

# State as an Heir: Balancing Public and Private Interests in Georgia and Europe. Part II: Dilemma of the State as Legal Successor

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**Abstract:** As previously stated in Part I, Article 1343 of the Civil Code of Georgia establishes the state as a “sixth-degree” heir, signifying that the state possesses a legitimate public interest in acquiring heirless property. Considering the state as a heir in the same capacity as individuals would conflict with the private interests of those individuals, particularly when they might have a legitimate claim to the heirless property. It is vital to circumscribe the state’s involvement to the minimum necessary in order to fulfil its public interest. The Part II of the article is dedicated to an examination of the dilemma faced by the state in its capacity as legal successor, posing the question of whether it should assume the role of “sixth degree” heir or defender of the public order.

## 1. Dilemma of the State as Legal Successor: “Sixth Degree” Heir or Defender of the Public Order?

### 1.1. Unusual Defender of the Public Interest

In inheritance law, public order plays a vital role in ensuring fair civil turnover. When public order is violated, it impacts not only private interests, but also public interests, as the good protected by public order holds significant societal value. The violation of this order undermines the foundation of

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society's existence. This is why the scenario where private property is found without an owner and is absorbed by the state is in conflict with the concept of private ownership.<sup>1</sup>

The circle of authorized entities to receive heirless property, as outlined in Article 1343 of the Civil Code, is broad and the title of the article does not fully encompass the list. It includes not only the state, but also institutions for the elderly, disabled, medical, educational, and other social protection, in cases where the testator was under their care, as well as entrepreneurial societies and cooperatives.

According to Article 1492 of the Civil Code, when heirless property is transferred to the state, the state is liable for the testator's debts with the corresponding portion of the heirless property, just as an heir would be. This raises the matter of whether this obligation extends to other authorized recipients listed in Article 1343. Heirless property does not obligate institutions providing support, or subjects of entrepreneurial-legal relations, to pay the testator's debts.<sup>2</sup> However, this does not exclude the possibility that the property could be used to satisfy creditors' debts if the recipient of the heirless property does not protect their right to the estate.

Heirs can be:

- (1) At the time of inheritance by law – persons who were alive at the time of the testator's death, as well as the testator's children born alive after his death.
- (2) In the case of inheritance by will – persons who were alive at the time of the testator's death, as well as those conceived during his lifetime and born afterward, regardless of whether they are his children or not, as well as legal entities.<sup>3</sup>

According to the broad interpretation of Article 1307 of the Civil Code, the state can acquire the status of a testamentary heir. However, under

<sup>1</sup> Angelique Devaux, "The European Regulations on Succession of July 2012: A Path Towards the End of the Succession Conflicts of Law in Europe, or Not," *The International Lawyer* 47, no. 2 (2013): 248, <https://www.jstor.org/stable/43923949>.

<sup>2</sup> See: Roman Shengelia and Ekaterine Shengelia, *Family and Inheritance Law (Theory and Practice)* (Tbilisi: "Meridiani", 2019), 407; Kenneth Reid, Marius Waal, and Reinhard Zimmermann, *Comparative Succession Law*, vol. 2, *Intestate Succession* (Oxford: Oxford University Press, 2015), 32.

<sup>3</sup> See: Roman Shengelia, "The Necessity of Improving the Mechanism for Protecting the Interests of Subjects of Inheritance Law Relations," *Life and Law* 1–2, no. 57–58 (2022): 95.

Article 1343, legal inheritance is as natural a phenomenon for the state as it is for an individual.

The state can be a testamentary heir and, in this role, it assumes rights and obligations to the same extent as an individual would, since the state's status as a testamentary heir is determined by the testator's will. However, this scenario differs from the case where the right to inherit does not stem from the testator's will, but from the presumption of the state being a legal heir.

Through a systematic interpretation of inheritance rules, the state has the right to challenge the heirs of the testator based on claims that inheriting individuals typically present against each other.<sup>4</sup> Although this view is generalized, it does not exclude the state's authority to act against private interests, including overcoming the unlawful private interests of individuals to uphold the public interest.<sup>5</sup>

In a case considered by the Supreme Court of Georgia, the author of a private complaint was unable to demonstrate any legal interest in annulling a decision. Although the complainant was a co-owner of immovable property, the declaration of the other co-owner's death did not constitute a violation of the complainant's co-ownership rights. Even if the deceased co-owner's death had been confirmed by the court, inheritance proceedings would have been initiated for the deceased's share, with the heirs being invited to claim it. If no heirs were found, the heirless property would pass to the state. Since the complainant was neither a legal nor a testamentary heir of the deceased, their complaint was dismissed.<sup>6</sup>

## 1.2. Constitutional Lawsuits: Beginning of the Chaos

The matter of whether the state is a "sixth-degree" legal heir or a guarantor of public order is vital to the two constitutional lawsuits filed by

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<sup>4</sup> See: Besarion Zoidze, "Formalism in Georgian Law – Primarily According to the Practice of the Constitutional Court," *Journal of Public Law*, no. 1 (2023): 59–93; Besarion Zoidze, "The Interaction between Private and Public Law (Primarily in The Context of The Theory of Interests)," *Private Law Review*, no. 5 (2023): 17.

<sup>5</sup> Does the transfer of heirless property to the state restrict the constitutional right to property? For more information, see: Giorgi Khubua, "Superpositive Constitution (?): On the Issue of the Legal Nature of 'Constitution and Law,'" *Journal of Public Law*, no. 2 (2023): 6–7.

<sup>6</sup> Decision of the Supreme Court of Georgia in Case №as-634–595–2010, July 5, 2010.

Giorgi Khorguashvili and Giorgi Arsenidze against the Parliament of Georgia. These cases bring into focus the constitutional compatibility of certain provisions of the Civil Code of Georgia, particularly Articles 1336 and 1343, which regulate inheritance and the transfer of heirless property to the state.

In the case of Giorgi Khorguashvili against the Parliament of Georgia (Constitutional claim No. 1395, 2019), Khorguashvili challenges the constitutionality of specific provisions in Articles 1336 and 1343 of the Civil Code.<sup>7</sup> The main issues include:

- (1) The constitutionality of the phrase in Article 1343(1) that transfers heirless property to institutions for the elderly, disabled, medical, educational, and other social protection if the testator was under their care. Khorguashvili argues this provision contradicts constitutional principles, especially regarding personal property rights (Article 11 of the Constitution of Georgia).
- (2) The constitutionality of transferring heirless property to the state under Article 1343(1) when there are no legal heirs, or when all heirs have been deprived of inheritance rights. Khorguashvili claims this provision infringes on individual property rights (Article 19 of the Constitution).

However, the Constitutional Court did not accept the part of the claim challenging the state's right to inherit in the absence of heirs. This decision left open the issue of whether the state's involvement in inheritance is consistent with the constitutional right to private property and inheritance.

In Giorgi Arsenidze's case (2023), the plaintiff argues that certain blood relatives, who are not recognized as heirs under the Civil Code, should be allowed to inherit in the absence of direct heirs (fifth-degree heirs). Arsenidze contends that the legal framework does not adequately address the interests of those who have cared for the testator, particularly in cases where the state might inherit property in such situations.<sup>8</sup>

The Civil Code does not establish a "sixth-degree" heir in cases where the direct heirs are absent. Currently, the system recognizes up to fifth-degree heirs, beyond which the state is deemed the heir if no other relatives or

<sup>7</sup> Constitutional Court of Georgia № 2/10/1395 in the Case "Giorgi Khorguashvili vs. the Parliament of Georgia".

<sup>8</sup> Constitutional Claim №1796 "Giorgi Arsenidze vs. the Parliament of Georgia".

designated parties can inherit. Both plaintiffs argue that this legal vacuum unfairly excludes individuals who may have close ties with the deceased, such as those who provided care or support during their life.<sup>9</sup>

The legal framework in the Civil Code leaves the state as the fallback heir in cases of intestacy, but it does not extend inheritance rights to individuals beyond the five degrees specified. In their constitutional claims, both Khorguashvili and Arsenidze argue that, in the absence of heirs, the property should be transferred to relatives who were close to the testator but testator, meet the technical requirements of the existing degrees. These lawsuits highlight a gap in the legal provisions concerning inheritance, which might limit the recognition of non-immediate family members as legal heirs.

The state, in the context of Article 1343 of the Civil Code, assumes the role of inheritor when no legal or testamentary heirs exist, or when all heirs are either non-existent, have renounced their inheritance rights, or have been disqualified from inheritance. The state's role as a legal heir is based on the principle that heirless property should not remain ownerless and must be managed for public benefit, especially when there are no direct heirs.

However, the lawsuits question whether this principle fully aligns with the constitutional right to property and whether it respects the broader social and familial connections individuals may have with the testator. Specifically, if a person has been a primary caregiver or has a close personal relationship with the deceased, should they not be considered a rightful heir in the absence of immediate family members? These lawsuits suggest a re-evaluation of how property is transferred to the state, possibly advocating for broader recognition of those outside the established degrees of inheritance.

The constitutional lawsuits challenge whether the current framework for heirless estate, particularly the transfer of property to the state, violates the constitutional rights of individuals to inherit property. In this context, public order is an essential consideration. The state's role as a guarantor of public order may justify its claim to heirless property, ensuring that it is not left without ownership and is used for public or societal benefits.

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<sup>9</sup> Cf. Louise I. Shelley, "Privatization and Crime: The Post-Soviet Experience," *Journal of Contemporary Criminal Justice* 11, no. 4 (1995): 244–56, <https://doi.org/10.1177/104398629501100405>.

However, the plaintiffs argue that public order should not override individual rights in cases where the testator's property can be inherited by other relatives or individuals who were close to the deceased.

The Constitutional Court of Georgia will ultimately need to assess whether the current legal provisions respect the balance between public order and individual property rights, and whether the exclusion of a "sixth-degree" heir creates an unjust legal gap. The outcome of these cases could set important precedents for the rights of individuals in situations where heirless estate inheritance is in question.<sup>10</sup>

The matter of whether the state is a "sixth-degree" legal heir or a defender of public order revolves around the application and interpretation of Articles 1336 and 1343 of the Civil Code.<sup>11</sup> While the state currently acts as the fallback heir in the absence of other claimants, the constitutional lawsuits filed by Khorguashvili and Arsenidze suggest that the Civil Code may be in need of reform. These cases underscore the tension between protecting individual property rights and maintaining societal order through the state's role in inheriting property, especially when other legal heirs are absent or disqualified. The Constitutional Court's eventual ruling could clarify whether the state's interest in heirless property should be prioritized or if individuals with close personal ties to the deceased should be recognized as legitimate heirs.

### 1.3. Getting Stronger and More Powerful

The state, as an heir, possesses characteristics typical of natural persons in inheritance law is a complex one. There are several aspects to consider, particularly regarding the state's role in the inheritance process and the distinction between public interests and private property rights. Below, I will address several key points raised in the scenario you have outlined.

In inheritance law, the state typically assumes the role of an heir only when there are no legal heirs or when all heirs renounce their inheritance

<sup>10</sup> Cf. Mariusz Załucki, "Impact of the EU Succession Regulation on Statutory Inheritance," *Comparative Law Review, Nicolaus Copernicus University*, no. 23 (2017): 223–5, <http://dx.doi.org/10.2139/ssrn.3122632>.

<sup>11</sup> Cf. Rosa M. Garcia-Teruel, "Excluding Forced Heirs Due to a Lack of Personal Relationship with the Deceased in Spain in a Comparative Perspective," *Review of European and Comparative Law* 47, no. 4 (2021): 7–26. <https://doi.org/10.31743/recl.12717>.

rights, as outlined in Article 1343 of the Civil Code of Georgia. The state's role here is generally seen as one of "necessity" rather than one of personal interest, as it steps in to ensure that property does not remain ownerless.<sup>12</sup> ECtHR noted that

norm is "foreseeable" when it affords a measure of protection against arbitrary interferences by the public authorities. Any interference with the peaceful enjoyment of possessions must, therefore, be accompanied by procedural guarantees affording to the individual or entity concerned a reasonable opportunity of presenting their case to the responsible authorities for the purpose of effectively challenging the measures interfering with the rights guaranteed by that provision. In ascertaining whether that condition has been satisfied, a comprehensive view must be taken of the applicable judicial and administrative procedures.<sup>13</sup>

While a natural person inherits to fulfil personal or familial interests, the state's involvement is more procedural, seeking to maintain public order and legal continuity. This distinction shapes the nature of the state's rights and obligations as an heir, setting it apart from private heirs.

[A]ny interference by a public authority with the peaceful enjoyment of possessions can only be justified if it serves a legitimate public (or general) interest. Because of their direct knowledge of their society and its needs, the national authorities are in principle better placed than the international judge to decide what is 'in the public interest'. Under the system of protection established by the Convention, it is thus for the national authorities to make the initial assessment as to the existence of a problem of public concern warranting measures interfering with the peaceful enjoyment of possessions.<sup>14</sup>

<sup>12</sup> Cf. European Union Committee, *The EU's Regulation on Succession*, 6th Report of Session (London: The Stationery Office Limited, 2010), 11; European Commission, *Summary of Replies to the Public Consultation on Crossborder Inheritance Tax Obstacles within the EU and Possible Solutions* (Brussels, 2010), 6.

<sup>13</sup> Cited ECtHR Judgment of 13 October 2020, *Agro-Pacht KFT v. Hungary*, application no. 31185/14, para. 34 in Douglas Maxwell, *The Human Right to Property – A Practical Approach to Article 1 of Protocol No. 1 to the ECHR* (Oxford: Bloomsbury Publishing, 2022), 189.

<sup>14</sup> Cited ECtHR Judgment of 13 December 2016, *Bélané Nagy v. Hungary*, application no. 53080/13, para. 113, and ECtHR Judgment of 30 June 2005, *Jahn and Others v. Germany*, applications nos. 46720/99, 72203/01 and 72552/01, para. 91 in Maxwell, *The Human Right to Property*, 201.

One of the most important aspects to highlight is that, while the state can be an heir, it is not meant to “fight for the right” or “contest” the estate as a natural person might. In other words, the state’s involvement is generally seen as an “inevitable necessity” rather than an active pursuit of property. It assumes inheritance only when it is necessary to prevent the property from being without an owner.

If the state were to be viewed as having the same rights and obligations as a natural person heir, it could lead to situations where public interests might be subordinated to private interests, potentially causing a conflict of interests. For this reason, many legal scholars argue that the state’s role should be limited to the bare minimum necessary to ensure that property is transferred appropriately without entering into the competitive nature of inheritance.

The matter of whether the state should have the same rights and obligations as a natural person is a key issue. Equalizing the state’s rights with those of a private heir could create imbalances, particularly because the state has a larger role in public order, and its actions can influence broader societal structures.

For example, *Re Maldonado’s* case is a notable decision of the English Court of Appeal concerning the inheritance of property located in the United Kingdom, which belonged to a Spanish national who died without heirs. Under English conflict of laws principles, the distribution of a deceased person’s estate is generally governed by the law of their domicile at the time of death. However, the question of title to specific property is typically determined by the law of the jurisdiction where the property is situated. In this case, Spanish law dictated that, in the absence of heirs, the estate would pass to the Spanish state as the “ultimate heir.” In contrast, English law provides that such property would pass to the Crown as *bona vacantia* – that is, as ownerless property. The Court of Appeal concluded that the Spanish state’s right to inherit under Spanish intestacy law meant that the property never became ownerless. Accordingly, the English doctrine of *bona vacantia* did not apply and the Spanish state was entitled to the property.

It would be more fitting to say that the decision of the Court of Appeal administers a well-deserved punishment to those legal systems whose interpreters did not study with sufficient care and attention the legal literature



of the civil law countries during the nineteenth century. All the pandectist textbooks of the 19th century deal at length with the question of the “legal nature” of the right of the fisc or State to take the assets of an intestate leaving no known relatives.<sup>15</sup>

If the state were to act as an heir with the same rights as a natural person, it could undermine the idea that inheritance is a private matter that should be governed by individual rights. In some instances, the state’s claim to property could be seen as too invasive, especially if it actively “fights” for the inheritance against other potential heirs, thus affecting the balance of power in inheritance disputes.

Right of succession between children and parents, and between grandchildren and grandparents, was so closely related to family life that it came within the sphere of Article 8. It has thus considered that matters of intestate succession – and voluntary dispositions – between near relatives prove to be intimately connected with family life. Family life does not include only social, moral or cultural relations, for example in the sphere of children’s education; it also comprises interests of a material kind, as is shown by, amongst other things, the obligations in respect of maintenance and the position occupied in the domestic legal systems of the majority of the Contracting States by the institution of the reserved portion of an estate.<sup>16</sup>

When it comes to actual possession of property, the key principle is that an heir is considered to have received the estate when they file a claim with a notary or begin managing the property. In this case, the state’s role in claiming property as heirless might be seen as an administrative action to ensure that property does not remain unowned.

However, if the state is claiming property as heirless, it should do so with awareness of other potential claims. For instance, if there are other heirs or claimants, the state should not simply claim ownership without fully considering the interests of those who may already possess the property

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<sup>15</sup> E.J. Cohn, “The Moral of Maldonado’s Case,” *The Modern Law Review* 17, no. 4 (1954): 381. Cited Decision of The Supreme Court of Judicature Court of Appeal – *Re Maldonado, deceased The State of Spain v. The Solicitor for the Affairs of her Majesty’s Treasury*, [1953] EWCA Civ J1130–1.

<sup>16</sup> ECtHR Judgment of 13 June 1979, Case Marckx v. Belgium, application no. 6833/74, hudoc. int, 23–4, paras. 51–52.

or have legal rights to it. This is especially relevant in situations where the property may be actively possessed by another heir.<sup>17</sup>

In cases where an heir has missed the deadline for claiming inheritance, and the estate is disputed, the state's involvement becomes more complex. If the state has already claimed ownership of the property, the court may have to decide whether the state's claim is legitimate or whether another heir, having missed the deadline, should be allowed to take over the inheritance.<sup>18</sup>

In these cases, the state should not be seen as a "rival" to the owner, but rather as a neutral party that steps in to preserve public order. However, if the estate has already been transferred to the state, it may be appropriate for the state to defend its interest in the property, just as any other legal heir would defend their claim.

The state's obligations as an heir specifically, regarding its responsibilities toward the estate are not as expansive as those of natural persons. For example, the state is not responsible for the testator's debts in the same way that a natural heir might be, unless explicitly stated by the law. As an heir, the state's main obligation is to preserve the property and maintain its legal status, ensuring that it is not left as heirless estate or lost to the public.

The involvement of state authorities in legal proceedings regarding heirless property often falls to institutions like the Ministry of Economy and Sustainable Development, which is responsible for managing state property. The state, acting through this institution, can step into legal disputes over inheritance, but its role remains that of a caretaker rather than a rival to other heirs. In the case where other heirs claim ownership of property, the state's participation should be seen in terms of procedural necessity rather than as an adversarial interest.<sup>19</sup>

<sup>17</sup> See: Mark Beuker, "Combining Legal and Economic Theory. An Interdisciplinary Approach to Dutch and Polish Family Provisions in Succession Law," *Review of European and Comparative Law* 47, no. 4 (2021): 49–65, <https://doi.org/10.31743/recl.12840>.

<sup>18</sup> Cf. Mihail Danov and Paul Beaumont, "Measuring the Effectiveness of the EU Civil Justice Framework: Theoretical and Methodological Challenges," *Yearbook of Private International Law*, no. 17 (2016): 151–3, <https://doi.org/10.9785/9783504385163-008>.

<sup>19</sup> The Council of the Notariats of the European Union, *Recommendations about the Monitoring and Evaluating of the Succession Regulation EU 650/2012*, 2023; European University Institute (EUI) Florence/European Private Law Forum Deutsches Notarinstitut (DNotI)

The Law of Georgia “On Relations Arising from the Occupancy of Dwellings” clarifies how property used in residential tenancy can be treated in cases of heirless estate inheritance. The court can recognize the property as heirless, transferring ownership based on the specific nature of the property and regulations in force at the time. This law emphasizes the importance of considering the context of actual possession and use when determining the rightful heir, especially in cases where the property has been used as a residence.

The state, as an heir under Georgian inheritance law, does not possess the same rights and obligations as natural persons. It acts primarily to prevent property from becoming ownerless and to maintain public order. While the state’s claim to inheritance is necessary in certain circumstances, its role is much more procedural and passive compared to natural heirs, who inherit to fulfil personal or familial interests. The state’s involvement in inheritance should be seen as an administrative necessity rather than an active pursuit of property, and its role should be limited to the interest of ensuring legal order, not to compete with natural heirs. The courts and other authorities must be mindful of the balance between protecting the state’s rights and respecting the property rights of individual heirs.

The Supreme Court of Georgia’s explanation regarding Article 1473 of the Civil Code highlights the legislator’s intent to ensure fairness and equality in the distribution of inheritance among heirs, particularly when it comes to dividing a parent’s estate. This principle of equalization of shares is crucial for maintaining fairness in inheritance law. The Court distinguishes between property given as a gift and property allocated as an advance share of the estate, emphasizing that these two types of property transfers are subject to different legal norms.

This distinction is important because, in the case of an advance allocation, the parent’s intent is to distribute the estate beforehand, while a gift is a voluntary transfer of property with no elements attached.<sup>20</sup> The Court’s

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Würzburg, *Real Property Law and Procedure in the European Union General Report (Final Version)*, 2005, 49–50.

<sup>20</sup> Hanna Witczak, “The Legal Status of Minor Testator’s Parents Deprived of Parental Authority in Intestate Succession. Some Remarks on the Solutions in Polish, Russian, and Italian Law,” *Review of European and Comparative Law* 47, no. 4 (2021): 107–10, <https://doi.org/10.31743/recl.12937>.

interpretation underscores that inheritance law is designed to honour the parent's intent, ensuring that heirs are treated equally unless specified otherwise by the parent. Also

the good governance principle should not, as a general rule, prevent the authorities from correcting occasional mistakes, even those resulting from their own negligence. However, the need to correct an old “wrong” should not disproportionately interfere with a new right which has been acquired by an individual relying on the legitimacy of the public authority's action in good faith.<sup>21</sup>

#### 1.4. Role of the National Agency of State Property of Georgia and Recent Practice - The Shadow Behind Statistics

However, the state's involvement in inheritance relations introduces complexity.<sup>22</sup> Unlike individuals, the state's role as an heir is not primarily driven by the testator's will (as in testamentary inheritance). Instead, the state assumes its inheritance role based on legal principles and the need to uphold public order. This makes the state's position as an heir distinct from natural persons. The state's role can sometimes be seen as an advocate for public interests and property rights, ensuring that inheritance is handled according to the law and preventing unfair distribution.<sup>23</sup> As we mentioned, the National Agency of State Property of Georgia is responsible for determining the existence of uninherited property. This determination is based on submitted applications or letters from citizens and various administrative

<sup>21</sup> Cited ECtHR Judgment of 12 June 2018, *Beinarovič v. Lithuania*, application no. 70520/10, para. 140 in Maxwell, *The Human Right to Property*, 320.

<sup>22</sup> Cf. Katherine Verdery, “The Property Regime of Socialism,” *Conservation & Society* 2, no. 1 (2004): 190–1, <https://www.jstor.org/stable/26396571>; François Trémosa, *The State of Implementation of the EU Succession Regulation's Provisions on its Scope, Applicable Law, Freedom of Choice, and Parallelism between the Law and the Courts*, Policy Department for Citizens' Rights and Constitutional Affairs of the European Parliament (Toulouse, 2017), 1–4.

<sup>23</sup> See: Tatjana Evas and Wouter Van Ballegooij, *Common Minimum Standards of Civil Procedure, European Added Value Assessment Accompanying the European Parliament's Legislative Own-initiative Report* (European Parliamentary Research Service, European Union, 2019), 20–1; Maria Mousmouti, Haris Meidanis, and Jos Uitdehaag, *Civil Enforcement in the EU: a Comparative Overview, Comparative Report* (Centre for European Constitutional Law, International Union of Judicial Officers, 2021), 38; European Union Agency for Fundamental Rights and Council of Europe, *Handbook on European Law Relating to Access to Justice* (Luxembourg: Publications Office of the European Union, 2016), 25.

bodies, in accordance with the relevant legislation. Furthermore, it is to be noted that over the past five years (2020–2025), the Agency has been conducting administrative proceedings on the recognition of estate owned by 22 individuals as heirless, of which only three estate items were registered as state property.<sup>24</sup>

It is to be noted that the decisions made by the National Agency for State Property concerning the recognition of real estate as uninherited, according to the information available to the Agency, have not been subject to judicial appeal.

The state's multifaceted role can be viewed as that of a "sixth- degree" legal heir. This means that while the state can inherit property under specific conditions, its role is more procedural and aligned with maintaining public order and fairness, rather than fulfilling the personal intentions of a testator.<sup>25</sup> The state's rights and obligations in inheritance law,<sup>26</sup> therefore, need to be carefully regulated to strike a balance between protecting individual rights and ensuring public interests are maintained.

### 1.5. Finding Solutions Between Private and Public Interests

The state's rights over property and inheritance can have significant economic repercussions, particularly in relation to the economic freedoms of private owners. Economic freedom is considered a fundamental component of prosperity, as it enables individuals to possess, utilize, and transfer property without restriction, thereby stimulating entrepreneurship, investment, and overall economic growth. However, when the state asserts broad control over property rights, it introduces uncertainty into the market, as private owners and heirs may fear potential state intervention in their property disputes. Of particular concern is the state's power to claim inheritance rights over private estates, especially in cases where there are no immediate heirs. This authority has the capacity to establish an environment in which

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<sup>24</sup> The following information has been officially provided by the National Agency of State Property of Georgia, no. 14/9032, 19/02/2025.

<sup>25</sup> Cf. Irakli Leonidze, "The Problem of Inheriting a Land Plot in the Household According to Georgian Judicial Practice," *Justice and Law* 4, no. 76 (2022): 107–40.

<sup>26</sup> Cf. Alfonso-Luis C. Caravaca, "Article 20 – Universal Application," in *The EU Succession Regulation*, eds. Alfonso-Luis C. Caravaca, Angelo Davì, and Heinz-Peter Mansel (Cambridge: Cambridge University Press, 2016), 291.

property is no longer exclusively within the domain of private individuals. Such uncertainty has the potential to dissuade investment, impede property transactions, and disrupt market dynamics that depend on clear, predictable ownership rights.<sup>27</sup> The possibility that the state might assert its claim to inheritance could potentially result in individuals exercising caution when exercising their property rights, due to the long-term stability of ownership becoming uncertain. The state's capacity to appropriate property without shouldering comparable economic risks to those of private individuals has the potential to exacerbate existing inequalities. It is evident that private owners act in their own economic self-interest, thereby benefiting both themselves and the broader economy. In contrast, the state's intervention is often characterized by a lack of comparable economic motivation. This is due to the fact that the state does not face the same personal or financial loss when appropriating property. In such cases, the economic agency of private individuals is undermined, as the state's claim to property often supersedes private ownership rights.<sup>28</sup>

Thus, understanding the state's position as an heir within the Civil Code requires an in-depth consideration of its dual role: as both an enforcer of inheritance law (defending the interests of rightful heirs and the public order) and as a participant in the inheritance process (fulfilling its role as a legal heir in cases of heirless estate succession). The regulation of the state's rights and obligations in inheritance law remains an important task to ensure fairness and equity in the system.

In order to consider mediation as an effective means of protecting the rights of heirless household owners, it is essential that the legislator develop a strategy for selecting the most appropriate environment for mediation and legal resolution of complex social relations.<sup>29</sup> Following this, the formation of large-scale, targeted working groups according to municipalities should be initiated, where heirless households are still unregistered

<sup>27</sup> Cf. Ekaterine Shengelia and Irakli Leonidze, "Notary Electronic Registry and Data Security," *Journal of Personal Data Protection Law*, no. 1 (2024): 41.

<sup>28</sup> Cf. Devaux, "The European Regulations on Succession of July 2012," 249.

<sup>29</sup> Cf. Natia Chitashvili, "Strengthening the Legal Guarantees of Mediation Confidentiality with Contractual Mechanisms," *Journal of Law*, no. 2 (2023): 110.

and there is a dispute between the parties or the threat of a disputable relationship.<sup>30</sup>

While the state must retain the authority to act in cases where there is no owner or legitimate claimants to property, this power must be exercised cautiously and transparently, with due regard for the private interests involved. The state's involvement should be limited to the minimum necessary to preserve public order and ensure that property does not remain ownerless. One potential safeguard is to ensure that individuals with close personal or economic ties to the deceased, such as those who have cared for the testator or contributed significantly to their well-being, are given stronger recognition in inheritance laws. By expanding the definition of who may be considered an heir, the legal system can more accurately reflect the diversity of private interests that may be involved in inheritance matters. Furthermore, the principle of state rights should be subject to increased judicial scrutiny. It is incumbent upon the courts to ensure that the state's claims to property do not undermine individual property rights or economic freedom.<sup>31</sup> This objective can be accomplished by means of a more rigorous examination of state claims in the context of inheritance disputes. In order to ensure that the state's role is always justified and proportionate to the public interest, this examination is necessary.<sup>32</sup>

## 2. Conclusion

When the state's authority over property and inheritance is essential for maintaining order in certain situations, its unconditional rights pose a risk to private owners' interests and economic freedom. The state's broad jurisdiction in property claims can undermine the legitimate rights of private individuals, potentially stifling the economic vitality that private property ownership fosters. To mitigate these risks, it is crucial to ensure that state intervention remains limited, transparent, and consistent with broader

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<sup>30</sup> Irakli Leonidze and Giorgi Chikviladze, "The Importance of Eliminating the Legal Gap of Title to a Household and the Role of the Constitutional Court," *Journal of Constitutional Law*, no. 2 (2022): 91–2.

<sup>31</sup> Cf. Reid, Waal, and Zimmermann, *Comparative Succession Law*, 30.

<sup>32</sup> Irakli Leonidze, "State as an Heir: Balancing Public and Private Interests in Georgia and Europe. Part I: Comparative Overview," *Review of European and Comparative Law* 60, no. 1 (2025): 248, <https://doi.org/10.31743/recl.18175>.

societal values. By striking a balance between preserving public order and safeguarding private rights, legal systems can better protect economic freedom while fulfilling the state's essential role as a legal successor in cases of heirless property.

Article 1343 of the Civil Code of Georgia establishes the state as a “sixth-degree” legal heir, meaning the state holds a legitimate public interest in acquiring heirless property. However, considering the state as a full-fledged heir in the same capacity as private individuals’ conflicts with the private interests of individuals, especially when those individuals might have a legitimate claim to the property. Therefore, it is crucial to limit the state’s involvement to the extent necessary to fulfil its public interest in ensuring the proper management and disposition of property that otherwise remains without an heir.

The state’s multifaceted role as a legal heir reflects its dual function: it acts as both a defender of public order and an opponent of private interests in some cases. Through the systematic interpretation of the Civil Code and relevant judicial practices, it becomes evident that the state’s role as a “sixth-degree” heir needs a nuanced understanding. The regulation of its rights and obligations as an heir is of significant importance in inheritance law, and this dual nature-acting both for and against the interests of private citizens should be carefully balanced.

In testamentary inheritance, the state assumes rights and obligations similar to those of natural persons, because the state’s involvement arises from the will of the testator. However, in legal inheritance, the state’s role is less robust and is instead a consequence of the absence of other heirs. Given that the state’s status as an heir in legal inheritance is not determined by the testator’s intentions, but by the lack of other legal heirs, it is essential to define what specific rights and obligations the state assumes in such cases. This will ensure clarity and consistency in inheritance law.

It is, therefore, necessary to improve Article 1343 of the Civil Code to directly define the state’s status as a special legal heir, delineating its rights and obligations clearly. By doing so, the law would prevent excessive state intervention in inheritance relations, preserving the balance between protecting public interests and safeguarding private ownership rights. Furthermore, it might be prudent to consider jointly regulating the state’s status as both a legal and testamentary heir, ensuring a cohesive approach to



inheritance law that respects the distinctions between these two forms of inheritance.

Unconditional rights of the state can lead to the restriction of private owners' interests and economic freedom, because the state has more power and opportunities to fight for property and inheritance rights than individuals.

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