the inheritance by considering the applicant's request. In the event that the court determines that the request is valid, it may transfer the case to the regional notary. The notary, in turn, is obligated to consider the case with the same rights and duties as a judge. In the event of a dispute between the parties, the judge or notary is obliged to terminate the examination of the matter in the uncontested procedure. Furthermore, the judge or notary is required to advise the parties on the procedural actions. Notaries, in the context of inheritance proceedings conducted under the uncontested procedure, are empowered to distinguish between legitimate and illegitimate claims submitted for the purpose of inheritance. In Romania, the scope of responsibility for notaries extends beyond the administration of inheritance proceedings and the issuance of inheritances. They are also entrusted with the authority to adjudicate disputes pertaining to the disbursement of monetary obligations from the inheritance, in instances where such disputes arise among the parties involved.[26]

It should be assessed whether the state, as the heir of the person, has the right to property and inheritance. According to the Constitutional Court of Georgia, the constitutional norm regulating the right to property strengthens the universal right to acquire, alienate, and inherit property. This norm on the one hand, establishes a constitutional legal guarantee of the institution of private property and, on the other hand, strengthens the fundamental right. Its function is to maintain free space for an individual in the property-legal sphere, thereby providing an opportunity for personal development and the manifestation of life responsibility.[27]

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of Notarial Studies, 2015), 10–2; Emil Kowalik, "General Characteristics of Service of Procedural Documents in Polish Civil Proceedings Compared to Selected European Countries," *Review of European and Comparative Law* 59, no. 4 (2024): 93, https://doi.org/10.31743/recl.17167.

26 Notaries of Europe, *European Commission for the Efficiency of Justice, Working Group on the Evaluation of Judicial Systems – Specific Study of the CEPEJ on the Legal Professions: Notaries* (Notariats of the European Union, 2018), 11; Cornelius H. Van Rhee, "Case Management in Europe: A Modern Approach to Civil Litigation," *International Journal of Procedural Law* 8, no. 1 (2018): 27.

27 Decision of the Constitutional Court of Georgia of 29 December 2020, №2/3/1337, "Khatuna Tsotsoria v. the Parliament of Georgia," II–1.

The right to property is the cornerstone of the development of a modern democratic society, upon which economic freedom and stable civil turnover are built.[28]

> The right to property is not only the elementary basis of a person's existence, but also ensures his freedom, the adequate realization of his abilities and possibilities, and the conduct of life with his own responsibility. All of this naturally determines the individual's private initiatives in the economic sphere, contributing to the development of economic relations, free entrepreneurship, a market economy, and normal, stable civil turnover.[29]

For a person to practically use the right to property, it is not enough to grant them an abstract guarantee of property ownership. They must also benefit from a civil, private law order that enables the unhindered use of their right to property, and, consequently, the development of civil turnover. "The constitutional-legal guarantee of property includes the obligation to create a legislative framework that ensures the practical realization of the right to property and makes it possible to accumulate property through acquisition."[30]

It is essential to maintain a fair balance between fundamental rights and conflicting public interests. The need to maintain this balance also encompasses the issue of establishing constitutional order and protecting rights.[31] Granting unjustified advantages for a public purpose does not align with the constitutional and legal order concerning property.

The norm regulating property in the Constitution of Georgia clearly states that the acquisition, disposal, and inheritance of property are rights guaranteed by the Constitution.[32] Accordingly, whether the state, as the heir of a natural person, has the right to property and inheritance should be

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28 Lado Chanturia, *Ownership of Real Estate* (Tbilisi: "Samartali", 2001), 115–6.

29 Decision of the Constitutional Court of Georgia №1/2/384 of 2 July 2007 in the case "Citizens of Georgia – Davit Jimsheleishvili, Tariel Gvetadze and Neli Dalalishvili against the Parliament of Georgia," II–5.

30 Decision of the Constitutional Court of Georgia №3/1/512 of 26 June 2012 in the case "Citizen of Denmark Heike Kronqvist against the Parliament of Georgia," II–33.

31 Besik Loladze, Zurab Macharadze, and Ana Pirtskhalashvili, *Constitutional Justice* (Tbilisi: "Forma", 2021), 3–4.

32 Decision of the Constitutional Court of Georgia of 26 June 2012 №3/1/512 in the case "Danish citizen Heike Kronqvist against the Parliament of Georgia," II–36.

assessed within the context of the possibility and admissibility of the state's claim to inheritance rights.

3.2. Austria

Section 749 of the Civil Code of Austria states that in the absence of heirs, the estate is distributed to the legatees, with the value of the assets being the determining factor. In the event that neither heirs nor legatees exist, the law stipulates that the state shall acquire the property and the State reserves the right to appropriate the estate, and it is not liable for the decedent's debts beyond the value of the assets received. The local authorities handle the estate, and in the absence of any rightful heirs, the state may inherit and manage the property. If the property has special value, it could be repurposed for public use.[33]

3.3. Czech Republic

In the absence of an heir, due to the Civil Code of the Czech Republic the inheritance shall devolve to the state, which is considered the statutory heir. The state is not entitled to refuse the inheritance or the right. In regard to other persons, particularly in the context of deceased debts, the state holds a status analogous to that of an heir who has made a reservation as to estate inventory. Section 1634 of the Civil Code of Czech Republic states that the state is liable for debts only up to the value of the estate of inheritance.[34]

3.4. Estonia

In accordance with the principles of universal succession, it is not permissible under Estonian law for a deceased individual to be considered as having no heir. The opening of a succession occurs upon the death of the bequeather, and the place of opening of a succession is defined as the last residence of the bequeather. In the absence of a testamentary disposition by the deceased individual, and when the rules of heirless estate succession are applicable,

[33] Gregor Christandl and Kristin Nemeth, "Austrian Succession Law Rewritten: A Comparative Analysis," *European Review of Private Law* 28, no. 1 (2020): 149–72. https://doi.org/10.54648/erpl2020007; Ruggeri, Kunda, and Winkler, *Family Property and Succession*, 1.

[34] Radim Boháč, "Inheritance Tax, Gift Tax and Real Estate Transfer Tax in the Czech Republic," *Societal Studies* 2, no. 6 (2010): 94–7; Ruggeri, Kunda, and Winkler, *Family Property and Succession*, 122.

yet no relatives or surviving spouse are found to inherit, or if all parties renounce their right to succession, the state or local government, depending on the location of the opening of the succession, becomes the heir. In the event that no successors are identified, the local government of the place of opening of a succession becomes the heirless estate successor. The government is not permitted to renounce the succession. Regardless of whether the requirements for acceptance of the succession have been met, the heirless estate successor is regarded as having accepted the succession.[35]

In the context of Estonian law, the state may be considered a legal heir in certain exceptional circumstances but the process of "stating as heir" pertains to the formal declaration and substantiation of one's right to inherit. This process frequently necessitates the utilization of notary services, and in instances of dispute, the matter may be adjudicated in a court of law. It is imperative for individuals dealing with inheritance matters to have comprehensive documentation and seek the counsel of legal professionals to ensure that their rights are duly recognized.

3.5. Germany

Section 1936 of the Civil Code of Germany is titled "The State's Right to Inheritance by Law." If, at the time of opening the estate, no relatives, spouse, or partner of the testator are alive, the estate is inherited by the federal entity in which the testator had their last place of residence.[36] If this cannot be determined, the estate is inherited by the federal entity based on the testator's place of residence, or if that is also undetermined, the estate is inherited by the federation.[37] In the case of testamentary inheritance, the testator must explicitly name the state or a federal entity as the heir in the will. Paragraph 1937 of the Civil Code of Germany specifies that the subjects of testamentary inheritance are not listed, though the testator can deprive a relative, spouse,

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35 Urve Liin, "Succession Law Procedure Coverage in Estonian Public Electronic Databases: *Ametlikud Teadaanded* and the Succession Register," *Juridica International*, no. 21 (2014): 200–5. https://doi.org/10.12697/JI.2014.21.18; Ruggeri, Kunda, and Winkler, *Family Property and Succession*, 175.

36 German Civil Code, accessed June 14, 2024, https://www.gesetze-im-internet.de/bgb/__1936.html.

37 The comparison method of the norms is often used by the Supreme Court of Georgia. See the decision of the Supreme Court of Georgia of 23 March 2010, №as-1058–1325–09.

or partner of their inheritance rights by law. However, the state is not included in this list, meaning the testator cannot state in the will that the state or a federal entity is deprived of the right of legal inheritance.[38] The court considering inheritance cases is responsible for determining the legal heir. If no heir can be determined, the court must publish a corresponding notice on inheritance rights, which is regulated by the special law "On Proceedings in Family Matters and Voluntary Justice Issues." Potential heirs may apply to the court within the established period. If no claims are made, the court will rule that the only heir to the property is the state.[39] States liability is always limited to the size of the estate.

3.6. Hungary

The State is an heir of necessity, which signifies that it is not entitled to relinquish an inheritance. The State possesses the same legal status as individuals. In the context of Hungarian law, the inheritance of the State is an acquisition subject to civil law rather than public law. Upon a person's death, his estate shall pass as a whole to his heir[40] and ultimate intestate succession by the State means that in the absence of any heirs, the estate heir shall be the State.[41] The process of inheritance is ordinarily formalized by the court system, subsequent to a period of attempts to locate potential heirs or resolve any disputes that may have arisen.

3.7. Poland

Article 935 of the Civil Code of Poland stipulates that in the absence of a spouse, relatives by consanguinity, or children of the deceased's spouse who are entitled to inherit under the law, the estate shall devolve to the municipality of the deceased's last place of residence as the designated statutory heir. In instances where the deceased's last place of residence within the jurisdiction of the Republic of Poland remains undetermined, or if

38 Shelly Kreiczer-Levy, "Inheritance Legal Systems and the Intergenerational Bond, Real Property," *Probate and Trust Law Journal* 46, no. 3 (2012): 26–7.

39 Ruggeri, Kunda, and Winkler, *Family Property and Succession*, 258.

40 Section 7:1. Act V of 2013 Civil Code of Hungary (in force on July 1, 2021).

41 Ibid., Section 7:74.

the deceased's last place of residence is located outside the country, the estate shall devolve to the State Treasury as the designated statutory heir.[42]

3.8. Slovenia

It's interesting that in the absence of heirs to the estate, it becomes the property of the Republic of Slovenia. However, if the estate becomes subject to bankruptcy proceedings, it may be converted into a bankruptcy estate. Prior to a court decision declaring the estate the property of the Republic of Slovenia, the court is required to publish a notice to unknown creditors of the estate and inform the Republic of Slovenia and known creditors of the estate that the estate is without an heir. In the absence of creditor requests for the initiation of bankruptcy proceedings within six months, the estate becomes the property of the Republic of Slovenia, which is then not liable for the debts of the deceased. In the event that a bankruptcy procedure is requested and initiated by a court, the estate does not undergo transfer to the Republic of Slovenia; rather, it becomes the bankruptcy estate.[43]

3.9. Sweden

In the absence of heirs, the estate is to be allocated to the Inheritance Fund. The Swedish Inheritance Fund is a Swedish state fund that was established in 1928. In the absence of a written will and no living spouse or close family, the property of a deceased individual is transferred to the fund. The fund receives financial contributions through gifts and wills. The primary objective of the fund is to provide financial support to non-profit organisations and other voluntary associations. The administration of the fund is undertaken by the Swedish Legal, Financial and Administrative Services Agency.[44]

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42 See: Jerzy Rajski, "European Initiatives and Reform of Civil Law in Poland," *Juridica International*, no. 14 (2008): 151–5.

43 Franci Avsec, "Legal Framework of Agricultural Land/Holding Succession and Acquisition in Slovenia," *Journal of Agricultural and Environmental Law* 16, no. 30 (2021): 37–8, https://doi.org/10.21029/JAEL.2021.30.24; Ruggeri, Kunda, and Winkler, *Family Property and Succession*, 585.

44 Mikael Elinder et al., "Estates, Bequests and Inheritances in Sweden – A Look into the Belinda Databases," Uppsala Center for Fiscal Studies, Department of Economics, Working Paper 2014:14, 7–10, accessed March 4, 2025, https://www.diva-portal.org/smash/get/diva2:766280/FULLTEXT01.pdf.

4. The State's Struggle for Rights in Georgia

In the cases established by the Civil Code of Georgia, the property of the deceased shall be transferred to the authorized entities:

(a) to elderly, disabled, medical, educational, and other social protection institutions, if the testator was supported by them;
(b) to the state, if there are no grounds for transferring the property to the entities specified in subparagraph "a".[45]

It is important to note that, in general,

> the guarantee of the right to inheritance strengthens the specific possibility of acquiring property by individuals. The right of the testator to dispose of his property by will and the right of the heir to acquire property through legal or testamentary inheritance are integral parts of the fundamental right.

However, the state, as a legal or testamentary heir, appears in this framework as the "strong party."[46] Therefore, the inheritance status of the state should be more clearly defined so that the rights and obligations acquired by it do not restrict the property rights of citizens. Decisions made on cases involving heirless estate should be legal and substantiated.

In order to receive heirless estate, the authorized entity – in this case, the state – must apply to a notary with an application.[47] The application may be submitted as a public or private act. The application can be submitted both before and after the expiration of six months from the opening of the inheritance.[48]

A certificate for the transfer of heirless estate to an authorized entity may only be issued after the expiration of six months from the opening of the inheritance. After six months, if no application for the inheritance

[45] See: Order №71 of the Minister of Justice of Georgia on Approval of the Instruction "On the Procedure for Performing Notarial Acts", March 31, 2010, Article 93; Law of Georgia "On Notarial Services", December 4, 2009, Article 38.

[46] Constitutional Court of Georgia, Decision №3/1/512 of 26 June 2012 in the case "Danish citizen Heike Kronqvist against the Parliament of Georgia".

[47] Diana Berekashvili, "Mandatory Share in Inheritance Law" (PhD diss., Ivane Javakhishvili Tbilisi State University, 2020), 185.

[48] Order №71 of the Minister of Justice of Georgia on Approval of the Instruction "On the Procedure for Performing Notarial Acts", March 31, 2010, Article 15.

has been filed with the notary bureau and the authorized entity requests the transfer of heirless estate into ownership, the notary is obliged to publish a public announcement about the request. The application must detail the circumstances of the case and provide the address of the notary office.

The application must be published in the press distributed throughout Georgia three times, with an interval of at least seven days between each publication. The costs of publishing the application are borne by the authorized entity requesting the transfer of ownership of the heirless estate. If the property is transferred to the authorized entity, other documents may be required depending on the specifics of the case (such as documents related to legal entities or to the heirless estate itself).[49]

Under the Law of Georgia "On Relations Arising from the Occupancy of Dwellings," if the issue was considered by the court, the judge had to correctly determine what was meant by heirless estate, how it should be transferred to the state, and which legal facts determined whether the property was heirless.[50] Despite the notarial procedure, the court could still determine the status of the heirless estate based on the Law of Georgia "On Relations Arising from the Occupancy of Dwellings."[51]

So, what is the state's "struggle for inheritance rights?" In one case considered by the Supreme Court of Georgia, it was established that a deceased person had children, one of whom took possession of the inheritance, and a certificate of inheritance was issued to him by a notary. The court ruled that, since the first-degree heir received the inheritance, there was no longer a basis for recognizing the property as heirless and transferring it to the state under Article 1343 of the Civil Code.

In a related example, the Supreme Court ruled that it was incorrect to involve the Ministry of Economic Development of Georgia as the legal successor of an individual by lower instances, noting that Article 1343 of the Civil Code applies only if there is heirless property that has a deceased registered owner. If a person had no property at the time of death,

49 See: Shengelia and Shengelia, *Family and Inheritance Law*, 430–1.

50 Khatuna Jokhadze, "The Contradictory Nature of State Property Denationalization in Georgia" (PhD diss., Ivane Javakhishvili Tbilisi State University, 2008), 199–200.

51 Practical Recommendations of the Supreme Court of Georgia on Civil Procedural Law Issues for Judges of Common Courts, Tbilisi, 2010, 79–80. Also, see: Leila Kokhreidze, "Persons Participating in Inheritance Disputes," *Justice and Law* 3, no. 42 (2014): 31–2.

the state cannot be considered his heir. It was established that, at the time of death, the citizen did not own the disputed property because the property had been transferred before his death, and, based on the circumstances of the case, the state was deprived of the opportunity to dispute the legality of the alienation.[52]

National Agency of State Property of Georgia applied to a notary and requested the issuance of a certificate of inheritance for the deceased's heirless property. However, the notary refused to issue the certificate because the testator's guardian had submitted a domestic will in relation to the property. As a result of the disputed relationship, the certificate of inheritance for the heirless property would not be issued until the court had ruled on the validity of the will. The court examination confirmed that the handwritten text and signature were executed by the testator, thereby validating the testator's will. According to the Supreme Court, the main principle in drawing up a domestic will is the free expression of the testator's will and the confirmation of that will with the testator's own signature, which established the validity of the will in this case without any doubt. The appearance of a natural person as a testamentary heir outweighed the interest of the state.

In a related other example, based on the Law of Georgia "On Relations Arising from the Use of Residential Tenancies," the Civil Cases Chamber of the Tbilisi Court of Appeal issued a legally effective decision declaring a citizen's property to be heirless and transferring it to the beneficiary. The citizen's grandson requested the invalidation of this decision, as he was the owner of the property and had not participated in the initial consideration of the case. The case revealed that the applicant's father had received the inherited property into actual possession, and the applicant himself had obtained his father's property by applying to a notary, thus confirming his real interest in the dispute. Since the court's decision involved property to which the applicant had a legal claim, it was necessary to invalidate the decision in order to protect the applicant's property and inheritance rights

[52] Cf. Gary E. Spitko, "Intestate Inheritance Rights for Unmarried Committed Partners: Lessons for U.S. Law Reform from the Scottish Experience," *Iowa Law Review* 103, no. 5 (2018): 2183–7.

and resume the proceedings.[53] Therefore, the legal interest of the heir, as expressed by the individual, outweighed the state's interest.

The state's struggle for rights may reach an immeasurable scale, potentially limiting not only individual rights but also the rights of all owners and heirs within the state. This could generalize a problem taken in isolation to the detriment of individuals by regulating it at the legislative level. It is obvious that

> [T]he ownership of property is a right to which duties and obligations are inseparably attached. Those who have property are bound, according to their means to assist those who have not; property may not be used oppressively nor may it be monopolised by those who own it.[54]

It is essential that the state should have the limitations which will be attached to this right.

For example, in one case considered by the Supreme Court of Georgia, the court of first instance determined that a collective farm household was represented and, after its abolition, the household property belonged to the plaintiff and the defendant by right of co-ownership (the plaintiffs' and defendants' fathers were brothers, and both were registered in the same household). In this case, the household was defined by the agricultural land plot and the previously existing building on it. However, the court limited its consideration to the legal circumstances presented in the case, without examining the legal status of the parties involved in the household property. The first instance court's position was based solely on the scope of the plaintiff's claim, excluding the expected legal result.[55]

The Appellate Chamber overturned the first instance's legal reasoning regarding the existence of the household and determined that it was not a collective farm household, but a household of workers and servants,

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53 Cf. Slađana A. Kramar and Katarina Vučko, "A Guide to the Implementation of the Succession Regulation (EU) No. 650/2012," Croatian Law Centre Electronic Edition, 2020, 6–9.

54 Cited Tom Allen in Maxwell, *The Human Right to Property*, 69.

55 Cf. Anatol Dutta et al., "Comments on the European Commission's Proposal for a Regulation of the European Parliament and of the Council on Jurisdiction, Applicable Law, Recognition and Enforcement of Decisions and Authentic Instruments in matters of Succession and the creation of a European Certificate of Succession," *Rabel Journal of Comparative and International Private Law (RabelsZ)* 74, no. 3 (2010): 525–9.

with the property co-owned by the plaintiff and the defendant. However, because the building that had once belonged to the household no longer existed on the land plot, and the ownership right had not been registered in the public registry by the household members, the Appellate Chamber ruled that the agricultural land was the property of the state, based on Article 19(4) of the Constitution. The court rejected the parties' legal claim regarding the household and determined that, according to Article 1513 of the Civil Code, the plaintiff could not become the owner of the household property.[56]

The reasoning of the Appellate Chamber directly infringed upon the rights of the household's owners. This contradicted the legislator's intent to regulate the issue while protecting citizens' legal status, as well as balancing the state's/public interest with private rights. According to this reasoning, a misconception arises that unregistered agricultural household land plots, including those in occupied territories where buildings and structures have been destroyed, would automatically become state property, even if citizens are unable to physically dispose of them.

The Supreme Court of Georgia disagreed with the reasoning of the Appellate Chamber regarding the exclusion of the legal form of the household and the legal status of household members and non-members. The Supreme Court of Georgia clarified the following points: (a) the necessity of correctly defining what constitutes a household and applying the relevant legal norms; (b) the inseparability of household property from the legal status of household members; (c) the need to adapt the applicable norms to the specific circumstances of the case, ensuring the protection of household owners' legal status.

This decision highlights the challenges that household owners may encounter and provides a clear legal interpretation, emphasizing that Article 1513 of the Civil Code of Georgia should not be interpreted in the manner presented by the Appellate Chamber.

[56] Cf. Andrei D. Popescu, *Guide on International Private Law in Successions Matters* (Onești: "Magic Print", 2014), 47–9.

5. Summary of the Part I

Aim of this passage was to explore the role of the state as a legal heir in Georgia, raising the question of whether the state should be viewed as a legal heir or if its inheritance is more about maintaining public order. A review of examples across European Countries reveals numerous instances that illustrate the state is not an ordinary heir. When the state is named as a testamentary heir, it holds the same rights and responsibilities as any other heir, a designation that comes from the will of the deceased, respecting their testamentary freedom. However, it is important to note that the state's inheritance may not always be explicitly stated in the will; instead, it could stem from legal presumptions of inheritance as "Sixth Degree" Heir. The issue of the dilemma of the state as legal successor will be discussed in Part II.

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